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The Federal Supreme Court (F S C) has been convened on 13/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, 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: Ali Fakhri Abdul Hamza – his agents the barristers Mohammed Majeed Al-Saidi, Yasser Falah Hasan, and Ahmed Mazin Makkiya.

The Defendant: the Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Al-Sharifi.

### **The Claim**

The plaintiff claimed through his agent that the defendant issued Resolution No. (133) of 2021 in the fifteenth ordinary session held on 13/4/2021, which stated ((Recommendation to the Council of Representatives to appoint Engineer (Muhammad Sahib Al-Daraji) as Chairman of the Military Industrialization Authority, based on the provisions of Articles (61/5<sup>th</sup> and 80/5<sup>th</sup>) of the Constitution)), and since the Military Industrialization Authority Law No. (25) of 2019 stipulated in Article (1/2<sup>nd</sup>) thereof that (the Authority shall be headed by an employee with a special grade who holds a university degree). Primary at least in science or engineering, experienced in the work of the Commission, and has a job service of not less than (15) fifteen years and appointed with the approval of the Council of Ministers and the approval of the Council of Representatives), whereas these conditions do not apply to the current head of the Commission (Muhammad Sahib Al-Daraji), which is a clear violation of the provisions of the Military

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Industrialization Authority Law, as well as a clear violation of the powers stipulated in Article (80/5<sup>th</sup>) of the Constitution, which stipulates (recommending to the Council of Representatives, approving the appointment of undersecretaries, ambassadors, holders of special degrees, the Chief of Staff of the Army and his assistants, those in the position of division commander and above, the head of the National Intelligence Service, and the heads of security agencies) while the decision subject of the lawsuit included in paragraph (2) thereof (2- Assigning the aforementioned to the duties of the head of the Military Industrialization Authority as an agency until he is appointed originally), and the defendant has committed serious administrative and financial violations that cause great damage to public money and the institution, so the plaintiff asked this court to cancel the Council of Ministers Resolution No. (133) of 2021 issued on 13/4/2021, and the defendant shall burden fees, expenses, and advocacy fees. The lawsuit was registered with this court with the number (198/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1<sup>st</sup>) of the Court's Bylaw No. (1) of 2022, and the defendant shall be informed of its petition and documents in accordance with item (2<sup>nd</sup>) of the same aforementioned article, and his agent replied with the reply draft dated 5/9/2022, the conclusion of which is that the plaintiff has no interest in filing this lawsuit so as not to violate his constitutional and legal rights in a way that causes him direct damage following the requirements of Article (20/1<sup>st</sup>) of the Law. The Court's Bylaw as well as the text of Article (4) of its Law No. (30) of 2005, as amended. Moreover, the Council of Ministers issued its decision subject to appeal following its constitutional powers under Article (80/3<sup>rd</sup> and 5<sup>th</sup>) of the Constitution to continue the work of state institutions regularly and

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steadily, especially the Military Industrialization Authority, which works daily for the need not to interrupt or stop to provide weapons, equipment and requirements of the armed and security forces, especially in circumstances that expose our country and our people to the danger of terrorist gangs and crime, and that the assignment of Engineer (Muhammad Sahib Al-Daradji) until his appointment is necessary to conduct the affairs of the Authority and carry out its tasks. Especially that the establishment of the Commission came due to the importance of military industries, achieving national security, supporting the economy, benefiting from national expertise, contributing to securing the military work of the security ministries, and achieving national sovereignty to achieve their objectives stipulated in Article (2) of the aforementioned Authority Law, in addition to that all the conditions stipulated in Article (1/2<sup>nd</sup>) of the same law are available in the engineer (Muhammad Sahib), so he requested to judge to dismiss the appeal in terms of form and substance, and to charge the plaintiff the fees and expenses and advocacy fees. After completing the procedures required by the court's Bylaw, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff and his agent attended, and the defendant's agent attended and began to conduct the public adversarial pleading, the plaintiff and his agent repeated what was stated in the lawsuit petition and requested a ruling according to it. The plaintiff's agent added that my client is the vice president of the Military Industrialization Authority and that he has held the aforementioned position since (7/5/2020), and the plaintiff stated that the reason for filing the lawsuit by me is that the person was assigned the duties of the President of the Military Industrialization Authority is surrounded by

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suspicious of corruption, and the assignment of the position of Chairman of the Authority must be mine as the only deputy in the Commission and authorized by law, and the Chairman of the Commission has currently transferred all the employees of the Office of the Vice President of the Commission, the Chairman of the Commission formed an investigative committee against me for the reasons mentioned in the order and my hand was withdrawn for (60) days, and currently an order was issued to consider me resigned from the job on 9/20/2022 and a lawsuit was filed in the administrative judiciary. The plaintiff's agent answered I submit to the court a draft in which all contracts for land investment are attached the aforementioned draft was linked to the lawsuit papers and the defendant's agent was provided with a copy of it, the defendant's agent answered requesting the dismissal of the lawsuit for the reasons stated in his draft linked to the lawsuit papers, he added that the subject of the appeal is Cabinet Resolution No. (133) of 2021, and while the plaintiff claimed that there are great suspicions of corruption hovering around the personality of the head of the Commission, Muhammad Sahib Al-Daraji, there is currently a body that the plaintiff can review and prove with the considered legal evidence and that what was stated in the contested decision has fulfilled the required formality, and that the plaintiff is currently removed from the job and I request that the case be dismissed, the court noted that lawyer Saad Ghazi Musleh submitted a request to the court requesting the admission of his client (President Military Industrialization Authority Agency / being in this capacity) a third person in the lawsuit along with the defendant to complete the litigation, because there was no need for that, the court decided to reject the request and decided to introduce him (in a personal capacity and not in a functional capacity) in addition to the introduction of the Director

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General of the General Company for Military Industries and the Director General of the General Company for Mechanical and Copper Industries third persons in the lawsuit for the purpose of clarifying them about what is necessary to resolve it, so the person questioned by him (Muhammad Sahib Al-Daraji) attended and submitted an explanatory list regarding what the plaintiff and his agent pleaded and added (My job service available in the functional field is 16 years and until 2016, i also had experience before the field of employment in a large and important company in Qatar and before it in the United Kingdom, and a graduate of the University of Baghdad Bachelor of Engineering and holds a master's degree in project management, in addition to assuming the position of Minister of Housing and Construction, as well as the Minister of Industry and Minerals, in addition to membership in the Council of Representatives, and after the issuance of Law No. (25) of 2019, a decision was issued by the Council of Ministers that includes two paragraphs, the first is the recommendation to the Council of Representatives to confirm me as the head of the Industrialization Authority, and the second paragraph is my assignment until the appointment, and concerning what the plaintiff put forward, the plaintiff had previously submitted letter No. (2075) on 26/6/2022 (to the General Military Industries Company, and his inquiries were answered promptly by a decision of the Board of Directors), this was when he was a deputy of the Commission and there is an order to form an investigative committee No. (491) on 5/7/2022 because the plaintiff prepared letter No. (80) on 12/8/2021, according to which he addressed the Serbian side, confirming the cooperation of the Military Industries Authority with a company called (Golden Path Company), and the committee considered the plaintiff's act dangerous and harmful to the public

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interest, in addition to that the plaintiff was assigned his duties on 6/5/2020 on the last day of the previous caretaker government after he was an employee in the Ministry of Agriculture, and the investigative committee reached conclusions, including the withdrawal of the plaintiff's hand, and before the passage of (60) days, the committee recommended a letter to the Prime Minister to remove him from the post and highlighted to the court the letter of the investigative committee, promising the plaintiff to resign because he failed to start after the end of the period of withdrawal of the hand, and an administrative order was issued as resigned. The person questioned by the Director General of the General Company for Military Industries (Jalal Abbas Hussein) attended and presented a list that was reviewed by the court and included (the plaintiff was authorized with all the powers of the Chairman of the Commission by the two ministerial orders numbered (2611) on 8/9/2021 and (4580) on 30/12/2021 and he was in line with all the untrue allegations he is currently presenting and he could have taken any action at the time in the event of irregularities as claimed), and the person questioned by him attended the General Manager of the General Company for Mechanical and Copper Industries (Akram Shaker Abdel Fattah) the court reviewed his list and stated (I am the General Manager of the General Company for Copper and Mechanical Industries since 2005 and I have been working since 1981, although about (50%) of the old cadre that was working within the Military Industrialization Authority is still continuing to serve and with different job grades, and there are quite a few engineers who work in the institution who have very high experience and in various fields of the institution), and the court reviewed the decision of the Personnel Justice Court No. (3394/2022 dated 26/9/2022) in the lawsuit numbered (2825/M/2022)

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filed by the plaintiff Ali Fakhri Abdel Hamza against the defendant, the Prime Minister, in addition to his job to challenge the decision (133 of 2021), which includes the formal dismissal of the lawsuit due to its occurrence outside the legal period, the court also reviewed the decision of the Employees Justice Court issued on 25/9/2022 rejecting the plaintiff's request (Issuance of the state order to suspend the implementation of the procedures of Ministerial Order No. 125 No. 2991 on 20/9/2022, which included considering the applicant for issuing the state order, Ali Fakhri Abdul Hamza, resigned from the job due to the interruption and until the resolution of the lawsuit numbered 3588 /Mim/ 2022) due to the non-application of the conditions necessary to issue the state order, and after the court completed its clarification from the third persons, it decided to remove them from the lawsuit, the agent of each party repeated his previous statements and requests, and where nothing remained to be said, the end of the argument has been made clear, and the court issued the following judgment:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the lawsuit focused on the ruling to cancel Cabinet Resolution No. (133) of 2021 issued in the fifteenth session dated 13/4/2021, which included a recommendation to the Council of Representatives to appoint Engineer (Muhammad Sahib Al-Daradji) as Chairman of the Military Industrialization Authority, based on the provisions of Articles (61/5<sup>th</sup> and 80/5<sup>th</sup>) of the Constitution, and claimed that this was contrary to the Military Industrialization Authority Law No. (25) of 2019 in Article (1/2<sup>nd</sup>) thereof, which stipulated (The Commission shall be headed by an employee with a special grade who holds at least an initial university

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degree in science or engineering, has experience in the work of the Commission and has a job service of not less than (15) fifteen years and is appointed with the approval of the Council of Ministers and the approval of the Council of Representatives), through public adversarial pleadings, reviewing the arguments submitted by the defendant's attorney under the reply list, and during the pleadings, and the court hearing the statements of the persons questioned and reviewing their drafts, the court reached the following conclusions:

First: The authority is not legitimate unless it is the result of the popular will and its expression, but if this authority emanates from that will and is based on it, this requires that the administration adheres to legal rules that are infallible from its wildness and to ensure its response on its heels if it exceeds its limits and it was inevitable that the state in its contemporary concept is based on the principle of the legitimacy of the authority coupled with and reinforced by the principle of submission to the law as two complementary principles without which legitimacy does not exist in its most important aspects the legal state is the one in which every citizen has the primary guarantee for the protection of his rights and freedoms, so that the organization of power in it as well as its exercise within a framework of legitimacy, a guarantee supported by the judiciary through its independence and immunity, so that the legal base becomes the focus of each organization, a unit for each authority, and a deterrent against violating the law. Whereas the Constitution is the supreme basic law that establishes the rules and principles on which the system of government is based, defines the public authorities, draws their functions, sets the limits and restrictions governing their activity, determines the rights and freedoms, and arranges the basic guarantees for their protection, the Constitution is characterized by a special nature

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that confers on it the character of sovereignty and transcendence as the guarantor of freedoms, their habitat, the pillar of constitutional life, the basis of its system, and the right of its rules to be at the top of the legal structure of the State and occupy the forefront among the rules of public order as the supreme. The peremptory norms that the State must abide by in its legislation and the executive powers it exercises, without distinction or discrimination in the field of compliance with them between the three public authorities, legislative, executive, and judicial, because these authorities are all institutional powers established by the Constitution from which they derive their existence and entity, which is the reference in determining their functions. Since that was one of the most important features that characterize the brevity and abbreviation of the constitutional text, as the constitutional text is not explanatory, but a regulatory text that sets the general frameworks for organizing the state and the foundations on which it is based and determines its various authorities and the competence of each of them and the mechanism for exercising each authority of its competencies and the limits of the relationship between those authorities without redundancy or detail, so exceeding or violating the constitutional texts loses the state's legal legitimacy and destroys the legal system that is built based on the supremacy of the constitution and the lack of approval. The actions of state institutions and breaking with it represent the destruction of the political process in the country. The Constitution represents the supreme document that embodies the demands of the people and guarantees the rights and freedoms of individuals and the passport of the state to the international community, it is evidence of the state's merit in governing itself, and it is the birth certificate of the political system, the embodiment of the political idea, the ideology of the holder of power,

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and the identity of the state system. The preamble to the Constitution of the Republic of Iraq of 2005 states: (We, the people of Iraq, of all components and across the spectrum, have taken upon ourselves to decide freely and by choice to unite our future, to take lessons from yesterday for tomorrow, and to enact this permanent Constitution, through the values and ideals of the heavenly messages and the findings of science and man's civilization. The adherence to this Constitution preserves for Iraq its free union of people, of land, and of sovereignty). Therefore, what is stated in Article (93/3<sup>rd</sup>) of the Constitution, which states (The Federal Supreme Court shall have jurisdiction to adjudicate cases arising from the application of federal laws, decisions, drafts, instructions, and procedures issued by the federal authority, and the law guarantees the right of both the Council of Ministers and the concerned individuals and others the right to appeal directly to the court) It can be considered just phrases contained in the Constitution, and that saying so may apply to other articles of the Constitution and therefore represents a disruption of its provisions and a departure from them and neglect of its requirements and corruption of its effects and this cannot be accepted by the people and the authorities, considering that the constitution is credited with the emergence of the state and when it is absent, it is not possible to talk about an independent legal entity called the state, and to it the emergence of power with its three branches is the basis of its legitimacy and legality, so the constitution as the supreme law established is the basis of the legitimacy of the state and the basis of the legitimacy of the work of those in charge of the work of the federal authorities and the strength of the supremacy of the constitution is to consolidate the principles of democracy and faith in it, not by apparent structures and abstract texts, and talking about the supremacy and

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supremacy of the constitution is in vain in countries with totalitarian regimes which is dominated by the rule of one individual or takes the one party as its system In these countries there is no point in stipulating the supremacy of the constitution because there is no supreme in them except the ruler who holds power, as for the legislative system, even if it rises or descends, it is only tools that adapt the situation in general to its benefit and work in its service and not in the service of the people, and since the system of government in Iraq is a parliamentary representative republican democratic based on the provisions of Article (1) of the Constitution, the Constitution's loss of its due supremacy under Article (13) thereof and its transgression represents the destruction of the system of government, which is based on the principle of the rule of law in accordance with Article (5) of the Constitution and on the basis of the peaceful rotation of power based on the provisions of Article (6) thereof and on the basis of political pluralism in Iraq based on the provisions of Article (39) thereof, so the system of government in Iraq requires this supremacy of the Constitution, when the implementation of the constitutional provisions is the duty of all authorities, on the basis of the provisions of article 93 (ter) of the Constitution, the subject matter of this case shall be considered within the competence of this Court, otherwise it is a distortion of its jurisdiction and a waste of its position in the legal structure of the judicial system in Iraq. Second: The connection of the constitutional litigation with the subject matter of the case by the Federal Supreme Court based on the provisions of Article (93/3<sup>rd</sup>) of the Constitution requires this court to decide on it, whether to decide the validity of the decision or not, considering that this court has the final say in (decisions, drafts, instructions, and procedures issued by the federal authorities) following the aforementioned article of the

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Constitution and the court cannot recuse itself from this jurisdiction, otherwise this is considered a reversal on its part from adhering to the provisions of Article (93/3<sup>rd</sup>) of the Constitution, and that this is consistent with the constitutional composition of the federal authorities and their supremacy following Article (47) of the Constitution, the consideration of the subjects covered by the provisions of Article (93/3<sup>rd</sup>), mentioned above, by the courts of administrative justice contradicts the fundamental foundations on which the constitutional jurisdiction of this court is based and obstructs the constitutional guarantee granted to the parties to the dispute covered by the provisions of Article (93/3<sup>rd</sup>) of the Constitution and contradicts the supremacy of the federal authorities, because the litigation procedures for the Federal Supreme Court differ from those for the Administrative Court, as the subject matter is considered by the Federal Supreme Court with all its nine members, the judges. When it is considered by the Administrative Court, which consists of a counselor and the membership of advisers or assistant advisers, and accordingly, the consideration of decisions issued by the Council of Ministers, on the other hand, the rules regulated by the Constitution are the ones that must always be weighted when opposed by a lower legal rule, which is still in force because its constitutionality is not challenged, to achieve the principle of the supremacy of the Constitution and the inadmissibility of enacting a law that contradicts it, as every text contained in the constitutions of the regions or any other legal text that contradicts it is considered null and void. Based on the provisions of Article (13/2<sup>nd</sup>) of the Constitution, this requires the implementation of the constitutional provisions and not exceeding them by the authorities, bodies, and institutions that make up the state, the Federal Supreme Court shall not be impeded from its

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constitutional jurisdiction by a decision issued by the Administrative Court, and this also requires the removal of any obstacle, even if legal, to the exercise of the Federal Supreme Court's competences, which must decide on its subject matter, with regard to what is issued by the federal authorities, which is covered by the provisions of Article (93/3<sup>rd</sup>) of the Constitution, without the rest of the administrative decisions whose subject matter is within the jurisdiction of the administrative judiciary, without regard to what is issued by the administrative judiciary in this regard. Third: One of the priorities of the existence of a constitutional life is the establishment of the state of law and this gives the constitution credibility and realism and gives the constitutional judiciary a real ability to perform its function in ensuring respect for the constitution and not exceeding it, and therefore it is assumed that each state seeks to achieve its legality and the legal state is not achieved unless it achieves a set of principles, foundations, and rules, including a commitment to the principles of legitimacy and legitimacy. The first relates to public bodies in terms of their composition and competencies, while the second relates to the acts issued by them, and each of them has elements on which its existence depends, as the general rule or the origin on which democratic systems are based in respect for the provisions carried by the legal rules of different degrees. Exercise it, considering that the sovereignty of the law and the people is the source of authorities and their legitimacy, and this is confirmed by the Constitution of the Republic of Iraq of 2005 in Article (5) thereof, and legitimacy is meant in the opinion of a section of jurists The ideal idea that is intended to achieve justice, that is, it achieves justice through respect for rules in general. Whether in legal rules or other rules, and based on the foregoing, legitimacy in constitutional law is related to

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access to power in the state, and here we must differentiate between two types of authority: the legitimate authority, which requires the acceptance and consent of the ruling class (the people), and the second illegitimate authority, which is not based on the acceptance and consent of the ruling class, but based on its existence and survival on the use of force and coercion to subject the ruling class to its will, and such authority does not allow the establishment of the state in the modern sense, whose establishment is linked to the consent of the ruling class, and based on this link between the authority and the ruled class, some jurisprudence went to the inadequacy of the mere existence of a public authority to which individuals are subject to the existence of the state, Rather, this authority must gain the acceptance of individuals in order to achieve the principle of legality, while the principle of legality means respect for the public authorities of the law, hence the connection of the aforementioned concept with the idea of the legal state, which must be subject to it in all its activities and all its actions, and every action issued by it, which is tainted by violating the law, it is considered an illegal act, and the result is that the administration does not carry out any of the actions entrusted to it to achieve except for the implementation or application of the law. Thus, the administration has only a limited role that it cannot deviate from, otherwise, it will describe its work as illegitimate. But the practical reality of the work of the administration requires granting the administration a discretionary power through which it can carry out its functions and issue its work in line with its ability to achieve the public interest and free its spirit of initiative and creativity, thus achieving a balance between legitimacy and freedom of management, as giving the administration almost absolute freedom to practice its work is not without risks, because the

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administration does not exercise its powers and does not express its will directly, but needs natural persons to do so in its name and on its behalf. It is affected by its inclinations, personal interests, and purposes that concern it first and foremost, so it abuses or abuses the power granted to it, and even though the constitutional legislator, as well as the ordinary legislator, is trying, through its legislation, to restore the rights and freedoms of individuals through the judiciary. However, this does not prevent granting the administration broad powers and powers in unusual circumstances to confront them, but it is required that this freedom remain exceptional, because the essence of legitimacy crystallizes in the consent of the governed, while the essence of legality crystallizes in not violating the law and issuing work based on it, and we conclude from this that respect for the rights and freedoms of individuals requires the existence of strict rules that prevent the administration from violating the principle of legality and not exceeding the law, but the proper functioning of public utilities and the continued performance of If the discretionary power of the administration is considered an exception to the principle of legality, it has its justifications and legal, technical, practical and logical bases that necessitate its existence when the administration performs its functions, because the administrative authority sometimes knows more than the rest of the authorities the secrets and backgrounds of administrative activity and its practical requirements, as it is not possible to develop general rules for all details of administrative life, It is not possible to develop legislation that covers all the details of the rapid developments experienced by the administrative activity of the state, which makes the administration need to cover those rapid changes with administrative decisions issued by its discretion without waiting for the procedures for the issuance of

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legislation to maintain the security of the state or public order or to face emergency circumstances that were not taken into account, but all of this must not be without judicial oversight, whether the control is by the Federal Supreme Court in accordance with Article (93/3<sup>rd</sup>) of the Constitution or by the administrative judiciary for decisions and actions not covered by the provisions of the aforementioned article of the Constitution, based on the provisions of Article (100) of the Constitution, which prohibited the immunization of any act or administrative decision from appeal, and this is not without parliamentary oversight, so the Constitution of the Republic of Iraq granted the legislative authority control over the performance of the executive authority, which is the right to question, interrogate and put confidence in the government in accordance with Article (61/ 8<sup>th</sup>) of the Constitution, it is possible that the control in some systems by the executive authority itself, where the administration itself monitors the conformity of its actions to the law, either at the request of individuals or on its own and this control takes three forms, it is either a state grievance or a presidential grievance or a grievance that is submitted to a special administrative committee and concludes from all that that the administration must abide by the provisions of the law and not violate it to achieve the principle of legality, but the proper functioning of public utilities and the continued performance of the administration For their functions, they sometimes require granting them freedom, which helps them to make the appropriate and timely decision in the public interest, whether that freedom relates to the concept of discretionary power or to the concept of exceptional circumstances according to the availability of the conditions of each case. Fourth: Whereas the contested decision is contrary to the provisions of Article (1/2<sup>nd</sup>) of the Military

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Industrialization Commission Law No. (25) of 2019, which required that the Chairman of the Authority be an employee of a special grade and with experience in the work of the Authority and has a functional service of not less than (15) fifteen years, and be appointed with the approval of the Council of Ministers and the approval of the Council of Representatives, as the aforementioned law required the Chairman of the Authority to be experienced in the work of the Authority and the experience is represented by skill in performing practical work or Intellectual high quality, quickly and easily without much effort, as the acquisition of experience depends on repeated knowledge and practices, and therefore experts are made of practical and intellectual practice and are not born as such, Motivation and practice are more important factors than innate or inherited ability, and that previous experiences in the field of work are a great incentive to provide solutions and overcome the difficulties posed, and that this is achieved through career progression within the work of each institution and that the law stipulated that and because achieving the objectives of the Commission requires that, which is represented in accordance with Article (2) of the law to establish an advanced base for military industries in Iraq and meet the needs of the armed forces and security forces in all their formations and support the national economy and contribute In maintaining security and qualifying scientific cadres specialized in military industrialization and when it came to the statements of third persons that the Military Industrialization Commission includes cadres, It has a very large experience gained through academic qualifications and long years of service, and since failure to take this into account leads to a violation of the principle of equal opportunities confirmed under Article (16) of the Constitution, which represents a major principle of the principles that

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embody the preservation of the rights of all citizens, which the state must take all necessary measures to achieve based on the provisions of the aforementioned article, which is one of the main gates to achieve social justice in the state, as this principle is linked to various aspects of life. It is linked to public service, education, politics, and achieving development and works to reduce the gap between citizens in all fields, This principle has a great impact on the achievement of creativity, and is an important factor in creating a sense of equality for individuals with others, which pushes all employees in all state departments to work hard and integrity and think widely to develop work and achieve excellence in performance, this legitimate competition within one department is what creates the right administrative leaders away from the influence of any factor other than the factors of sincerity, integrity, efficiency and high care to serve the country, those factors on the basis of which the best are chosen to lead institutions The principle of equal opportunities is the best way to reduce corruption and this principle was adopted in most heavenly laws before man-made legislation, as it was stated in the Holy Qur'an Surat Taha Verse (112), (*But whoever has done righteous deeds, while being a believer—will fear neither injustice, nor grievance*) It was explained in the explanation of this (that is, he is not afraid to be wronged, so he is not rewarded by his work, and he is not afraid to detract from his right, so his work is not fulfilled, and God accepts from the work what was in the faith, and the son of Adam is not afraid on the Day of Resurrection to be oppressed, so he will be added to him in his bad deeds, and he will not be wronged and aggrieved in his good deeds). As stated in the era of Imam Ali (pbuh) to Malik Al-Ashtar (Do justice to God and do justice to people from yourself and especially your family and those in which you have a passion from your flock, you

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do not do injustice, and whoever oppresses the servants of God was God his opponent without his servants, and whoever opposed him God refuted his argument and God had a war until he removed and repented. There is nothing called to change the grace of God and accelerate his vengeance from the establishment of injustice, God hears the call of the oppressed and is for the oppressors on the lookout and let the most beloved things to you be in the middle in Right, and I do it in justice and collect it for the satisfaction of the flock), this principle has been adopted in man-made laws since the start of the French Revolution in 1789 and followed by countries after World War II, especially after the establishment of the United Nations in 1945 and the important principles contained in its Charter to achieve equality and non-discrimination between people in order to achieve the principle of equal opportunities for all citizens, as this principle was adopted by international charters and declarations and became a constitutional principle for most countries and this principle was confirmed by the Universal Declaration of Human Rights of 1948 As well as by the International Labour Office at the conference held in 1957 and in light of all this, the advancement of the country and overcoming all crises requires giving way to the constitutionally and legally authorized bodies to choose the leaders who meet the aforementioned criteria and that are the only motive behind that choice examines these standards. For all of the foregoing, and for the contested decision to violate the provisions of Article (1/2<sup>nd</sup>) of the Military Industrialization Commission Law No. (25) of 2019 and based on the provisions of Article (93/III) of the Constitution of the Republic of Iraq for the year 2005, which stipulated (The Federal Supreme Court shall have the following competencies: Adjudicating cases arising from the application of federal laws,

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decisions, regulations, instructions, and procedures issued by the federal authority, and the law guarantees the right of both the Council of Ministers and concerned individuals and others the right to appeal directly to the court). The Federal Supreme Court decided the following:

1. Ruling that the Council of Ministers Resolution No. (133) of 2021 issued in the fifteenth ordinary session held on 13/4/2021 containing ((1. Recommending to the House of Representatives the appointment of Engineer (Muhammad Sahib Al-Daraji) as Chairman of the Military Industrialization Commission, based on the provisions of Articles (61 / item 5<sup>th</sup> and 80 / item 5<sup>th</sup>) of the Constitution, 2. Assigning the aforementioned to the duties of the head of the Military Industrialization Commission as an agency until his appointment is incumbent.)) and canceling it.

2. The defendant shall charge the fees, expenses, and advocacy fees of the plaintiff's agents an amount of one hundred thousand dinars distributed in accordance with the law.

. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 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 18/Rabee Al-Akhir/1444 Hijri coinciding with 13/November/2022 AD.

**Signature of**

**The president**

**Jasem Mohammad Abbood**

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Republic of Iraq  
Federal Supreme Court  
Ref. 198 / federal /2022



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