

Republic of Iraq
Federal Supreme Court
Ref. 218 / federal /2022



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The Federal Supreme Court (F S C) has been convened on 19/12/2022 headed by Judge Jassim Mohammed Abbood, and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, 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: Ali Hameed Khadhim Al-Shukri.

The Defendant: The Prime Minister/ being in this capacity – his agents the legal counselors Ghadeer Ja'afar Dawood and Qasim Suhaib Mashkoor.

The Third Party Beside the Defendant: Secretary-General of the Cabinet/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed in the lawsuit petition that the Council of Ministers, in its fiftieth ordinary session held on 24/12/2019, issued its resolution No. (464) of 2019 containing ((approval of the amendment of paragraph (3) of the Cabinet Resolution No. (389) of 2019 to become as follows: Subject to paragraph (1) mentioned above, the inspector general who does not meet the age requirement shall continue to have the same degree in the entity in which he was working, and the competent minister or the head of the entity not associated with a ministry shall propose his appointment to the position of undersecretary or Consultant or General Manager...)) Since the aforementioned paragraph (3) is contrary to the provisions

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of the Constitution and the law and is unfair and prejudicial to his rights, he took the initiative to challenge it before this court based on the provisions of Article 93/3rd of the Constitution for the following reasons: 1- Law No. (24) of 2019 was issued to repeal the order of the dissolved Coalition Provisional Authority No. (57) of 2004, Article (3/1st) which stipulates ((Those who occupy the position of Inspector General shall be referred to retirement following the Unified Retirement Law No. (9) of 2014, while those who are not covered by the Retirement Law shall be issued by the Council of Ministers to issue the necessary decision against them or they shall be reinstated to their previous government jobs exclusively in government institutions...)), then, Cabinet Resolution No. (389) of 2019 was issued, paragraph (3) of which stipulates (... The Inspector General, who does not meet the age requirement of the same degree in the entity in which he was working, shall continue until his fate is determined by the Council of Ministers, and the competent minister or the head of the entity not associated with the Ministry shall propose his appointment as an undersecretary, adviser or director general within a period not exceeding 30 days) and then this paragraph was amended by the aforementioned Cabinet Resolution No. (464), which resulted in a gap and disparity in treatment between those with similar legal positions and a violation of the principle of Equality between inspectors general who has been referred to retirement while enjoying all the privileges and salary of the rank of undersecretary of the Ministry of Authenticity and between inspectors general who is not covered by the Unified Retirement Law and continue to serve as a commissioner or agency, thus depriving them of the privileges and salary of the rank of undersecretary like their retired peers, Contrary to the provisions of Articles (14, 16,

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19/6th and 22/1st) of the Constitution, which affirmed the principles of equality, equal opportunities among Iraqis, their right to work and fair treatment in administrative procedures, the Inspector General is a government employee in accordance with the provisions of the Civil Service Law and the Owners Law in force and its instructions, where all the provisions of laws, regulations and instructions related to public service were applied to him, including the Unified Retirement Law and the Law on the Salaries of State and Public Sector Employees, according to which the annual allowance was granted to him. Therefore, he is appointed under valid legal conditions following Legislative Order No. (57) of 2004 to the position of Inspector General at the rank of Undersecretary (Senior A) according to Diwani Order No. (72) of 2008, which has remained in force to date, and since the job grade of Inspector General (Senior A) is contained in all federal budget laws for previous years within the staffing of the Office of the Inspector General, which is mentioned in the text of the aforementioned Cabinet Resolutions, the defendant had to follow the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, which stipulates (If the employee's job is canceled and a vacant job is available on the date of cancellation in the department to which he is affiliated, its work is similar to the work of his job and his grade, he shall be considered transferred to it with his current salary. If the vacancy is of a grade lower than his grade, he has the choice to accept it or not, and if he accepts it in writing, he must accept for the General Secretariat of the Council of Ministers, all other state departments dealt in accordance with the principle of the supremacy of the Constitution and the law over decisions towards the fate of the Inspector General after the cancellation of Legislative Order No. (57) of 2004 and indicated their

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position and opinion in an explicit legal manner, including the Prime Minister's Office, the Council of Representatives, the Office of the Chairman of the Integrity Commission, and the Ministry of Finance, all of which confirmed and agreed that the transfer of the inspectors general appointed mainly to other jobs, this transfer does not mean the appointment intended in Article 61. 5th /Beh) of the Constitution because they have acquired legal status, and the dissolution of the offices does not mean the cancellation of their legal positions and therefore there is no legal basis to re-present them to the Council of Ministers to recommend to the Council of Representatives the appointment, which is what the Federal Supreme Court went to in its decision No. (6/Federal/2012) on 5/3/2012, and since one of the general principles is that the transfer of the employee shall be with the same salary and job grade that he occupied in the department from which he was transferred, and there is no legal basis for recalculating his salaries and annual bonuses again after he has acquired a position Legally, and if those who have been transferred are entitled to the job titles to which they were transferred, provided that they are not higher than their previous addresses, it is not permissible to transfer an employee on the permanent staff and appointed incumbently to an acting employee. This is what the Court of Administrative Justice settled on in the merits of its decision, which acquired the degree of bits, in discrimination with the decision of the Supreme Administrative Court, as it stated that the plaintiff was an employee of a special degree originally when he was holding the position of inspector general and transferred to his job grade (senior A) and his financial allocation, especially since (the plaintiff) was appointed in valid legal circumstances as an authentic inspector general in the Ministry of Tourism and Antiquities under Diwani

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Order No. (62) of 2015 and then he was appointed as an inspector general in the Ministry of Culture under the order Diwani No. (11/Sin) of 2016, because he does not meet the conditions of retirement, so the provisions of Article (3/1st) of Law No. (24) of 2019 were applied to him, and among those covered by paragraph (3) of the decision subject of the lawsuit, so he was transferred with the job grade (Senior A) and the financial allocation from the Ministry of Culture to the Ministry of Higher Education and Scientific Research to occupy the position of advisor in the ministry under Diwani Order No. (194) of 2020, and then he was rotated from an advisor to the position of Undersecretary for Administrative Affairs under Diwani Order No. (33) For the year 2021, whereas the competent authority for public service affairs is (the Ministry of Finance) under the provisions of Articles (1 and 7) of the Ministry of Finance Law No. (92) of 1981 and the Staffing Law No. (25) of 1960, has placed him in the job title transferred to him, but the Legal Department in the General Secretariat of the Council of Ministers, contrary to the tasks entrusted to it by Article (33) of the Internal Regulations of the Council of Ministers No. (2) of 2019, as amended (which does not include its competencies to express an opinion on this subject or otherwise) in addition to the directives of the (Prime Minister) contained in the letters of his office containing the adoption of the Diwani orders on the transfer of former inspectors general for the reasons stated therein, has considered that he has assumed the duties of the Undersecretary for Administrative Affairs in the (Ministry of Higher Education and Scientific Research) as a matter of assignment on the pretext that he does not meet the constitutional mechanism for appointment as stated in several books issued by it, and thus the General Secretariat of the Council of Ministers has neglected the

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legal status he acquired when he was an inspector general and therefore unfair and prejudices his rights in the position, including salary, annual bonuses, and the allocation of a residential plot of land for him and his family under Cabinet Resolution No. (54) of 2009, like his other peers, He also violated his rights upon retirement, as well as contradicting the approach of the General Secretariat of the Council of Ministers with the principle of stability of legal posts. Therefore, the plaintiff requested this court to rule on the invalidity of paragraph (3) of the Council of Ministers Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019 based on the provisions of Article (93/3rd) of the Constitution and oblige the defendant to adopt the Diwaniyah orders containing his transfer to the Ministry of Higher Education and Scientific Research and his occupation of the position of Undersecretary for Administrative Affairs on the authenticity and charging the defendant fees, expenses and advocacy fees. The lawsuit was registered with this court with the number (218/federal/2022) and the legal fee for it was collected in accordance with the provisions of Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendant was informed of its petition and documents in accordance with the provisions of Article (21/2nd) of the same aforementioned rules of procedure, and his agent replied with the reply list dated 22/9/2022, the conclusion of which is that the two decisions of the Council of Ministers in question were issued by the previous government in accordance with the correct contexts of the work of the Council of Ministers, based on the provisions of Article (3/1st) of Law No. (24) of 2019, where these two decisions specified the mechanism for nominating and appointing the Inspector General after the abolition of his job, and that the measures taken were issued

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some during the previous government and some during the current government and fall within the regulatory procedures that are the powers of the Council of Ministers regulated under the Internal Regulations of the Council of Ministers No. (2) of 2019 and for the compatibility of these decisions and procedures with the Constitution and the laws in force, so he requested the dismissal of the plaintiff's lawsuit and charging him the fees and expenses, and after completing Procedures required by the aforementioned rules of procedure of the Court, a date for the pleading was set in accordance with the provisions of Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff attended in particular, and the defendant's agent attended and began the public presence pleading, the plaintiff repeated what was stated in the lawsuit petition and requested a judgment according to it, the defendant's agent responded and requested the dismissal of the lawsuit for the reasons stated in the response list linked to the lawsuit papers, the court noted that the Undersecretary General of the Council of Ministers submitted the request dated 4/10/2022 requesting the entry of his client a third person along with the defendant and the court decided to accept the request, so he paid the legal fee and presented a response list that the court reviewed and linked to the lawsuit papers, and requested to introduce the speaker of the Council of Representatives as a third person in the lawsuit, and since the subject matter of the lawsuit is not related to legislation issued by the Council of Representatives, the court decided to reject the request, For the purpose of completing its investigations, the court decided to include a representative of (Ministry of Finance) a third person in the lawsuit for the purpose of clarifying from him what is necessary to resolve it, so the human rights employee Amer

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Abbas Qadir attended as an agent for (the Minister of Finance being in this capacity) and answered the court's clarification of the opinion of the Ministry of Finance according to the letter of the Legal Department No. (24308 on 26/10/2020), and he replied with a response list dated 7/11/2022 that was linked within the lawsuit papers, and after the court completed its clarification from him, it decided to remove him from the lawsuit, and each party repeated its previous statements and requests and where there is nothing left 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 plaintiff filed a lawsuit before this court against the defendant (the Prime Minister / being in this capacity) to challenge the validity of paragraph (3) of Cabinet Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019, which stipulated that (the Inspector General who does not meet the age requirement shall continue to have the same degree in the entity in which he worked, and the competent minister or the head of the entity not associated with a ministry shall propose his appointment as an undersecretary. Ministry, Advisor or Director General) based on the provisions of Article (93/3rd) of the Constitution of the Republic of Iraq of 2005 and requesting a ruling of invalidity on the basis of violating the provisions of the Constitution in Articles (14, 16, 19/6th and 22/1st) thereof, which affirmed the principle of equality and equal opportunities among Iraqis and their right to fair treatment in judicial

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and administrative procedures and their right to work in a way that guarantees them a decent life, the defendant being in this capacity was obliged to adopt the Diwani orders containing his transfer to the Ministry of Higher Education and Scientific Research and holding the position of Deputy Minister for Administrative Affairs in authenticity and charging him expenses, fees, and advocacy fees. As for the Plaintiff's case related to challenging the authenticity of paragraph (3) of the Cabinet's decision No. (389) for 2019 which was amended by decision No. (464) for 2019, the Court finds the following:

First: The Council of Ministers, represented by its President, is one of the federal authorities stipulated in Article (47) of the Constitution and thus is subject to the provisions of the Constitution, and its competencies and powers are limited by the provisions of Article (80) thereof, but it has discretionary power in the field of applying some of those competencies, especially those stipulated in paragraph (5th) of the aforementioned Article related to the recommendation to the Council of Representatives to approve the appointment of undersecretaries of ministries, ambassadors and holders of special degrees... etc, as far as the mechanism by which the nomination and selection of those who hold the aforementioned positions, and the recommendation and withdrawal thereof, and the discretionary power of the Council of Ministers in this area is concerned: His freedom to choose between the available alternatives that compete with each other to provide different solutions in the same subject, and to compare among them according to logical grounds, to provide the most appropriate for the public interest, the most appropriate to meet its requirements and preserve its values, provided that this is done in accordance with the principle of constitutional legitimacy, and on the

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basis of the foregoing, each of the authorities, including the executive authority, must work within the framework of the principle of legality and the rule of law, even if it uses its discretion in order to accomplish its tasks, and thus its use of its discretionary power. It is not absolute, but restricted within the limits of the control exercised by constitutional institutions, including the Federal Supreme Court, in application of the provisions of Article (93/3rd) of the Constitution. Second: The competence of the Council of Ministers to nominate for the position of undersecretaries of ministries, ambassadors, holders of special degrees and others, and to recommend to the Council of Representatives the appointment to the aforementioned positions in application of the provisions of Article (80) of the Constitution, and the issuance of a decision by the Council of Ministers to that effect, requires the availability of machines in the candidate that qualify him to occupy the aforementioned position, based on science, experience, competence and integrity, and conditions in the decision issued for nomination and recommendation lie in the competence, place and reason, in addition to the public interest that the decision seeks to provide state departments with efficient elements to ensure the work of the facilities for the public regularly and steadily provide the best services to citizens, provided that the candidate enjoys these conditions and the public interest requires it, until a decision is issued by the Council of Representatives on the appointment, and until after the issuance of the aforementioned decision, if the conditions for nomination of a candidate for the aforementioned position are disturbed or the public interest requires the withdrawal of the recommendation for candidacy before the issuance of the decision of the Council of Representatives to appoint, there is nothing to prevent the withdrawal of nomination and recommendation, and this is not

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contrary to the provisions of the Constitution of the Republic of Iraq of 2005, especially Article (80) thereof, since the competence of the Council of Ministers to nominate and recommend appointment, does not preclude between the said Council and its competence to withdraw the recommendation and nomination, if there are serious reasons that require this in light of the discretionary power enjoyed by the Council of Ministers in this regard, restricted by the public interest and the means of achieving it and the reason that prompted the withdrawal of the recommendation, provided that this is done before the appointment and approval of the recommendation by the Council of Representatives, and the withdrawal of the recommendation for candidacy, in accordance with the aforementioned detail, does not conflict with the principle of separation of powers referred to in Article (47) of the Constitution, as long as the withdrawal of the nomination and recommendation was made by the same administrative body that issued it, so that the Council of Ministers did not exceed the competencies of the Council of Representatives when withdrawing the recommendation, and to say otherwise means unjustifiably restricting the discretionary power of the Council of Ministers and its powers in the exercise of its competencies as set for it by the Constitution, as long as the exercise of the Council of Ministers' discretionary power in this regard is subject to the control of the Federal Supreme Court in application of the provisions of Article (93/3rd) of the Constitution. Third: Article (3/1st) of Law No. (24) of 2019, Law Repealing the Order of the dissolved Coalition Provisional Authority No. (57) of 2004, according to which the issue of the Inspector General who is not covered by retirement was addressed by granting the Council of Ministers the authority to do so, based on the decision issued by it in

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this regard, especially paragraph (3) of the amended decision in question, was consistent with the competencies of the Council of Ministers contained exclusively in paragraphs (1st and 3rd) of Article (80) of the Constitution of the Republic of Iraq of 2005 which stipulated that (the Council of Ministers shall exercise the following powers: First- Planning and implementing the general policy of the state, general plans, and supervising the work of ministries and entities not associated with a ministry... Third- Issuing regulations, instructions, and decisions, to implement laws), and therefore paragraph (3) of the amended Council of Minister's decision subject to the challenge was issued based on the competence of the Council of Ministers to supervise the work of the ministries and its competence to implement paragraph (3/1st) of Law No. (24) of 2019 mentioned above in application of the provisions of Article (80/1st and 3rd) of the Constitution. Fourth: After the cancellation of the dissolved Coalition Provisional Authority Order No. (57) of 2004 by Law No. (24) of 2019 and based on the provisions of Article (3/1st) thereof, paragraph (3) of the amended Council of Minister's decision was issued under challenge and based on the aforementioned paragraph, 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 position of undersecretary, adviser, or director general does not mean that they are covered by the provisions of article (61/5th/Beh) of the constitution, which It states that (The Council of Representatives shall have the following competencies: Fifth: Approving the appointment of Beh- Ambassadors and holders of special degrees, upon a proposal from the Council of Ministers), they are not covered by the provisions of Article (80/5th) of the Constitution, which

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stipulates that (the Council of Ministers shall exercise the following powers: Fifth: Recommending to the Council of Representatives, approving the appointment of undersecretaries, ambassadors, holders of special degrees, ...) , as they have acquired legal status, by virtue of Diwani Order No. (72) of 2008, which is still in force. The dissolution of the offices does not mean the cancellation 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 the appointment, and that those who have been transferred deserve the job titles transferred to them, provided that they are not higher than their previous job titles, it is impermissible to convert an employee on permanent staff and originally appointed to an acting employee, contrary to the provisions of the law and without substantiation from it. Fifth: The issuance of the amended Cabinet decision subject to appeal was a result of the issuance of Law No. (24) of 2019, the law to cancel the dissolved Coalition Provisional Authority order No. (57) of 2004, as Article (3/1st) of the aforementioned law, stipulated that (Whoever occupies the post of Inspector General shall be referred to retirement following the Unified Retirement Law No. (9) of 2014. As for those who are not covered by the retirement law, the Council of Ministers shall issue the necessary decision for them, or they shall be reinstated to their previous government jobs exclusively in government institutions), this means that the aforementioned article authorized the Council of Ministers to issue the necessary decision to address the issue of those who held the position of Inspector General, who is not covered by the Retirement Law or are returned to their previous jobs and that the Council of Ministers issued paragraph (3) of its amended decision subject to the challenge, which stipulated that (the Inspector General

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who does not meet the age requirement shall continue to have the same degree in the entity in which he was working, and the Minister or the head of the entity not associated with the Ministry shall propose his appointment as an Undersecretary Minister. or consultant or general manager), on the basis of the foregoing, the inspector general who is not covered by retirement retains his same job grade, in the government entity to which he is attributed and according to its staff, but the aforementioned decision authorized the minister to propose his appointment according to the needs of the ministry and its vacant staff as an advisor, deputy minister or director general, and that the appointment proposal does not mean reappointing him again because the employee may not be appointed twice in the same job grade, but rather the appointment proposal for the appointed employee is intended to be proportional to the grades of the ministry's assigned staff. to it in accordance with the needs of the ministry and the degrees allowed by its staffing in light of the discretionary power possessed by the competent minister aimed at the public interest and the proper functioning of the public office to ensure the continuation of the work of public utilities regularly and steadily, on the basis of the foregoing, paragraph (3) of the decision of the Council of Ministers subject to the challenge was consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, which states (If the employee's job is canceled and a vacant job is available on the date of cancellation in the department to which he belongs, its work is similar to the work of his job and his grade, he shall be considered transferred to it with his current salary, and if the vacancy is of a grade lower than his grade, he has the choice to accept it or not, and in the event that he accepts it in writing, he must Appointment to that position), and for the

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foregoing, paragraph (3) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, did not contain any violation of the provisions of the Constitution of the Republic of Iraq of 2005, especially Articles (14, 16, 19 / 6th and 22 / 1st) thereof, and for the absence of anything that violates its validity, which requires the dismissal of the plaintiff's claim regarding the appeal. Concerning the plaintiff's claim to oblige the defendant, in addition to his position, to adopt the customs orders containing his transfer to the Ministry of Higher Education and Scientific Research and his occupation of the position of Undersecretary for Administrative Affairs, the Federal Supreme Court finds the following:

First: The plaintiff was appointed as an Inspector General of Authenticity at the Ministry of Tourism and Antiquities under Diwani Order No. (62) of 2015, and then as an Inspector General at the Ministry of Culture under Diwani Order No. (11/S) No. (Mim.Ra.Waw/Sin/1326 on 19/6/2016), and to be covered by the provisions of paragraph (3) of Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, he was transferred with his job grade and financial allocation acquired under Diwani Order No. (72) of 2008, to the Ministry of Higher Education and Scientific Research to fill the position of advisor under Diwani Order No. (194) of 2020 and then rotate him to the position of Undersecretary for Administrative Affairs under Diwani Order No. (33) of 2021, and the Minister of Higher Education and Scientific Research at the time agreed to this in accordance with what is established in the lawsuit file. Second: Based on the provisions of the Staffing Law No. (25) of 1960, as amended, and the Ministry of Finance Law No. (92) of 1981, and the competence of the Ministry of Finance in public

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service affairs based on the provisions of Articles (1 and 7) of the aforementioned law, the Ministry of Finance inhabited the plaintiff with the job title transferred to him in proportion to the staff of the Ministry in the capacity of Undersecretary of the Minister of Authenticity based on the Diwani order issued in this regard mentioned above and following the opinion of the Ministry of Finance confirmed by the letter of the Office of the Minister of Finance No. (1787). On 3/11/2020 and its attachment is the letter of the Legal Department in Ministry No. (24308) on 26/10/2020 associated with the endorsement of the letters of the Council of Representatives, the Supreme Judicial Council, the Prime Minister's Office, and the Integrity Commission, in addition to what was clarified in this regard by the regulations submitted by the Deputy Minister of Finance in addition to his job, which was entered in the lawsuit as a third person for clarification. Third: The aforementioned Diwani orders issued by the Prime Minister's Office related to the plaintiff were valid and followed the provisions of the law, especially Diwani Order No. (194) of 2020, which included his transfer to the Ministry of Higher Education and Scientific Research to occupy the position of advisor, as well as Diwani Order No. (33) of 2021, according to which he was rotated to the position of Undersecretary of the Ministry of Higher Education and Scientific Research for Administrative Affairs, originally, and accommodated with the aforementioned job title to be issued based on the provisions of Article (3/1st) of Law No. (24) of 2019, Law Repealing the Order of the dissolved Coalition Provisional Authority No. (57) of 2004 and under paragraph (3) of Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, and in accordance with paragraph (1) of Diwani Order No. (72) of 2008 in force, which

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stipulates that (the Inspector General appointed in accordance with Orders (57) of 2004 and (19) of 2005 shall be at the rank of Undersecretary). Fourth: The request of the defendant's attorney, in addition to his job, based on the regulations submitted and the defenses raised before this court, to dismiss the plaintiff's lawsuit regarding the implementation of Diwani Order No. (194) of 2020 and Diwani Order No. (33) of 2021, despite their issuance in the correct legal and constitutional form, by the Prime Minister's Office of the defendant in addition to his job, is considered an unjustified failure to implement these orders, and these defenses must be answered, as the Prime Minister's Office is subordinate to the Prime Minister, who He is a representative of the Council of Ministers and his decisions can be issued through his office, and the defendant (the Prime Minister / being in this capacity) must abide by the decisions issued by him or through his office and follow up on their implementation, based on the jurisprudential rule that stipulates (whoever seeks to revoke what has been done on his part, his quest is a response to it), as for the defenses raised and based on the regulations submitted by the agent of the third person (the Secretary General of the Council of Ministers / being in this capacity) who enters alongside the defendant as a dispute for the plaintiff, which proved through its conclusion that the third person refrained from implementing the above two decisions related to the plaintiff asserting that it is contrary to the provisions of Legislative Order No. (19) of 2005, which did not provide for granting inspectors general the rank of undersecretary rather they receive the rights of an undersecretary, and the appointment of the prosecutor with the rank of undersecretary was acting and not incumbent, as the appointment to the rank of deputy minister must be made in accordance with the mechanism stipulated in Article (80/5th)

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of the Constitution for the competence of the Council of Ministers exclusively to nominate for the aforementioned position and recommend to the House of Representatives to approve the appointment. In addition to the above, the Diwani Order issued by the Prime Minister's Office No. (728) on 18/1/2021 No. (33) of 2021 is incorrect, as the Prime Minister's Office is not authorized to issue Diwani orders, the General Secretariat of the Council of Ministers is not aware of whether the aforementioned Diwani Order was issued with the approval of the Prime Minister or not, and the General Secretariat objected to its implementation, and the Federal Supreme Court finds that the aforementioned defenses must be dismissed, as the plaintiff enjoys a functional legal status based on Legislative Order No. (72) of 2008 and its inclusion in the provisions of paragraph (3) of Cabinet Resolution No. (389) of 2019 amended by Resolution No. (464) of 2019 He was transferred to the position of consultant, then Undersecretary of Higher Education, and the Diwani Order issued by the Prime Minister's Office No. (728) on 18/1/2021 No. (33) of 2021 – which guarantees the rotation of the plaintiff from the position of advisor in the Ministry of Higher Education to the position of Undersecretary for Administrative Affairs and residence in that degree was included with the approval of the Ministry of Finance and the approval of the Minister of Higher Education and Scientific Research at the time - it is considered issued by the Prime Minister in his capacity as a representative of the Council of Ministers, and the role of the General Secretariat of the Council of Ministers is limited to its implementation, after which the executive authority of the Council of Ministers and its decisions, which is responsible for following up the implementation of those decisions, and has no right to obstruct their implementation or object

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to that implementation in violation of the provisions of the Constitution and the law, and to say otherwise means to obstruct the decisions of the Prime Minister in his capacity as a representative of the Council of Ministers and the direct executive responsible for the general policy of the state and the Commander-in-Chief of the Armed Forces, who manages the Council of Ministers and chairs its meetings based on To the provisions of Article (78) of the Constitution, in a way that leads to emptying the constitutional institution of its content, especially that the decisions of the Council of Ministers or the Prime Minister issued through the Prime Minister's Office, based on the discretionary power he enjoys, in light of the provisions of the Constitution and the laws in force in order to achieve the public interest and to ensure the proper functioning of public utilities regularly and steadily, are subject to the control of the competent constitutional institutions, including the Federal Supreme Court, based on its competence stipulated in Article (93/3rd) of the Constitution. On the basis of the foregoing, it is not permissible to suspend these decisions or suspend their enforcement without the support of the Constitution and the law, unless they are challenged by the methods prescribed by the Constitution and the laws in force and ruled invalid or suspended their enforcement, and therefore the refusal of the defendant (the Prime Minister in addition to his job) and the third person entering by his side in litigation to the plaintiff (the Secretary-General of the Council of Ministers in addition to his job) from implementing the two Diwani orders issued No. (4042) on 1/9/2020) numbered (194) of 2020 and No. (728) on 18/1/2021 No. (33) of 2021) related to the plaintiff, is considered contrary to the provisions of the Constitution and the laws in force, which require obliging them to implement the two aforementioned Diwani orders,

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and for the foregoing, the Federal Supreme Court decided to rule as follows:

- 1- Dismissal of the plaintiff's lawsuit Ali Hamid Kazem Al-Shukri regarding the challenge to the validity of paragraph (3) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, for lack of prejudice to its validity.
- 2- Obliging the defendant (the Prime Minister / being in this capacity) and the third person entering by his side in litigation to the plaintiff (the Secretary-General of the Council of Ministers in addition to his position) to implement the two Diwani orders issued No. (4042) on 1/9/2020 No. (194) of 2020 and No. (728) on 18/1/2021 No. (33) of 2021) related to the plaintiff Ali Hamid Kazem Al-Shukri.
- 3- To burden the defendant and the third person, being in their capacity, the relative fees and expenses, and charging the plaintiff with advocacy fees to the defendant's agents and the third person, being in their capacity, an amount of one hundred thousand dinars distributed among them according to the legal ratios.

The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93/3rd and 94) of the Constitution of the Republic of Iraq for 2005 and (4/3rd, 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 5/Jamada Al-Awla/1444 Hijri which coincided with 19/December/2022 AD.

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Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court