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The Federal Supreme Court (F.S.C.) convened on 25.9.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Galeb Amer Shneen, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abed Alrahman Sulaiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The plaintiff: Mhemed Sajeb Mahdy /former president of Alnahraen university
– his agent the attorney Ehab Saleh Hasson.

The defendant: the prime minister/ in addition to his post – his attorney the legal consultant Haider Ali Jaber.

The claim:

The plaintiff claimed that he is appealing Diwani Order No. (241) issued by the Prime Minister's Office No. (Mim.Ra.waw/ Dal. 7/59/4914) on 9/14/2020, which includes his exemption from the position of President of Al-Nahrain University on 9/20 /2020, that is, 3 months after the formation of the current government, as he was assigned the duties of the university president in paragraph (Second) of the ministerial order No. (2185 on June 27, 2019), and according to paragraph (1st) of the same ministerial order, the former university president was dismissed (Prof. Dr. Nabil Kazem Abdel-Saheb), according to

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the recommendations of an investigative committee and his return to teaching at the Faculty of Engineering, Al-Nahrain University, then the Council of Ministers issued its decision No. (378 on 10/24/2019), which included a recommendation to the Council of Representatives to approve his appointment (ie the plaintiff). As President of Al-Nahrain University - sequence (56), and after the emergency change of government on 5/6/2020, (Dr. Nabil Kazem Abdel-Saheb) became Minister of Higher Education, then the Diwani order was issued under appeal, and since the current government is not considered to have comprehensive powers, And that the Council of Ministers exercises its constitutional powers according to Article (80) of the Constitution, which indicated that the Prime Minister The ministers are the executive responsible for implementing the general policy that was defined in his government program regarding issues related to early elections, and that the decision under appeal is not based on any paragraph within the government program, and constitutes a violation of Article (47) of the Constitution, which affirms the principle of separation of powers, in addition to As a result of the failure to achieve a rule of parallel competencies due to the difference of the assignment authority from the exemption body, as the decision to assign him was taken by the Council of Ministers in its regular session No. (41) and was put to discussion and vote on it by the Chairman and members of the Council on 10/22/2019, and then issued the decision was in writing and sent to the Council of Representatives to complete the appointment procedures as President of Al-

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Nahrain University according to Clause (Fifth) of Articles (61 and 80) of the Constitution, while the ministerial order to exempt him was issued based on the appealed Diwani order, and this is contrary to Clause (Fifth) of the two articles (61 and 80) of the Constitution, which stipulates that one of the functions of the Cabinet Secretariat is (approving the appointment of special grade holders on a proposal from the Council of Ministers), and the Prime Minister's Office issued its decision (subject to appeal) before conducting an assessment of its management of University, and the Diwani order under appeal included the exemption of three leaders from Al-Nahrain University, at the beginning of the school year on 9/20/2020, which led to administrative confusion that negatively affected the scientific and academic level of the university, and the court had previously issued its decision with the number (97/Federal). /2021) that the decision of the Council of Ministers No. (251) for the year 2021 to exempt the plaintiff from the position of President of the Iraqi University and keep him in his position for reasons similar to the reasons for his claim is incorrect. Therefore, he requested to cancel Diwani Order No. (241) subject to appeal, which was issued by the Prime Minister unilaterally without reference to the Council of Ministers and issue a decision that would do justice to him returning to his position as President of Al-Nahrain University based on Article (93/Third) of the Constitution, and charging the defendant with fees and attorney fees. (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005, and informs the defendant of its petition and documents in accordance

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with Article (2/First) of the same aforementioned internal system So, his attorney replied with the answer list dated 06/28/2022, in summary, that the plaintiff's request deviates from the jurisdiction of the Federal Supreme Court specified under Article (93) of the Constitution and Article (4) of its Law No. (30) for the year 2005, as amended, and that the consideration of his appeal is Before other authorities, according to the provisions of Article (7/Ninth) of the amended State Council Law No. (65) of 1979, especially since the plaintiff had previously filed his lawsuit No. (2082/Mim/2021) before the Employees Judiciary Court challenging the same Diwani order above, and the court issued its decision No. (3140/2021) dated 10/24/2021 dismissing the case because the Diwani order is valid and in accordance with the law, so his appeal is ruled to be dismissed because it has already been adjudicated based on the provisions of Article (105) of the Evidence Law No. (107) of 1979 as amended, especially that the Council of Ministers exercises his powers entrusted to him in accordance with what is specified in Article (80) of the Constitution, and the Prime Minister exercises his responsibilities and tasks entrusted to him under Article (78) of the Constitution and the legislation in force in his capacity as the direct executive responsible for the general policy of the state. His role insists on issues related to early elections. As for the government program, it included comprehensive administrative reform in state institutions, and the Diwani order was correct and in accordance with the law and did not violate the constitution because of the discretionary power of the administration in

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organizing work within the public facility. Therefore, assigning whom it deems appropriate The order to assign the plaintiff to manage the affairs of Al-Nahrain University was issued by ministerial order, and the Diwani order was subject to appeal based on the letter of the Ministry of Higher Education and Scientific Research No. (Mim. Waw. Dal. /2/Sin/114) dated 8 /9/2020, Also, the letter of the Ministry of Higher Education and Scientific Research No. (110) dated 7/9/2020 indicated that the presidency of the university did not follow up on the presence of civil defense employees at the university when a fire broke out in the College of Engineering - Al-Nahrain University on 9/1/2020, which caused material damage. And confusion in the performance of the institution, in addition to the fact that the reliance on Court Decision No. (97/Federal/2021) has nothing to do with the subject of the appeal and is considered a misplaced legal document because it asks to cancel the aforementioned Diwani order, while the previous court decision came to cancel Cabinet Resolution No. (251) for the year 2021, which includes withdrawing a recommendation from the Council of Representatives to appoint the plaintiff as president of the Iraqi University, so the ruling was requested to dismiss the appeal in form and substance and to charge the plaintiff with expenses, fees, and attorney's fees, and after completing the procedures required by the court's internal system, mentioned above, a date was set for the pleading in accordance with the provisions of Article (2/ Second) and inform the two parties of it, and on the appointed day the court was formed, so the plaintiff attended himself

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and the two parties' attorneys attended, and the public pleading was initiated. Ha, the defendant's attorney responded, requesting that the case be dismissed for the reasons stated in his answer sheet dated 06/28/2022, and after the court heard the pleas of the two parties, it decided to include the Minister of Higher Education and Scientific Research a third person in the case to seek clarification from him about what was needed to resolve it, so his representative, Dr. Ahmed Jaafar Shawi, and the court clarified from him the reasons for raising the recommendation from the Ministry of Higher Education and Scientific Research regarding the termination of the plaintiff's assignment from his position, so he highlighted a list attached to the two letters of the Ministry of Higher Education and Scientific Research numbered (Mim.Waw.Dal./Kha/Sin/110 on 7/9/2020) and (Mim.Waw.Dal./Kha/Sin on 8/9/2020), the list and its accompanying documents were linked within the lawsuit papers, and he added that there was no other reason than the reasons mentioned in the two books above, and after the court completed its clarification from the third person decided to expel him, and the two parties' attorneys repeated their previous statements and requests, and since there was nothing left to say, the court decided the conclusion of the pleading, and issued the following decision:

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The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff had filed a lawsuit before this court against the defendant in addition to his job to challenge the invalidity of Diwani Order No. 241 issued by the Prime Minister's Office No. (Mim .Ra. waw/D 7/59/4914) in 9/14/2020, which includes his exemption from the position of President of Al-Nahrain University on 20/9/2020, on the basis of his violation of the provisions of the Constitution of the Republic of Iraq, especially the provisions of Article (47) of it and Clause (5th) of Articles (61 and 80) of it, and the plaintiff requested the court to rule to cancel the aforementioned Diwani order, return it to his previous position as president of Al-Nahrain University based on Article (93/Third) of the constitution, and charge the defendant, in addition to his job, fees and attorneys' fees, and after reviewing the court's evidence of the plaintiff and the defendant's defenses through the regulations submitted to the court, through their attorneys, and the response of the third person's deputy, the Minister of Higher Education and Scientific Research, in addition to his job, and through the pleading, the court reached the following conclusions:

First: The competencies of the Council of Ministers were mentioned exclusively in Article (80) of the Constitution of the Republic of Iraq for the year 2005, and among those competencies, stipulated in Paragraph (Fifth) thereof, which stipulated (recommend to the Council of Representatives, approval of the appointment of deputy ministers, ambassadors and those with

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special degrees...) based on the foregoing, the Council of Ministers does not have the power to appoint the plaintiff as a university president, as he is a special grade without the approval of the Council of Representatives. Based on this, Cabinet Resolution No. 378 of 2019 issued on October 23, 2019, contains (a recommendation to the Council of Representatives to approve the appointment of the plaintiff as President of Al-Nahrain University).

Second: The Council of Ministers, represented by its Prime Minister, is one of the federal authorities stipulated in Article (47) of the Constitution, and is thus subject to the provisions of the Constitution, and its competencies and powers are limited by what is stated in the provisions of Article (80) of it, but it enjoys discretionary authority in the application of some of those The competencies, especially those stipulated in paragraph (fifth) of the aforementioned article related to recommending the Council of Representatives to approve the appointment of those with special grades, as far as the mechanism by which the nomination, selection, recommendation and withdrawal of the person holding the aforementioned position is carried out, is meant by the discretionary authority of the Council of Ministers in this Scope: His freedom to choose between the available alternatives that jostle among them to provide different solutions in the same subject, and to compare among them according to logical bases, to present the most appropriate for the public interest, and the most appropriate to meet its requirements and preserve its values, provided that this is done in accordance with the principle of

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constitutional legitimacy, and on the basis of what In advance, each of the authorities, including the executive authority, must work within the framework of the principle of legality and the rule of law, even if its authority is used In order to accomplish its tasks, its use of its discretion is not absolute, but rather restricted within the limits of control exercised over it by constitutional institutions, including the Federal Supreme Court, in implementation of the provisions of Article (93/Third) of the Constitution.

Third: The competence of the Council of Ministers to nominate for the position of President of the University with a number of special grades and to recommend to the Council of Representatives appointment to the aforementioned position in application of the provisions of Article (80) of the Constitution, and the issuance of a decision by the Council of Ministers in this regard, requires the availability of capabilities in the candidate that qualify him to occupy the said position, based on the basis of Scientific, experience, competence and integrity, and conditions in the decision issued for nomination and recommendation lie in the jurisdiction, location and reason, in addition to the public interest that the decision seeks to supply the state departments with efficient elements in a way that ensures the regular and continuous work of public utilities to provide the best services to citizens, provided that the candidate enjoys these conditions and the public interest requires that Until a decision is issued by the Council of Representatives to appoint a university president, and until after the aforementioned decision is issued, if the

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conditions for nomination are disrupted in the candidate for the aforementioned position or the public interest requires the withdrawal of the recommendation for nomination before the issuance of the Council of Representatives decision to appoint, there is nothing to prevent the withdrawal of the nomination. And the recommendation to appoint a replacement university president, and this is not in violation of the provisions of the Constitution of the Republic of Iraq for the year 2005, especially Article (80) of it, because the competence of the Council of Ministers to nominate and recommend an appointment to the position of the university president, does not preclude the said council from its competence to withdraw the recommendation and nomination, if there are serious reasons that require that in light of the discretionary power enjoyed by the Council of Ministers in this regard, which is limited by the public interest and the means of achieving it and the reason that prompted the withdrawal of The recommendation, provided that this is done before the appointment and approval of the recommendation by the Council of Representatives, and this is what was achieved based on Cabinet Resolution No. (32) for the year 2021 on 01/27/2021 containing ((withdrawing the recommendation from the Council of Representatives to nominate the plaintiff as president of Al-Nahrain University (issued under Cabinet Resolution No. 378 of 2019 Serial - 56 - Attachment linking the letter of the General Secretariat of the Council of Ministers No. - Shin. zin. Lam./10/1/3/10/36446 dated 10/24/2019)), after the Diwani Order, subject of appeal No. (241) issued by the Prime Minister's Office No. (Mim.

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Ra. Waw./Dal 7/59/4914) issued on 9/14/2020, which includes under the first paragraph of it (((Exempting the plaintiff from the presidency of Al-Nahrain University based on the requirements of the public interest and based on what was presented by the Minister of Higher Education and Scientific Research following the book No. (Mim waw dal/2/Sin/114) on 8/9/2020 and based on the powers conferred on the Prime Minister and his approval))), then he is the direct executive responsible for the general policy of the state based on the provisions of Article (78) of the Constitution, especially since the plaintiff was not appointed to the aforementioned position, but was nominated for appointment and recommendation. That recommendation did not obtain the approval of the Council of Representatives until it was exempted, the nomination was cancelled, and the recommendation was withdrawn, and the withdrawal of the recommendation for nomination, according to the aforementioned detail, does not contradict the principle of separation of powers referred to in Article (47) of the Constitution, as long as the withdrawal of the nomination and the recommendation was made by the same the administrative authority that issued it, for the Council of Ministers not to exceed the powers of the Council of Representatives when withdrawing the recommendation, and to say otherwise means restricting the Council of Ministers' discretionary authority without justification and its powers to exercise its powers assigned to it by the Constitution, as long as the Council of Ministers' exercise of its discretionary authority in this regard is subject to the oversight of the Federal

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Supreme Court in application of the provisions of Article (93). Third) of the Constitution of the Republic of Iraq.

Fourth: Upon this court's review of the appealed Diwani Order No. (241) issued by the Prime Minister's Office in No. (Mim. Ra. waw/D. 7/59/4914) on 9/14/2020, which includes under paragraph (First) thereof (relieving the plaintiff from the presidency of Al-Nahrain University), and the decision issued by the Council of Ministers No. (32) for the year 2021 on 27/1/2021 containing (withdrawing the recommendation from the Council of Representatives to nominate the plaintiff as president of Al-Nahrain University), it became clear that the plaintiff was not appointed as president of Al-Nahrain University because a decision was not issued by The Council of Representatives includes this, in implementation of the provisions of Article (80/5th) of the Constitution, starting from the date of the issuance of Cabinet Resolution No. (378) of 2019 on October 23, 2019 containing (the recommendation to the Council of Representatives to approve the appointment of the plaintiff as President of Al-Nahrain University), the passage of a long period between the nomination and the recommendation and the failure of the Council of Representatives to issue a decision regarding the appointment, pending his exemption and the withdrawal of the recommendation, requires that the candidate (the plaintiff) remain enjoying the same conditions on which the nomination was made, and the reason for which he was exempted, based on what was presented by the Minister of Higher Education and Research

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Scientific on the head of the Ministers and his approval pursuant to the appealed civil order, and the consequent withdrawal of the recommendation based on the aforementioned cabinet decision, with a view to deciding on the validity of the discretionary power of the Prime Minister and the Council of Ministers in this and its suitability for the public interest, and upon reviewing the regulations of the legal representative - the third person agent) Minister of Higher Education and Scientific Research (in addition to his position) on 08/21/2022 and 5/9/2022 and their annexes, who was entered by this court as a third person in the case for clarification from him about what is necessary to settle the case. qualified to be nominated for appointment to the position of President of Al-Nahrain University, and this is confirmed by the letter of the Ministry of Higher Education and Scientific Research in the number (M and D / K / S / 110 on 7/9/2020) and in the letter referred to in the Diwani order in question, and that the reason for his exemption and withdrawal of the recommendation in his nomination lies In the public interest that requires that, which requires his exemption, withdrawal of the recommendation, and reinstatement of the position he was exercising before recommending the nomination, to ensure that public utilities and state institutions operate regularly and consistently in a manner that ensures the provision of the best services for citizens, and based on the foregoing, the appealed Diwani Order No. (241) issued by the Prime Minister's Office on 9/14/2020, which includes, according to paragraph (first) thereof (relieving the plaintiff from the

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presidency of Al-Nahrain University), and the decision issued by the Council of Ministers No. (32) for the year 2021 on 27/1/2021 containing (Withdrawing the recommendation from the Council of Representatives to nominate the plaintiff as president of Al-Nahrain University), which were among the constitutional powers and competencies of the administration, in implementation of the formal and objective discretion it enjoys, in accordance with the rule of the constitution, the law and the public interest.

Fifth: This court finds that the appealed Diwani Order No. (241) issued by the Prime Minister's Office in No. (M.R. and / D. 7/59/4914) on 9/14/2020 contained under paragraph (First) thereof (relieving the plaintiff From the presidency of Al-Nahrain University), it was based on the approval of the Prime Minister and at the request of the Minister of Higher Education and Scientific Research for the requirements of the public interest, based on the discretionary power enjoyed by the Prime Minister as he is the direct executive responsible for the general policy of the state in the application of the provisions of Article (78) of the Constitution. The Council of Ministers has its competencies and powers based on its discretionary authority in its issuance of Resolution No. (32) of 2021 on 27/1/2021 containing (withdrawing the recommendation from the Council of Representatives to nominate the plaintiff as President of Al-Nahrain University) that does not contradict the concept of (administration of daily affairs) contained In the core of the Constitution of the Republic of Iraq for the year 2005 by Article (64/Second), nor with its concept

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and competencies referred to in the decision issued by this court in No. (121/Federal/2022) on 5/15/2022, and the internal system of the Council of Ministers No. (2) of 2019 average s according to the provisions of Article (42/Second) thereof, which stipulates that (the conduct of daily affairs means: taking decisions and actions that cannot be postponed, which would lead to the continuation of the work of state institutions and public utilities regularly and steadily, and does not include, for example, the proposal of draft laws or the contract of loans or appointment in senior positions in the state and exempting them from them or restructuring ministries and departments), especially that exempting the plaintiff and withdrawing the aforementioned nomination recommendation do not fall within the concept of appointment, exemption or restructuring of the ministry stipulated in the aforementioned article, as the plaintiff was not appointed as president of a university Al-Nahrain, due to the lack of a decision by the Council of Representatives in this regard.

Sixth: Concerning the decision issued by the Employees Judiciary Court in the lawsuit filed by the plaintiff against the Prime Minister and the Minister of Higher Education and Scientific Research / in addition to their jobs, to demand ((the cancellation of the first paragraph of the appealed Diwani Order No. 241 of 2020 on 9/14/2020)), (Case No. 2082/Mim/2021 dated 10/24/2021 Resolution No. 3142/2021), and this court finds that it is null because it was issued by a party not competent to issue it. After all, the jurisdiction over the case is held for this court based on the provisions of Article (93/Third) of the

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constitution. Because of the foregoing, the plaintiff's lawsuit is obligatory to reject, as there is nothing that would prejudice the validity of the Diwani order in question. As for what was presented, the Federal Supreme Court decided the following:

1. dismiss the claim of the plaintiff, Muhammad Sahib Mahdi / former President of Al-Nahrain University to challenge the validity of Diwani Order No. (241) for the year 2020 No. (Mim. Ra. waw. /D. 7/59/4914) on 9/14/2020 contained under paragraph (first) thereof (Exempting the plaintiff from the presidency of Al-Nahrain University) and requesting its cancellation.
2. Charge him with expenses, fees, and attorney fees for the defendant's attorney, in addition to his job as legal advisor Haider Ali Jaber, an amount of one hundred thousand dinars, distributed according to the law.

The judgment was issued in agreement based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/Second) of Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 as a final and binding judgment for all authorities and understand publicly On 16/Safar/1444 AH corresponding to 9/13/2022 AD.

Signature of
The president

Jasem Mohammad Abboud

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