

Republic of Iraq  
Federal Supreme Court  
Ref 162/ 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: Ibrahim Hamid Mohsen.

The Defendants:

1. The Prime Minister / being in this capacity - His 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 in the petition that the General Secretariat of the Council of Ministers issued the letter No. (Qaf/2/5/8449) on 6/4/2020, which includes the absence of a legal basis that allows his transfer and appointment as an adviser, and that he was appointed as deputy and not authentic, and since this decision was unfair and infringed on his rights, so he took the initiative to challenge it before this court based on the provisions of Article (93/3<sup>rd</sup>) of the Constitution, under proper legal circumstances, he was appointed as an authentic Inspector General by authenticity of the Ministry of Agriculture under the Office Order No. (246) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Nun/Kaf/3706) on 23/5/2010, and then appointed as Inspector General by authenticity of the Ministry of Health under the letter issued by the General Secretariat of the Council of Ministers No.

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(Qaf/2/5/42/2632), on 1/8/2018 and its annex to the Prime Minister's letter No. (Mim.Ra.Waw/Sin/Dal 6/3/2602) on 7/8/2019 - (Order 47), following the issuance of Law No. 24 of 2019 on the Repeal of 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, and because it enjoys a functional legal status based on the Office Order No. (72) of 2008, and to include it in the provisions of paragraph (3) of the aforementioned cabinet decision, its services were transferred at the job grade (higher/ Alif) and the financial allocation to occupy the position of an advisor by authenticity in the Ministry of Water Resources under the Office Order (142) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Dal 6/22/4265) on 10/3/2020, then he was transferred to the Prime Minister's Office with the functional grade (higher/ Alif) and the title of Advisor under the Office Order (55) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Dal 7/783) on 13/6/2020, then he was transferred to the Ministry of Higher Education and Scientific Research according to his job entitlement advisor (higher/Alif) according to the Office Order (22138) issued by the Prime Minister's Office No. (4000/2294529) on 13/11/2022, and then he was transferred under the title of advisor to the Council of Ministers - General Authority for Monitoring the Allocation of Federal Imports under the Office Order (23237) issued in the letter of the Prime Minister's Office issue (3065/2396278) on 2/8/2023, The Ministry of Finance / Budget Department has indicated the transfer of his grade (higher/ Alif) entitled advisor from the Ministry of Health to the Ministry of Water Resources according to its letter No. (3078) on 21/4/2020, and written by the same numbers (1488) on 15/3/2021, (411) on 6/1/2023, and (63629) on 14/9/2023, in which it indicates that his job grade is (higher/ Alif) and his address is an authenticity consultant, and

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this is what she confirmed according to her letter issued by the Legal Department No. (20944) on 1/6/2023, The Prime Minister's Office confirmed in several correspondence - including the letter No. (Mim.Ra.Waw/Dal 7/17/4838) on 14/9/2020, and the letter No. (3063/2209230) on 2/6/2022 - that his transfer with the job grade (higher / Alif) and entitled authentic advisor, and that his legal status and the calculation of financial matters have been organized according to the degree and address of (Advisor / Higher Alif) authenticity, since the issuance of the Office Order (142) on 10/3/2020 until the date of filing this lawsuit, 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.Waw/Dal 6/59/2715) on 13/2/2020, which includes (transferring the services of 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 job grade and the financial allocation at the highest grade (Alif) to occupy the position of adviser) even though the General Secretariat of the Council of Ministers claimed that he was appointed as deputy in the same letter issue (Sin/2/5/8449) on 6/4/2020 - the subject of the challenge - in this lawsuit and the court had previously issued its decisions with numbers (218/federal/2022, 164/federal/2023, 245/federal/2023, 295/federal/2023 and 92/federal/2024) in it, it stressed that the transfer of the inspectors general appointed mainly to other positions in the ministries to which they are attributed and the authorization of the minister to reappoint them to the position of undersecretary, adviser or director general does not mean that they are covered by the provisions of Article (61/4<sup>th</sup>/Beh) of the Constitution, because they have acquired legal status under the Office Order No. (72)

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of 2008, which is still in force, and that 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 for recommendation to the Council of Representatives, by appointment, and that those who have been transferred are entitled to 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 his same job grade in the government agency to which he is assigned and according to its staff, but the aforementioned decision empowered the minister to propose his appointment according to the need of the ministry and its vacant cadres as deputy minister, adviser or director general, and that the aforementioned decisions were issued against plaintiffs who are his consorts and those with similar legal status, and since the rulings issued by the Federal Supreme Court are not limited to the parties to the lawsuit only, and are applicable to all. whether by individuals or state authorities, therefore, the plaintiff asked this court to rule that the decision issued in the letter of the General Secretariat of the Council of Ministers No. (Sin/2/5/8449) on 6/4/2020 is invalid, and to oblige the defendants to implement the Office Orders issued by the Prime Minister's Office Nos. (142) on 10/3/2020, (55) on 13/6/2020, (22138) on 13/11/2022 and 23237 on 2/8/2024, and to charging them fees, expenses and attorneyship fees. After registering the case with this court No. (162/Federal/2024) and collecting the legal fee for it, notify the defendants of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, their agents replied by the reply regulation dated 8/7/2024 to summarize it: The plaintiff's challenge to the validity of paragraph (1) of the letter of the General Secretariat of the Council of Ministers - the subject of the challenge - is outside the

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jurisdiction of the court specified in Article (93) of the Constitution, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, and that the Office Orders searched for did not include the appointment of the plaintiff (authenticity) to his position, but rather referred to the transfer of his services and his occupation of an adviser, therefore, there is no basis for filing a lawsuit against the Prime Minister in addition to his job, because the orders are executed, and the litigation this 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, 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 worked should propose the position of undersecretary, adviser or director general, and that the text is clear in the proposal, which does not mean appointment, and the difference is clear between the two things the text included that the minister would propose and that the competent authority to issue the necessary decision against them was the Council of Ministers if the Minister nominates the Inspector General for this position, he shall be appointed by a decision of the Council of Ministers, if he is nominated for a job among the positions mentioned in the provisions of Article (61/4<sup>th</sup>) of the Constitution in force, the Council of Ministers shall recommend the appointment in accordance with the provisions of Article (80/4<sup>th</sup>) of the Constitution, and that the statement of the Prime Minister's authority to transfer the Inspector General to the position of Director General means that there is an authorization from the Council of Ministers, Cabinet Resolution No. (341) of 2021 was issued authorizing the Prime Minister to appoint general directors, and if this authority had been previously for him, we would not have needed to issue the aforementioned decision, and paragraph (3) does not apply to

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him in the first place, as he was not within the staff of the Ministry of Finance, the court established these principles under the provisions of Resolution (192/Federal/2023), in which it affirmed that the Chancellor as long as he is considered a consultant (higher grade / Alif), this requires adherence to the provisions of the Constitution and the provisions of Article (61/4<sup>th</sup>) thereof, and that the ruling went to the mechanism for appointing advisers in the legislative authority, it is a fortiori, to adhere to that when appointing advisers within the executive authority, and that the State Council has settled the issue of transferring the holders of the grades of its decision No. (67/2021) on 4/10/2021, when it approved its legal principle that the decision to transfer the employee appointed originally in one of 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 appointment authority with the fulfillment of the conditions required in each job and the appointment procedures, therefore, the defendants' agents requested to reject the plaintiff's lawsuit and charging him fees, expenses and attorneyship fees, and after completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, in which the court was formed, and the plaintiff himself and the defendants' agents attended and began to conduct the public presence pleading, and after the court heard the statements and requests of each party and completed its scrutinies, the end of the argument 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's claim focused on a request for a ruling of

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invalidity the decision of the General Secretariat of the Council of Ministers issued in its letter No. (Sin/2/5/8449) on 6/4/2020 stating that the plaintiff is appointed to the position of adviser as deputy, and also requested that the defendants be obliged to approve the customs orders issued by the Office of Prime Minister No. (142) on 10/3/2020, issue (55) on 13/6/2020 and Issue (22138) on 13/11/2022 and the number (23237) on 2/8/2023, all of which includes the transfer of the plaintiff and his occupation of the position of adviser (authenticity) at the grade (higher / Alif), and then charging the defendants all fees and expenses. And through scrutinizing the lawsuit file and its documents The Federal Supreme Court finds that the plaintiff's claim is formally admissible, that the litigation of the defendants in the lawsuit is directed, and that the lawsuit falls within the jurisdiction of this court in accordance with the provisions of Article (93/3<sup>rd</sup>) of the Constitution of the Republic of Iraq of 2005, and Article (4/3<sup>rd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended, also, the plaintiff's interest in the lawsuit is achieved in accordance with the provisions of Article (20) of the rules of procedure of this court No. (1) of 2022, and objectively this court finds that the plaintiff has been appointed inspector general of the Ministry of Agriculture by virtue of the Office Order No. (246) on 23/5/2010, then he was appointed as Inspector General of the Ministry of Health, according to the letter of the General Secretariat of the Council of Ministers No. (Qaf/2/5/42/2632) on 1/8/2018, and then the Office Order No. (142) was issued on 10/3/2020, from the Prime Minister's Office, which includes the transfer of the prosecutor, the former Inspector General of the Ministry of Health and Environment, to the staff of the Ministry of Water Resources with his functional grade and the financial allocation at the higher grade/Alif to occupy the position of legal and administrative adviser to the Ministry of Water Resources, on

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13/6/2020, the Office Order No. (55) was issued by the Prime Minister's Office containing the transfer of the services of the Counsellor Prosecutor at the Ministry of Water Resources with his job grade (higher / Alif) and the financial allocation to the staff of the Prime Minister's Office, then transferred to the staff of the Ministry of Higher Education and Scientific Research according to his job entitlement under the Office Order No. (22138) on 13/11/2022, and on 2/8/2023, the Office Order No. (23237) was issued which includes the transfer of the plaintiff's services and assigning him to the position of advisor at the (higher / Alif) grade in the General Authority for Monitoring the Allocation of Federal Imports, having Law No. (24) of 2019 the Council of Ministers is empowered by Article (3/1<sup>st</sup>) thereof, issuing the necessary decision to address the situation of the inspector general who are not covered by the Retirement Law, so the transfer of the plaintiff as a consultant with the grade (higher / Alif) was in accordance with the provisions of the aforementioned article and the Council of Ministers Resolution No. (389) of 2019 amended by Resolution (464) of 2019, and since the plaintiff had previously been appointed as an original inspector general, and that the issuance of the Office Orders by the Prime Minister's Office referred to above has established for the plaintiff a legal status and arranged for him rights and duties, whereas the Office Orders issued by the Prime Minister's Office shall remain in force and shall have their effects from the date of its issuance, unless it is withdrawn or canceled by the issuing authority or ruled invalid by virtue of a judgment issued from the competent court, and therefore must be adhered to by all state institutions to ensure the proper functioning of public utilities regularly, and according to the foregoing, the letter of the General Secretariat of the Council of Ministers, the legal department, No. (Sin/2/5/8449) on 6/4/2020 lacking its basis in the law and it is free to rule that it is invalid

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as far as the plaintiff is concerned, the Federal Supreme Court 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/2/5/8449) on 6/4/2020, as far as the plaintiff (Ibrahim Hamid Mohsen) is concerned.

Second: Ruling on the obligation of the defendants (the Prime Minister and the Secretary-General of the Council of Ministers) in addition to their functions implementing the Office Orders issued by the Prime Minister's Office in numbers (142) on 10/3/2020 and (22138) on 13/11/2022 and (23237) on 2/8/2023 including (transfer of the services of the plaintiff Ibrahim Hamid Mohsen and his occupation of the position of consultant at the higher grade / Alif).

Third: Charging the defendants / being in this capacity all judicial fees and expenses. The decision has been issued with majority, final and binding based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and (4 and 5/2<sup>nd</sup>) 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 AD.

**Judge**  
**Jasem Mohammed Abood**  
**President of the Federal Supreme Court**

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