

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Jassim Jazaa Jafer who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Hassan Hamoud Hassani – His agent the barrister Asaad Jabbar Hussein.

The Defendants: 1. The Prime Minister / being in this capacity - His two agents the legal advisers Abbas Majeed Shabib and Haider Ali Jaber.
2. Secretary General of the Council of Ministers / being in this capacity - His two agents the legal advisers Qassim Suhaib Shakur and Haider Ali Jaber.

The Claim:

The plaintiff claimed that the General Secretariat of the Council of Ministers issued the letter No. (Qaf/2/5/21/17491) on 6/10/2020, subordinate to the letter of the Ministry of Finance No. (6130) on 24/9/2020, which includes that he was transferred by assignment and that he occupied a job the Vice-President of authority as deputy and not authenticity, since this decision was unfair and infringed on his rights, he took the initiative to challenge it before this court on the basis of the provisions of Article (93/3rd) of the Constitution, because under valid legal circumstances, he appointed authenticity as inspector general of the Iraqi commission for broadcasting and transmission services under the Office Order (360) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Nun./48/5524) on 13/9/2009, then he

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

was appointed as Inspector General of the Ministry of Youth and Sports according to the letter issued by the Prime Minister's Office No. (Mim. Ra.Waw/74/2044) on 3/2/2015, and then transferred to the Mayoralty of Baghdad to occupy the position of Inspector General under Order (47) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/3/2602) on 7/8/2019, and after the issuance of the law to cancel the dissolved Coalition Provisional Authority Order No. (57) of 2004, and the Council of Ministers Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, as he enjoys a functional legal status based on the Office Order No. (72) of 2008, and to be covered by the provisions of paragraph (3) of the aforementioned cabinet decision, his services were transferred with the job grade (higher /Alif) and the financial allocation to occupy the position of Vice Chairman of the Securities Commission under the Office Order, No. (193) issued by the Prime Minister's Office letter No. (Mim.Ra.Waw/Dal 7/76/4040) on 1/9/2020, and then transferred its services from the JSC to the Ministry of Finance pursuant to the Office Order No. (23055) issued in the Prime Minister's Office letter No. (2390967) on 30/1/2023, and the annex to the Office Order (23362) issued under the letter of the Prime Minister's Office No. (3076/2311744) on 20/4/2023, and the Ministry of Finance issued its letter No. (630) on 26/3/2023, which includes requesting the Prime Minister's Office to correct the aforementioned office order, so that it will be transferred to occupy the position of advisor in the Ministry of Finance and assign him in addition to its duties, the Council of Ministers issued Resolution No. (23161) on 28/3/2023, which included the approval of the Council of Ministers to increase the number of advisers in the Ministry of Finance to two, in order to place him within the job grade (higher/ Alif) and the address of adviser by authenticity, this was

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

confirmed by several letters issued by the Prime Minister's Office - including the letter in number (Mim.Ra.Waw./5267) on 21/9/2020, and letter No. (3063/2209230) on 2/6/2022 - including that his transfer with the job grade (higher / Alif) and the title of Vice Chairman of the authority and then advisor respectively, and since the issuance of the Office Order No. (193) on 1/9/2020 until the date of filing his lawsuit, his legal and job status has been organized and his financial affairs have been calculated according to his grade and address (authenticity), whereas, the Court has already that issued its decision No. (218/Federal/2022) in which it confirmed that the transfer of inspectors general appointed mainly to other positions in the ministries to which they are assigned, and authorizing the Minister to reappoint them to the post of Deputy Minister, Counsellor or Director General does not mean that they are covered by the provisions of Article (61/5th/Beh) of the Constitution; having acquired legal status under the Office Order No. 72 of 2008, which is still in force, the dissolution of the offices does not mean the abolition of their legal positions, and therefore there is no legal basis for re-presenting them to the Council of Ministers to recommend to the Council of Representatives for appointment, and that those who have been transferred deserve the job titles to which they are transferred, provided that they are not higher than their previous addresses, the inspector general who is not covered by retirement shall retain the same job grade in the government agency to which he is assigned and according to its staff, however, the aforementioned decision empowered the minister to propose his appointment according to the ministry's need and vacant cadres as undersecretary, advisor or general manager, and the court had previously issued its decision No. (120/Federal/2023), which obligated the defendants to implement the Office Order No. (90) issued by the Prime Minister's Office No. (Mim.Ra.Waw./Dal 6/59/2715) on

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

13/2/2020, which includes (transferring the services of Mr. Majid Jaber Abed, the former inspector general of the Ministry of Agriculture, to the staff of the Ministry of Construction, Housing, Municipalities and Public Works with his grade career and financial allocation at the higher grade / Alif for the position of adviser), although the General Secretariat of the Council of Ministers claimed that he was appointed as deputy in the same letter No. (Qaf/2/5/8449 on 6/4/2020) - the subject of the challenge - in this lawsuit, the court also issued several other decisions issued against the plaintiffs who are his consorts and with similar legal status, including the invalidity of letters issued by the General Secretariat of the Council of Ministers it is similar in content to the letter – the subject of the challenge – in this lawsuit, whereas the rulings of the Federal Supreme Court are conclusive and its excuse is not limited to the parties to the lawsuit only, and it applies to everyone, whether individuals or state authorities therefore, the plaintiff asked this court to rule that the decision of the General Secretariat of the Council of Ministers issued in its letter No. (Sin/2/5/21/17491) on 6/10/2020 is invalid, and obliges the defendants to adopt the Office Order No. (193) issued by the Prime Minister's Office No. (Mim.Ra.Waw.Waw/Dal 7/4040) on 1/9/2020, and the Council of Ministers Resolution No. (23161) of 2023, issued based on the Ministry of Finance's letter No. (930) on 26/3/2023, which includes his transfer and occupation of the position of adviser in the grade (higher / Alif) originality, and charging them fees, expenses and attorneyship fees. After registering the case with this court No. (161/Federal/2024), collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the rules of Procedure of the Federal Supreme Court No. (1) of 2022, their agents responded with the answering draft dated 3/7/2024, its conclusion: that the plaintiff's

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

request is outside the jurisdiction of the court specified under Article (93/3rd) of the Constitution, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, and that the Office Order (193) did not include the appointment of the plaintiff (authenticity) in office, rather, he referred to the transfer of his services and his occupation of the duties of the Vice Chairman of the Securities Commission, and that the dissolved Coalition Provisional Authority order No. (74) of 2004 did not include the functional grade of the position of deputy, and therefore there is no basis for filing a lawsuit against the Prime Minister in addition to his job because the order is executed, and the litigation is not directed from this side, which applies to the Secretary-General of the Council of Ministers in accordance with the provisions of Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, if the plaintiff argues that his grade is (higher/ Alif) and he occupies it (authenticity), then the Office Order No. (23055) issued in the Prime Minister's Office letter No. (3005/2390967) dated 30/1/2023 included his transfer and assignment to the tasks of the General Authority of Customs, and that this order clearly included the termination of his assignment, and his assignment to new tasks, and this is an affirmation that his occupation is on the basis of assignment and not originality, this on the one hand on the other hand, the Office Order No. (23362) issued in the Prime Minister's Office letter No. (3076/2311744) dated 20/4/2023 also came as a mandate, the content of paragraph (3) of Resolution (389) of 2019, as amended by Resolution (464) of 2019, is clear that the competent minister in the entity in which the inspector general was working shall propose a position as an undersecretary or adviser or a general director, and the text is clear in the proposal, which does not mean appointment, and the difference is clear between the two things, and that the text included that the minister

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

makes the proposal and that the competent authority to issue the necessary decision against them is the Council of Ministers, and that the minister, if the inspector general nominates this job, it is issued by a decision of the Council of Ministers to appoint him, and if he is nominated for a job within the positions mentioned in the provisions of Article (61/5th) of the Constitution in force, the Council of Ministers shall recommend the appointment in accordance with the provisions of Article (80/5th) of the Constitution, saying that the Prime Minister has the authority to transfer the Inspector General to the position of Director General means that there is an authorization from the Council of Ministers, and Cabinet Resolution No. (341) of 2021 was issued authorizing the Prime Minister to appoint general directors, and if this authority had been for him previously, we would not have needed to issue the aforementioned decision, also, paragraph (3) does not apply to him in the first place, as he was not within the staff of the Ministry of Finance, and that the court established these principles under the provisions of Resolution (192/Federal/2023), in which it confirmed that as long as the adviser is considered an adviser (with a higher grade / Alif), this requires adherence to the provisions of the Constitution the provisions of Article (61/5th) thereof, the ruling went to the mechanism of appointing advisers in the legislative authority, that it is a priority to adhere to that when appointing advisers within the executive authority, and that the State Council has resolved the issue of transferring the holders of special degrees by its decision No. (67/2021) on 4/10/2021 when it approved its legal principle that the decision to transfer the employee appointed to a job from the jobs of the special grade (Alif) or one of the jobs of grade (Beh) to one of the addresses that fall in the same grade by a decision of the appointing authority, with the fulfillment of the conditions required in each job and the appointment

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

procedures, and for all of the above, the defendants' agents request to reject the plaintiff's lawsuit and charge him fees, expenses and attorneyship fees, after completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties shall be informed of it, in which the court was formed and the agent of each party attended and began to conduct the public presence pleading after hearing their statements and requests and completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Hassan Hamoud Hassani) had filed this lawsuit against the Prime Minister and the Secretary-General of the Council of Ministers in addition to their jobs, claiming that he had previously been appointed, under valid legal circumstances, as an authentic inspector general of the Iraqi Authority for Broadcasting and Transmission Services under the Office Order No. (360) issued in the letter of the Prime Minister's Office in the number (Mim.Ra.Nun./48/5524) on 13/9/2009, and then appointed as Inspector General of the Ministry of Youth and Sports under the letter issued by Prime Minister's Office No. (Mim.Ra.Waw/74/2044) on 3/2/2015, then he transferred him to Mayoralty of Baghdad to occupy the position of Inspector General under the OfficeOrder (47) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/3/2602) on 7/8/2019, and the law was issued to cancel the dissolved Coalition Provisional Authority Order No. (57) of 2004, as well as the Council of Ministers Resolution No. (389) of 2019 amended by Cabinet Resolution No. (464) of 2019, and since he

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

enjoys a functional legal status based on the Office Order No. (72) for the year 2008 and to be covered by the provisions of paragraph (3) of the aforementioned Cabinet Decision, his services were transferred at the (Higher /Alif) grade and the financial allocation to occupy the position of Vice Chairman of the Securities Commission under the Office Order No. (193) issued in the Prime Minister's Office letter No.(Mim.Ra.Waw/Dal 7/76/4040) on 1/9/2020 then its services were transferred from the Securities Commission to the Ministry of Finance according to the Office Order No. (23055) issued in the letter of the Prime Minister's Office No. (2390967) on 30/1/2023 and its annex to the Office Order (23362) issued in the letter of the Prime Minister's Office No. (3076/2311744) on 20/4/2023, the Ministry of Finance issued its letter No. (930) on 26/3/2023, including a request from the Prime Minister's Office to correct the aforementioned the office order to be transferred to occupy the position of advisor in the Ministry of Finance and assign him to manage the General Authority of Customs in addition to his duties, and accordingly the Council of Ministers issued a decision issue (23161) of 2023 on 28/3/2023 containing the approval of the Council of Ministers to increase the number of advisors in the Ministry of Finance to two, in order to accommodate it within the job grade (higher /Alif) and the title of an authentic adviser, therefore, he requested to invite the defendants in addition to their jobs to the pleading and rule on the invalidity of the decision of the General Secretariat of the Council of Ministers issued in its letter No. (Sin/2/5/21/17491) on (6/10/2020) and oblige them to adopt the Office Order (193) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw./Dal 7/4040) on 1/9/2020 and the Council of Ministers Resolution No. (23161 of 2023) issued based on the letter of the Ministry of Finance No. (930) on 26/3/2023, which includes his transfer

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

and occupation of the position of advisor at the grade (higher / Alif) authentically and charging them fees and expenses, the defendants' agents, in addition to their jobs, pleaded the lawsuit and requested to reject in form, due to the lack of jurisdiction of the court to appeal the administrative decisions issued by the General Secretariat of the Council of Ministers, and they also requested to reject of the lawsuit subjectively, because the plaintiff was assigned the position of vice president of the Securities Commission, and that this order is implemented by the ministry and from the General Secretariat of the Council of Ministers and that the Office order discussed above did not include the appointment of the plaintiff in his own position by authenticity, but referred to transfer of services and occupancy of the duties of the Deputy Chairman of the authority and the order of the dissolved Coalition Authority No. (74) of 2004 did not include the job grade for the position of deputy, and therefore there is no basis for filing a lawsuit against the Prime Minister in addition to his job because the order is executed, also, the Office Order No. (23362) issued in the letter of the Prime Minister's Office No. (3076/2311744) dated 20/4/2023 also came as a mandate, and after reviewing the court on the list submitted by the defendants' agent in addition to their jobs and listening to the statements of the parties to the lawsuit, the court finds that the plaintiff's claim is formally admissible, because the plaintiff and the defendants are in addition to their jobs two legal litigants who meet the conditions of litigation and possess the legal capacity to litigate, and the case falls within the jurisdiction of this court in accordance with the provisions of clause (3rd) of Article (93) of the Constitution of the Republic of Iraq of 2005, and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and the court also finds that the conditions for filing a lawsuit in accordance with the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

provisions of Articles (44, 45, 46 and 47) of the Civil Procedure Law No. (83) of 1969, as amended, are fulfilled in this case, the interest of the plaintiff is realized in accordance with the provisions of Article (20) of the rules of procedure of the Federal Supreme Court No. (1) for the year 2022, and objectively, the court finds that the Office Order No. (193) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/4040) on 1/9/2020 and the Council of Ministers Resolution No. (23161) of 2023, which included the transfer of the plaintiff (Hassan Hamoud Hassani) with the highest grade (Alif) and the financial allocation to the Securities Commission and lives under the title of Vice Chairman of the Authority has come as a result of the issuance of Law No. (24) of 2019, under Article (3/1st) of which the Council of Ministers is empowered to issue the necessary decision to address whoever occupies the position of inspector general who is not covered by the retirement law, and if the plaintiff is transferred to the Securities Commission with a higher grade (Alif) it came in correct application of the aforementioned text, and the Cabinet Resolution No. (389) of 2019 as amended by resolution (464) of 2019 the transfer of the plaintiff to a post of the same grade (higher /Alif) means that this position is filled originally, whereas the plaintiff held the position of authentic Inspector General and he is one of the highest grades (a) and because it is not permissible to appoint the employee twice in the same job grade, so the Office Order No. (193) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/4040) on 1/9/2020 is correct and has arranged legal positions and duties for the defendant since the date of its issuance, and that administrative and office decisions and orders remain in force and their effects are from the date of their issuance unless it is withdrawn or canceled by the authority that issued it in accordance with the law or ruled invalid by the judiciary, and this

Zainab

Republic of Iraq
Federal Supreme Court
Ref 161/ federal/2024



Kurdish text

must be adhered to of all state institutions to ensure the proper functioning of public utilities regularly and steadily, and for all of the above and by demand ,The Federal Supreme Court has decided the following:

First: Ruling on the invalidity of what was stated in the letter of the General Secretariat of the Council of Ministers, Legal Department, No. (Sin/2/5/21/17491) on 6/10/2020 as far as the plaintiff (Hassan Hamoud Hassani) is concerned.

Second: Ruling on obliging the first defendants to the Prime Minister and the second the Secretary General of the Council of Ministers / being in their capacity Implementing the Office Order issued by the Prime Minister's Office No. (193) on 1/9/2020 as the plaintiff (Hassan Hamoud Hassani) as a consultant at the highest grade / Alif.

Third: Charging the defendants with expenses, fees and attorneyship fees of the plaintiff's agent in an amount of one hundred thousand dinars.

The decision has been issued unanimously, final and binding of all authorities based on the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq of 2005, and Articles 4 and 5/2nd of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been made clear on 14 Muharram 1446 A.H. corresponding to 21/7/2024 A.D.

Judge
Jasem Mohammed Abood
President of the Federal Supreme Court

Zainab