

Republic of Iraq  
Federal Supreme Court  
Ref. 203 / federal /2022



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 31/10/2022 headed by Judge Sameer Abbas Mohammed and membership of Judges, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Hyder Jabir Abid, Ayoub Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Wissam Aslan Saud – his agents the barristers Ahmed Fakhri and Yassir Mohammed Mahmood.

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 Diwani Order No. (22053) on 28/5/2022 assigning (Ali Waad Allawi Hussein) to the position of Governor of Babylon and that he (i.e. the plaintiff) filed a grievance No. (352) on 4/7/2022 requesting the cancellation of the aforementioned Diwani Order and assigning him to the aforementioned position as the First Deputy Governor, and it was not answered despite the lapse of a period of (30) days, so he took the initiative to challenge it before this court for violating the provisions of the Constitution and the law as follows: 1- Violating Article (64/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution, which states that when the Council of Representatives is dissolved, the government resigns and continues to conduct daily business, It is not within its powers to appoint to senior positions, especially since the position of the governor is one of the most important positions in the administration of the governorate and the management of citizens' affairs in accordance with the powers granted

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to him by the Constitution and the Law of Governorates Not Organized in a Region No. (21) of 2008 and its amendments, 2. Violating the provisions of Article (2) of Law No. (27) of 2019 (Second Amendment to the Provincial and District Councils Elections Law No. 12 of 2018), which stipulated (the Governor and his deputies shall continue to exercise the functions and powers .....), 3. Violating the Federal Supreme Court's Interpretative Decision No. (121/Federal/2022) on 15/5/2022 containing the incompetence of the caretaker government to appoint or exempt from senior positions of the state, Therefore, the plaintiff requested this court to annul the Diwani Order No. (22053) on 28/5/2022 and oblige the defendant to assign him the duties of the governor of Babylon due to the legal conditions that apply to him. The case was registered with this court with the number (203/federal/2022) and the legal fee was collected for it based on the provisions of Article (21/1<sup>st</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and the defendant shall be informed of its petition and documents following item (second) of the same article, and his representative replied with the reply list dated 26/9/2022, the conclusion of which is the lack of interest as stipulated in Article (20/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Bylaw and Article (6) of the Civil Procedure Law No. (83) for the year 1969, especially since the constitutional lawsuit revolves around the interest of existence and non-existence, in addition to the lack of jurisdiction of the court to hear the case based on the provisions of Article (7/8<sup>th</sup>/4) of the Law of Governorates Not Organized in a Region, which stipulated that (the governor may object to the dismissal decision before the Administrative Court...), which was settled by the judgment of the Federal Supreme Court in many of its decisions, including Resolution No. (129/Federal/2022), and Article (28) of the same law included that the deputy performs the duties of the governor if the governor is unable to

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perform his duties for reasons of Authenticity for a period of more than (3) months, and thus there is no legal obligation that requires assigning the Deputy Governor to the tasks of managing the affairs of the governorate, and the Diwani order in question came with the approval of the Prime Minister based on the powers vested in him under Article (78) of the Constitution, and that the assignment of (Ali Waad Allawi) with the tasks of managing the affairs of the province of Babylon came in accordance with the requirements of the public interest and to ensure the continuation of the work of state institutions, and the plaintiff confused between the appointment to senior positions in the state and the mechanism in which the appointment of the governor is issued according to a presidential decree within (15) days from the date of his election based on the provisions of Article (25/2<sup>nd</sup>). From the Governorates Law, note that the Diwani Order included assigning the tasks of managing the affairs of the governorate and not the appointment, and thus did not violate the court's decision referred to in the lawsuit petition, nor did it include the dismissal of the plaintiff from his position as Deputy Governor of Babylon, in addition to that the committee formed under Diwani Order No. (22024) of 2022 issued under the letter of the Prime Minister's Office No. (3006/329/229) on 3/3/2022 evaluated the performance of (Hassan Mandil / Governor of Babylon) during his assumption of the position, and it was stated in paragraph (4<sup>th</sup>/1) of The Committee's Conclusions, not Aslan Saud (Plaintiff) Assigned to Manage the Affairs of Babylon Governorate Due to the Existence of a Lawsuit Against Him, therefore, he asked the Federal Supreme Court to rule on the dismissal of the appeal from the formal and substantive points of view and to charge the plaintiff the expenses, fees, and advocacy fees. After completing the procedures required by the Bylaw of the court, a date was set for the pleading in

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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, lawyer Yasser Mohamed Mahmoud, 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 accordingly. The defendant's attorney replied requesting the dismissal of the lawsuit for the reasons stated in the answering draft linked to the case papers, and each party repeated its 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 decision:

**The decision:**

Upon scrutiny and deliberation by this court, what was stated in the plaintiff's lawsuit, the regulations exchanged between the parties, and what their agents stated in the pleading session, it was found that the plaintiff's attorney requests a judgment to cancel Diwani's order No. (22053 on 28/5/2022) assigning (Ali Waad Allawi Hussein) the duties of the governor of Babylon)) and obliging the defendant to assign the plaintiff the position of the governor as his first deputy. The court finds that the plaintiff's claim is admissible in terms of litigation, because the plaintiff and the defendant, in addition to his position, are legal litigants who meet the conditions of litigation and have the legal capacity to litigate, the court also finds that the plaintiff's interest in this lawsuit is achieved in accordance with the provisions of Articles (44, 45, 46 and 47) of the Civil Procedure Law No. (83) of 1969, as amended, and the provisions of Article (20) of the Bylaw of the Federal Supreme Court

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No. (1) of 2022, and upon careful consideration of the plaintiff's requests, the court finds that the Constitution of the Republic of Iraq of 2005 and the amended Law of Governorates Not Organized in Region No. (21) of 2008 have regulated the mechanism and procedures for appointing governors, as item (third) of Article (122) of the Constitution provided that the governor shall be elected by the provincial council and stipulated in item (fourth) of the same article that the law on the election of the provincial council and the governor, Article (7/7<sup>th</sup>/1) of the Law of Governorates not incorporated into a Region No. (21) of 2008, as amended, stipulates the competence of the provincial council to elect the governor and his deputies by an absolute majority, and Article (26/1<sup>st</sup>) of the same law stipulates that the order to appoint the governor shall be issued by a presidential decree within (15) days from the date of his election, and it was not possible to apply the aforementioned provisions in practice after the termination of the work of the provincial and district councils under Law No. (27) of 2019 (the second amendment law to the Provincial Councils Elections Law). and District No. (12) of 2018), Article (1) of which stipulates: ((Clause 3<sup>rd</sup> of Article (44) of the Law shall be amended and replaced by the following: Third: Termination of the work of the governorate councils that are not organized in the region and the councils of the districts and their subordinate districts)) This was confirmed by the decision of the Federal Supreme Court No. (117/Federal/2019) on 2/5/2021 ruling on the unconstitutionality of Article (14/1<sup>st</sup>) of Law No. (10) of 2018 ((The Third Amendment Law to the Law of Governorates Not Organized in a Region No. (21) of 2008 as amended)), which stipulated the continuation of the work of the provincial and district councils until the results of the new council elections are issued, and then no new councils were elected, Whereas Article (122) of the Constitution of the Republic of Iraq of 2005

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stipulates that the governorates that are not organized in the region shall be granted broad administrative and financial powers to enable them to manage their affairs in accordance with the principle of administrative decentralization, and stipulates that the governor is the highest executive head in the governorate, and that the principle of administrative decentralization is based on achieving the interests of the inhabitants of those governorates, which prompted the legislator to recognize them with a number of competencies and a certain degree of independence in exercising those competencies under the follow-up And monitoring and directing the federal authorities, which requires the continuation of the work of the governor as the highest executive head in the governorate to implement those competencies and achieve those interests, and this is what the legislator omitted from the text of Article (2) of Law No. (27) of 2019, the Second Amendment Law to the Provincial and District Councils Elections Law No. (12) of 2018, which stipulated the continuation of the work of the governor and his deputies to exercise their duties and powers stipulated in the law of governorates not organized in a region after the end of the work of the provincial councils, whereas the Law of Governorates Not Organized in a Region or any other law did not address the vacancy of the position of the Governor, except for what is stated in Article (28) of the said Law, which stipulates that (in the event that the Governor is unable to perform his duties for authenticity reasons for a period of more than three months, he shall be referred to retirement and the Council shall elect a new Governor with the same election mechanism mentioned in Article (7), paragraph (7) of this Law, and the First Deputy shall perform his duties until the election of the new Governor) and that This text deals only with one case, which is the case of the governor's inability to perform his duties for authenticity reasons, and it is not permissible to compare it

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in other cases that lead to a vacancy in the position of the governor, through the foregoing, it is clear that it is not possible to appoint any governor in an original capacity in the governorates in which the aforementioned position is vacant during the period in which the provincial councils do not exist, and the legal texts do not help the deputy governor to perform the functions of the governor in a case other than those stipulated in Article (28) of the Governorates Law that are not organized in a region, and in this regard, and in order to continue the work of institutions in the governorates and provide services to citizens, the Prime Minister resorts to the assignment to carry out the functions of the governor based on This is due to the provisions of Article (78) of the Constitution, although the said article does not explicitly stipulate this power, but it is necessary to do so in order to ensure the functioning of public utilities, therefore, the court finds that the Diwani order subject to the challenge No. (22053 on 28/5/2022) assigning (Ali Waad Allawi Hussein) the duties of the Governor of Babylon was based on the approval of the Prime Minister and the requirements of the public interest and based on the discretionary power he enjoys as he is directly responsible for the general policy of the state in the application of the provisions of Article (78) of the Constitution, and this does not conflict with the concept of the caretaker government contained in Article (64/2<sup>nd</sup>) of the Constitution of the Republic of Iraq for the year 2005 nor with its concept and competencies referred to in the decision of this court No. (121/Federal/2022 on 15/5/2022)), which included the incompetence of the caretaker government to take decisions that involve political reasons and motives that have a significant impact on the political, economic, and social future of Iraq and can take decisions and actions that will continue the regular functioning of public utilities, And the continuity of the continuation of the provision of services to citizens,

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but it came in line with the internal regulations of the Council of Ministers No. (2) of 2019, amended in Article (42/2<sup>nd</sup>) thereof, which stipulated that (the conduct of daily affairs is intended to take decisions and non-postponing measures that would continue the work of state institutions and public utilities regularly and steadily, and does not include, for example, the proposal of draft laws, the contract of loans, or the appointment to senior positions in the state and exemption from it or restructuring ministries and departments.) The Court also finds that this is without prejudice to the power of the Prime Minister, whether in the caretaker government or in the government that is formed after it, and is fully empowered to use his discretionary power to terminate the assignment if this is consistent with the public interest, therefore, the court finds that there is nothing to prejudice the validity of the Diwani order in question. As for the plaintiff's request to oblige the defendant the Prime Minister, in addition to his position, to assign him the duties of the Governor of Babylon, the Court finds that the said request is outside its competencies contained in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, which did not include obliging the authorities to assign or appoint governors or heads of institutions. Other Departments It is also a violation of the principle of separation of powers. For all of the above, and by request, the Federal Supreme Court decided the following:

- 1- The judgment dismissing the plaintiff's lawsuit Wissam Aslan Saud for his request to oblige the defendant to the Prime Minister, in addition to his job, to assign him the position of governor of Babylon due to the lack of jurisdiction of the court to do so.
- 2- The judgment dismissed the plaintiff's lawsuit Wissam Aslan Saud for his request to challenge Diwani Order No. (22053) on 28/5/2022

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issued by the Prime Minister's Office, which includes assigning (Ali Waad Allawi Hussein) to the position of Governor of Babylon for lack of prejudice to its authenticity.

- 3- To burden the plaintiff Wissam Aslan Saud with the fees, expenses, and advocacy fees for the agent of the defendant the Prime Minister/ being in this capacity, the legal counselor Hayder Ali Jaber amount of one hundred thousand Iraqi dinars. The decision has been made 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 article (4) 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 5/Rabee Al-Akhir/1444 Hijri coinciding with 31/October/2022 AD.

**Signature of  
The president  
Jassim Mohammad  
Abood**

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