

Republic of Iraq
Federal Supreme Court
Ref. 176 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/12/2022 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: Representative Ahmed Raheem Azrag Al-Rudaini – his agents the barristers Sadiq Rasool Al-Muhanna and Nada Abdul Ridha Al-Juboori.

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

The Claim

The plaintiff claimed through his agent that the defendant issued on 26/7/2022 the Diwaniyah orders that included assigning (Raed Juhi) to head the intelligence service and assigning (Amer Al-Helou) as his agent, and he took the initiative to challenge them in accordance with the provisions of Article (93/3rd) of the Constitution for violating the provisions of the Constitution and the legislation in force, as it violated the provisions of Article (64/2nd) of the Constitution, which defined the powers of the current government after holding early parliamentary elections on 10/10/2021 as a caretaker government, as well as violating the provisions of Article (61 /5th/B) of the Constitution Which concerns the Council of Representatives to approve the appointment of holders of special grades on a proposal

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from the Council of Ministers, And that the defendant did not present it to the Council of Representatives in accordance with the provisions of the above article, which constitutes a clear violation of the provisions of Article 80/5th of the Constitution, which specified the authority of the Council of Ministers to recommend to the House of Representatives, approving the appointment of undersecretaries of ministries, ambassadors, and holders of special degrees, It also violated Article (13/Second) of the Constitution, which approved the invalidity of any text or procedure that contradicts the provisions and provisions of the Constitution, and also violated Article (42) of the Internal Regulations of the Council of Ministers No. (2) of 2019, which specified what is meant by the conduct of daily affairs of the state, not including appointment to senior positions in the state and exemption from them, and violated the jurisprudence on which the Federal Supreme Court settled, including its decision No. (121/Federal/2022), which required the continuation of subjecting all acts and decisions issued by the government to Conduct of business for constitutional judicial oversight (before the Federal Supreme Court), following Article 100 of the Constitution, which prevented the immunization of administrative decisions and orders from the appeal, the plaintiff requested the court to rule to cancel the disputed customs orders and rule them unconstitutional and to charge the defendant the fees and attorney's fees. The case was registered with this court with a number (176/federal/2022) and the legal fee for it was collected in accordance with the provisions of Article (21/1st) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and it informs the defendant of its petition and documents following paragraph (second) of the same article, his agent replied with the answering draft dated 29/8/2022, the conclusion of which is

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that the interest condition for the plaintiff to file a lawsuit before this court is not met, which is required by Article (20/1st) of the court's internal system, and that the issuance of the Diwani order in question does not constitute a violation of the provisions of the constitution, the decision of the esteemed court, or the internal regulations of the Council of Ministers, and the request to dismiss the appeal and charge the plaintiff expenses, fees, and attorney's fees. After completing the procedures required by the court's rules of procedure, mentioned above, a date was set for the pleading in accordance with article 21/3rd thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff and his agent, Sadiq Rasul Al-Mahna, and the defendant's attorney attended, and the public pleading was initiated. The plaintiff's attorney repeated what was stated in the lawsuit petition and requested a judgment according to it, the defendant's agent replied requesting the dismissal of the lawsuit for the reasons stated in the response list linked to the lawsuit papers and added that the Council of Ministers issued Resolution No. (280) on 1/11/2022 containing the cancellation of the Diwani orders issued during the government of conducting daily affairs, including the Diwani order in question, and therefore it became irrelevant and the most prominent copy of it, and the agents of the two parties repeated their previous statements and requests, and since there was nothing left to say, the end of the argument has been made clear and the court issued the following judgment:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit included a request for a judgment to cancel the two Diwani orders numbered (3026/2293265 and 3028/2293266) issued on (23/7/2022) by the defendant's department, in addition to his job, which included assigning Raed Juhi Hammadi to the duties of heading the Iraqi National Intelligence Service and Amer Abd Rasan to the duties of the deputy head of the Iraqi National Intelligence Service for administrative affairs, for violating the aforementioned orders the provisions of Articles (13/2nd, 61/5th/Beh, 64/2nd, and 80/5th) of the Constitution of the Republic of Iraq for the year (2005). As well as for violating the decision of the Federal Supreme Court issued by it No. (121/Federal/2022) on (15/5/2022) and then charging him all judicial expenses, including advocacy fees. The court reviewed the lawsuit papers and documents, as well as the defenses of the defendant's agent in addition to his job, and it was proven to the court from the investigations it conducted in the subject matter of the lawsuit that the defendant's department, in addition to his job, issued Resolution No. (280) on (1/11/2022), which includes in its first paragraph the cancellation of decisions, Diwani orders, approvals, and ministerial and administrative orders issued by the previous government, all regarding the appointment or assignment of heads of entities not related to the ministry, special grades, general managers and their grades, and those who receive their salaries starting from (8/10/2021), or their received letters and the aforementioned orders are officially contained in the ministries and entities not associated with the ministry after that date, so the plaintiff's requests contained in his petition to cancel the two

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forementioned Diwani orders are irrelevant, as the two Diwani orders in question have been canceled by a decision of the Council of Ministers No. (280) taken in the session held on (1/11/2022), so the lawsuit is irrelevant and therefore it is free to respond from this authority, since the defendant/ being in this capacity by issuing the two Diwani orders subject to the challenge, caused the filing of the lawsuit and then issued the aforementioned decision to cancel them, therefore, he bears the judicial expenses incurred by the plaintiff as a result of filing the lawsuit, and because of the foregoing, the Federal Supreme Court decided to rule as follows: first- Dismissal of the plaintiff's claim, Ahmed Rahim Azrag Al-Rudaini. Second- to burden the defendant/ being in this capacity all the judicial expenses including the advocacy fees for the agents of the plaintiff, the barristers Sadiq Rasool Al-Muhanna and Nada Abdul Ridha Al-Juboori, amount to one hundred thousand Iraqi dinars. The decision has been issued unanimously, and decisive according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) 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 dated 11/Jamada Al-Oula/1444 Hijri coinciding 6/December/2022 AD.

Signature of
The president
Jasem Mohammad Abboud

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