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The Federal Supreme Court (F S C) has been convened on 5/12/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Governor of Wasit/ being in this capacity – his agents are the official jurists, Hayder Mazin Saleem, Mohammed Abid Nassir, Sahib Mutar Khabbat, and Sattar Abid Fozan.

The Defendant: Minister of Agriculture/ being in this capacity – his agents, the official jurists Salam Hano Hameed and Suaad Mohammed Kareem.

The Third Party besides the Defendant: the Prime Minister/ being in this capacity – his agent, the legal counselor Hayder Ali Jaber.

### **The Claim**

The plaintiff/ being in this capacity claimed through his agent that the procedure for transferring the powers of some Iraqi federal ministries, including the Ministry of Agriculture, to local governments in the governorates not organized into a region has entered into force according to the provisions of the Law on Governorates Not Incorporated into a Region No. (21) of 2008, as amended. Law No. (15) of 2010 and Law No. (19) of 2013. These laws detail the organization of the work of local governments, and how to form their executive and legislative bodies, as the legislation of laws related to the transfer of powers is based on the texts of the Iraqi Constitution, including Article (1), which stipulates Provided that (the Republic of Iraq is a single, independent, fully sovereign federal state...), and since one of the requirements for building federal states is to expand the

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powers of their local governments so that they can carry out their role in serving their citizens more effectively and efficiently, and the procedure for transferring powers was consistent with the provisions of the effective Iraqi Constitution and the rules and the norms applicable in all federal states, it is an important measure that contributes to the development of the political system in Iraq, and aims to eliminate red tape, preserve public money from administrative and financial corruption, and facilitate, accelerate and develop public services provided to citizens. Therefore, the plaintiff asked this court to oblige the defendant, being in this capacity, to transfer all his powers from the Ministry of Agriculture to the Wasit Governorate and Wasit District following the provisions of Article (45) of Law No. (21) of 2008 as amended, and the expenses and fees are charged to him. The case was registered with this court under the number (132/Federal/2023), and the legal fee was collected for it, and the defendant was notified of its petition and documents in accordance with Article (21/First and Second) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and until the end of the period specified for the response. Set a date for the pleading in accordance with Article (21/Third) of the court's internal regulations mentioned above, and both parties will be notified of it, on the appointed day, the court was formed, and the legal advisor, Mohamed Abdel Nasser, attended as an agent of the plaintiff and the defendant's two official jurists, Salam Hanu Hameed and Souad Muhammad Karim, attended on behalf of the defendant, and the public argument proceeded. The plaintiff's agent repeated what was stated in the lawsuit petition and requested a ruling according to what was stated therein. The defendant's agent responded and asked to dismiss the case for the reasons stated in the answering draft dated 9/19/ 2023 ((which summarized that the Ministry of Agriculture had previously issued Ministerial Order No. (344) on 2/16/2016 based on Cabinet Resolution No. (304 of 2014) and in implementation of the letter from the Prime Minister's Office No. (Mim. Ra. Waw /Sin/ 2267 on 11/8/2015) which includes disengaging the agricultural directorates from the ministry and attaching

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them to the governorates from both the administrative and financial standpoints and the agricultural directorates remain technically connected, the role of the Ministry is to plan the general policy of the state, and the powers of the plaintiff's department have been exclusively specified in the aforementioned ministerial order in the manner permitted by agricultural legislation, with emphasis on the text of Paragraph (Fourth/2) thereof, which stipulates (the rest of the administrative and financial powers). The legal matters that were not mentioned in this order remain vested in the ministry until the necessary legislation is issued by the Council of Representatives. In addition to this order, the two ministerial orders were issued in numbers (34958) on 8/9/2016 and (42495) on 10/3/2016 - it was decided to transfer administrative powers. To the governorates as far as the agricultural directorates in all governorates are concerned except (Kirkuk, Nineveh, Salah al-Din, and Anbar) - and based on Council of Ministers Resolution No. (437) of 2017, Ministerial Order No. (37318) was issued on 10/23/2018, according to which It was decided to disengage the agricultural directorates in the governorates (Nineveh, Salah al-Din, Anbar) from the Ministry of Agriculture and attach them to the governorates from both the administrative and financial standpoints, after which Ministerial Order No. (12398) was issued on 8/21/2020, according to which the powers of the agricultural directorates were expanded and delegated to the governorates and their departments in a way that contributes to alleviating the suffering of tenants and farmers and not burdening them with reviews, and the letter from the Presidency of the Council of Ministers/the Supreme Authority for Coordination between the Governorates came No. (10/438) on 3/4/2019, which included: ( A- Keeping agricultural lands federal and the fees resulting from that being imposed according to federal laws. B- Encouraging agricultural investment and agricultural research in the governorates. C- Local governments shall have a tangible and clear role in the field of coordination with the relevant ministries regarding the subject of investment), in addition to Article ( 4/Eleventh-2/First-B) of the Second

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Amendment No. (19 of 2013) to the Law on Governorates Not Organized in a Region No. (21 of 2008) published in the Iraqi Gazette, Issue (4284) on 8/5/2013, which stipulates ( Allocating ownership of lands belonging to ministries and entities not affiliated with a ministry to the governorates to establish service and urban projects in the governorate, with the approval of the Council of Ministers, except the following lands: B- Agricultural lands and orchards, regardless of their kind or type), accordingly, the implementation of the article - the subject of the lawsuit - has begun as permitted by the agricultural legislation in accordance with the aforementioned ministerial orders, and the agricultural directorates in the governorates that have separated from the Ministry have become bodies not affiliated with the Ministry, and the agricultural legislation is special laws that stipulate the authorization of the Ministry of Agriculture or the Minister ( Exclusively) and it cannot be delegated to the governorates and their departments except after the issuance of a law or legislation requiring that, the court had previously dismissed the same matter pursuant to Decision No. (87/Federal/2021) dismissing the claim of the plaintiff, the Governor of Maysan, in addition to his position, filed against (the Minister of Agriculture, in addition to his position). The decisions of the Federal Supreme Court are final and binding on all authorities, based on Article (94) of The Constitution of the Republic of Iraq of 2005 and Article (5/Second) of the Federal Supreme Court Law), and the defendant's agent added that her client is committed to the directives of the Prime Minister. In response to the request of the plaintiff's agent, the Prime Minister included a third person in the lawsuit alongside the defendant to complete the dispute, the court decided to accept this and assign him to pay the legal fee, and after paying it, the Deputy Prime Minister, Legal Adviser Haider Ali Jaber, came, requesting that the lawsuit be dismissed in light of what was stated in ((The letter of the Prime Minister's Office, No. 3018/2322889 dated 8/10/2023 included in Paragraph (5). (Including, reconnecting the agricultural directorates in the governorates to the ministry - which was highlighted by the plaintiff's agents)), and after

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the court completed its audits and there was nothing left to say, the end of the argument has been made clear and the court issued the following ruling:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiff was the Governor of Wasit/in addition to his job, filed a lawsuit before this court against the defendant, the Minister of Agriculture/in addition to his job, and the third person joining his side to complete the dispute, the Prime Minister/being in this capacity, to demand that they be legally obligated to transfer all powers from the Ministry Agriculture to Wasit Governorate following the provisions of Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008 as amended, and they bear the expenses, fees, and attorney's fees. The Federal Supreme Court finds that the plaintiff's claim / being in this capacity is acceptable in form as it falls within the jurisdiction of this stipulated court. According to Article (93/Third) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/Third) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, relating to adjudication of cases arising from the application of federal laws, this is because the amended Law of Governorates Not Incorporated Into a Region No. (21) of 2008 is considered a federal law, and adjudicating cases arising from the application of Article (45) thereof falls within the jurisdiction of this court, and the legal capacity necessary to file a lawsuit and litigate is considered achieved in both parties. The case, in addition to the presence of the plaintiff's adversary, being in this capacity facing the defendant, in addition to his position after completing his dispute by introducing the third person, in addition to his position on his side, and the availability of the conditions for establishing it stipulated in Articles (44, 45, 46, and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to the condition of

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interest stipulated in Article (6) thereof, and in view of the availability of the conditions stipulated in Article (25) of the Bylaw of the Federal Supreme Court No. (1) of 2022, which stipulates that (every interested party has the right to directly appeal a lawsuit, which shall be submitted to the court to decide on the cases) Arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, in accordance with the following conditions:... ) and within the meaning of Article (20) thereof, which lies in the interest of the plaintiff when filing the lawsuit, and that it is a condition and affects his legal, financial, and social position, in addition to the text - The subject of the appeal - was actually applied to the plaintiff, and he did not benefit from it either in whole or in part, which requires acceptance of the plaintiff's claim in form. When looking closely at the merits of the case, the following was found:

First: Article (1) of the Constitution of the Republic of Iraq for the year 2005 stipulates that: ((The Republic of Iraq is a single, independent, federal state with full sovereignty, its system of government is a democratic, representative (parliamentary) republic, and this Constitution guarantees the unity of Iraq)), and it is clear from this text It defined the form of the state (a single, independent, fully sovereign federation), and also defined the system of government as (republican, representative, parliamentary, democratic), and that the constitution is the guarantor of the country's unity in light of the form of the state and the system of government stipulated in it, and the federal powers stipulated in Article (47) are assumed. ) of the Constitution is responsible for preserving that unity based on its obligations stipulated in the provisions of Article (109) of the Constitution, which stipulates that (the federal authorities shall preserve the unity, integrity, independence, sovereignty, and federal democratic system of Iraq), and thus this responsibility is considered a constitutional responsibility for all authorities. Observe them and do not violate the provisions of the Constitution regarding them.

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Second: Article (116) of the Constitution of the Republic of Iraq for the year 2005 stipulates: that the federal system in the Republic of Iraq consists of a capital, regions, decentralized governorates, and local administrations), which means that the federal system in Iraq is based on decentralized administration, and the federal system in it depends based on political decentralization, which means distributing powers between the center and local governments. As for decentralized administration, it means distributing administrative functions between the central government in the capital and independent local or departmental bodies, so that when these bodies exercise their administrative function, they are under the supervision and control of the central government and enjoy financial and administrative independence. In a way that enables them to perform their work following the law, and thus the administration of governorates that are not organized into a region is based on the principle of administrative decentralization, based on the provisions of Article (122) of the Constitution, which stipulates that (First: Governorates consist of several districts, districts, and villages. Second: Governorates that are not organized into a region are granted broad administrative and financial powers, enabling them to manage their affairs following the principle of administrative decentralization, this shall be regulated by law, third: The governor, who is elected by the Provincial Council, is considered the supreme chief executive of the governorate, to exercise his powers authorized by the Council. Article (123) stipulates that (the powers of the federal government may be delegated to the governorates, or vice versa, with the approval of both parties, and this shall be regulated by law), it is inferred from the aforementioned texts that the Iraqi constitutional legislator approved, under the provisions of the Constitution, the nature of the federal system of government based on political decentralization. He also approved the nature of the federal system of government based on administrative decentralization, taking into account the exclusive powers of the federal authorities stipulated in Article (110) thereof. Which may only be exercised by the federal authorities, and may be delegated to the governorates

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by agreement of the two parties and vice versa, without the regions, following the provisions of the law in the implementation of the provisions of Article (123) thereof mentioned above. Third: Implementing the principle of administrative decentralization in the administration of governorates that are not organized into a region is in implementation of Article (122/Second) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that (Governorates that are not organized into a region shall be granted broad administrative and financial powers, enabling them to manage their affairs on a In accordance with the principle of administrative decentralization, and this is regulated by law, it requires the existence of a law that defines the financial and administrative powers enjoyed by governorates not organized into a region in light of the principle of administrative decentralization, and on the basis of the above, the Governorates Not Organized in a Region Law No. (21) of 2008, as amended, was issued. Which represents a response to the implementation of the provisions of Article (122/Second) of the Constitution mentioned above. Fourth: Article (45) of the Law on Governorates Not Organized in a Region No. (21) of 2008, amended by the Second Amendment Law No. (19) of 2013, stipulates: ((First: A body called (the Supreme Authority for Coordination between the Governorates) shall be established, headed by the President of the Council of Ministers. The Ministers and the membership of the Ministers (Municipalities, Public Works, Construction, Housing, Labor and Social Affairs, Education, Health, Planning, Agriculture, Finance, Youth, and Sports) and the Minister of State for Governorate Affairs, Governors and Heads of the Governorate Councils are responsible for the following: 1- Transferring the sub-departments, agencies, functions, services, and competencies they exercise. The Ministries of Municipalities and Public Works, Construction and Housing, Labor and Social Affairs, Education, Health, Agriculture, Finance, Youth and Sports, with their allocations allocated to them in the general budget, and the employees and workers therein to the governorates within the scope of their functions specified in the Constitution and the relevant laws in a gradual

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manner, and the role of the ministries remains in the public policy planning. 2 - Coordination between the governorates and everything related to their affairs and local administrations and addressing the problems and obstacles they face. 3- Establishing mechanisms to manage the shared powers between the federal government and local governments stipulated in Articles (112, 113, 114) of the Constitution. 4- Consider delegating the federal powers requested by local governments from the federal government and vice versa, which are necessary to manage investment projects and facilitate the administration of governorates following the provisions of Article (123) of the Constitution. 5 - The Authority shall complete its work referred to in Paragraph (1) above within two years from the effective date of this law. If these tasks are not completed, these functions are considered transferred by law. 6- The committee meets every two months, at least once, or whenever necessary. 7- The Commission shall establish internal regulations to organize its meetings and follow up on its work. The aforementioned article was amended according to the Third Amendment Law No. (10) of 2018, as Clause (Third) was added to it, which stipulates that “The governorate shall adhere to the general policy drawn up by the Council.” Ministers and competent ministries. The aggrieved party may appeal the decision issued before the competent court within fifteen (15) days from the date of notification, and its decision shall be final)), the text of Paragraph (1) of Clause (First) of Article (45) mentioned above was also cancelled, and was replaced by the following: ((1- Transfer of sub-departments, agencies, functions, services, and powers exercised by the Ministries (Municipalities and Public Works, Construction and Housing, and Labor and Affairs). Social, agriculture, finance, youth and sports) with their allocations allocated to them in the general budget and the employees and workers in them are transferred to the governorates within the scope of their functions specified in the constitution and relevant laws in a gradual manner. The role of the ministries remains in planning public policy, and the Minister of Education and the Minister of Health each according to his specialty. Delegating the

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necessary powers issued by instructions from the Council of Ministers) and it is clear from the aforementioned text that: A- The transfer of powers from the ministries included in the transfer of powers to the governorates in implementation of the provisions of Article (45) of the amended Law of Governorates Not Organized in a Region No. (21) of 2008 is consistent with the provisions of Article (1) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that: The Republic of Iraq is a single, independent, federal state with (full) sovereignty. Article (116) stipulates: that the federal system in the Republic of Iraq consists of capital, decentralized regions and governorates, and local administrations), and Article (122/Second) stipulates that ( Governorates that are not organized into a region are granted broad administrative and financial powers, enabling them to manage their affairs following the principle of administrative decentralization, and this is regulated by law, to activate the principle of administrative decentralization in the management of governorates that are not organized into a region adopted by the federal system in the Republic of Iraq. B- The transfer of sub-departments, agencies, functions, services, and competencies exercised by the ministries covered by the provisions of Article (45/First/1) of the amended Law of Governorates Not Organized in a Region No. (21) of 2008, including the Ministry of Agriculture, is within the jurisdiction of the Supreme Commission for Coordination between the Governorates during the period The two years specified for the Commission's work. C- The Supreme Authority for Coordination between the Governorates must complete its tasks in transferring powers from the ministries included in the transfer of powers to the governorates, within a period of two years from the date of entry into force of Law on Governorates Not Organized in a Region No. (21) of 2008 amended by Law No. (19) of 2013. Otherwise, it is considered Powers are transferred by law, in the implementation of the provisions of Article (45/First/5) of the aforementioned law. D- The Ministry of Agriculture is one of the ministries included in the transfer of powers to the governorates based on the provisions

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of Article (45/First/1) of the Law on Governorates Not Organized in a Region No. (21) of 2008, as amended. E- Article (53/Fifth) of the amended Law of Governorates Not Organized in a Region No. (21) of 2008 stipulates that: (After the entry into force of this law, all of:... Fifth: Laws, decisions, and regulations that conflict with the provisions of this law) On the basis of the above, it is not possible to adhere to the provisions of laws, decisions, and regulations that conflict with the application of the provisions of Article (45) of the Law on Governorates Not Organized in a Region No. (21) of 2008, as amended, for any reason, in the application of the provisions of the aforementioned text, without transferring powers from the ministries to the Governorates, which requires transferring these powers by law based on the provisions of the aforementioned article. Fifth: An examination of the case file, based on the letters and correspondence attached to it and the defenses of the defendant's agents and the third person's agent in addition to their jobs, proved that the Ministry of Agriculture transferred some administrative, financial and legal powers to the governorates, and did not transfer others on the pretext that these powers are exclusively vested in the Minister of Agriculture and cannot be transferred except by legislation. A law, based on the ministerial orders issued by the Ministry of Agriculture in this regard, and this was confirmed in accordance with the letter issued by the Supreme Authority for Coordination between the Governorates, No. (10/438) on 3/4/2019, which includes paragraph (1) thereof (keeping the lands federal and the fees resulting from that As it is imposed under federal laws), and the letter of the Ministry of Agriculture/Legal Department No. (12787) dated 4/25/2023 stating the transfer of most powers from the Ministry of Agriculture to the governorates in accordance with the ministerial orders referred to therein, as for the rest of the powers that were not mentioned in those orders, they remained vested in the ministry until the necessary legislation was issued by the Council of Representatives, as they require legal legislation. The technical aspects of the work of the agricultural directorates and everything related to the management, exploitation, and investment of

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agricultural lands are technically related to this ministry, as the issued book confirmed. From the Office of the Prime Minister, No. (3018/2322889) on 8/10/2023, pursuant to Paragraph (5) thereof (reconnecting the agricultural directorates in the governorates to the Ministry) - that is, the Ministry of Agriculture - and the aforementioned paragraph was withdrawn pursuant to a letter from the Prime Minister's Office No. ( 3018/2397368) on 9/5/2023. The Federal Supreme Court finds that the provisions of Article (45/First/1 and 5) of the Law on Governorates Not Incorporated in a Region No. (21) of 2008, as amended, were not implemented by the Supreme Authority for Coordination between the Governorates regarding the transfer of the powers of the Ministry of Agriculture to the governorates despite the expiration of The period specified for the work of the Commission and the reference in the same article to the transfer of those powers by law is considered an abstention by the defendant, the Minister of Agriculture, in addition to his job, and the Prime Minister, in addition to his job, from implementing the provisions of the aforementioned article, which confirmed the transfer of powers by law after the end of the period prescribed for the work of the Supreme Authority for Coordination between the Governorates two years old, this abstention contradicts the provisions of the Constitution in Article (122/Second) thereof, and Article (45/First/1 and 5) of the Law on Governorates Not Organized in a Region No. (21) of 2008, as amended without justification, and also contradicts the adoption of the principle of administrative decentralization in Managing the governorates that are not organized in the territory adopted by the federal system in the Republic of Iraq in implementation of the provisions of Article (1) of the Constitution of the Republic of Iraq for the year 2005, which requires obligating the defendant, the Minister of Agriculture, and the third person next to him, the Prime Minister, in addition to their duties, to implement the provisions of Article (45) of Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, as far as the matter is concerned with the Ministry of Agriculture and the transfer of its powers in accordance with the details

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contained in the aforementioned article to the governorates, and for the above, the Federal Supreme Court decided the following ruling:

First: Obligating the defendant, the Minister of Agriculture and the third person, the Prime Minister, in addition to their jobs, to implement the provisions of Article (45) of the amended Law of Governorates Not Organized in a Region No. (21) of 2008, which includes the transfer of sub-departments, devices, functions, services, and specializations exercised by the Ministry of Agriculture, along with its appropriations allocated to them. In the general budget, its employees and workers are transferred to the governorates.

Second: The defendant, the Minister of Agriculture, and the third person next to him, the Prime Minister, in addition to their jobs, fees and expenses, and the attorney fees of the plaintiff's agents, being in this capacity, the legal officers Haider Mazen Salim, Muhammad Abdel Nasser, Saheb Matar Khabat, and Sattar Abdel Fawzan, are charged an amount of one hundred thousand dinars, to be distributed in accordance with the law.

The decision has been issued with majority, final, and binding for all authorities according to the provisions of Articles (93/3<sup>rd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4/3<sup>rd</sup> and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 20/Jamada Al-Oula/1445 Hijri coinciding 5/December/2023 AD.

**Judge**

**Jassim Mohammed Abboud**

**President of the Federal Supreme Court**

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