

Republic of Iraq  
Federal Supreme Court  
Ref. 262 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/5/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayooob Abbas Salih, Abdul Rahman Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the barrister Naji Ahmed Mukhlif Al-Falahi (father of the victim Ahmed Naji Ahmed).

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

### **The Claim**

The plaintiff (father of the victim Ahmed Naji Ahmed) claimed that the Prime Minister issued a directive on 11/11/2022 to raise the complaint against the accused who was subjected to any form of torture or forced extraction during the investigation stages to the General Secretariat of the Council of Ministers, based on the provisions of Article (19/fifth) of the Constitution, and since the assessment of confession falls within the competence of the judicial authority that undertakes the investigation and trial, and for this directive violating the provisions of Article 47 of the Constitution and the law, so He initiated this lawsuit, as on 18/10/2012, his son (Ahmed Naji Ahmed), aged 30 years at the time, was subjected to a terrorist incident that led to his martyrdom, one of the defendants who participated in his murder (Ismail Fadel Ahmed) was arrested and confessed on his own initiative to the crime committed that affected his victim's son in detail with his two partners (Amer Ali Abboud Al-Janabi and Kazem Abis Kazem Al-Janabi) and it was confirmed through the investigation and the fundamental trial that they committed the crime, so the Rusafa Criminal Court convicted them by its judgment No. (2124/C/2013) on 22/4/2014

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following Article (4<sup>th</sup>/1) and under Article (2<sup>nd</sup>/1 and 3) of the Anti-Terrorism Law, which was ratified in cassation by the decision of the Expanded Penal Commission (1671 / Expanded Penal / 2014) on 26/1/2016, and the convicts also submitted requests for retrial in light of the issuance of the General Amnesty Law No. (27) of 2016, and their requests were received, thus making the criminal judgments final, which confirms that the judicial authority has examined other legal evidence and matched it with the confession and confirms that it is the legally competent authority, in addition to violating the directive - subject to challenge - of the Constitution in Articles (90 and 91), which stipulated the jurisdiction of the Supreme Judicial Council with the Constitution also affirmed the independence of the judiciary and judges and the inadmissibility of any authority to interfere in the judiciary or the affairs of justice under Articles 87 and 88 thereof, in addition to what was confirmed by the Judicial Organization Law No. 160 of 1979, as amended, and the Supreme Judicial Council Law No. 45 of 2017, on the jurisdiction of the judiciary in judicial matters and not the executive authority, and there is no provision in the Constitution authorizing the Prime Minister to issue such a directive, which is an abuse of the powers of the judicial authority, and is considered a usurpation of power, and a constitutional violation, and its cancellation falls within the jurisdiction of the Federal Supreme Court under Article 93/3<sup>rd</sup> of the Constitution and Article 4/2<sup>nd</sup> of its Law No. 30. of 2005, and the directive does not overturn judicial rulings, this is confirmed by Article (160/3) of the Code of Civil Procedure, which stipulates that: (The judgment issued by the court shall remain valid and considered unless it is annulled or amended by the court itself or annulled or overturned by a higher court following legal means), and that the executive authority and its affiliated bodies are obliged to implement judicial rulings like individuals, out of respect for their sanctity as they are issued in the name of the people. Fearing the release of the convicts (Amer Ali Abboud Al-Janabi, Ismail Fadel Ahmed, and Kazem Abbis Kazem Al-Janabi) and to preserve his rights, he requested the issuance of the necessary

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decision and urgently stop the directive regarding these convicts and until the case is resolved with the defendant bearing the expenses. The lawsuit was registered with this court in number (262/federal/2022) and the legal fee was collected based on the provisions of Article (21/1<sup>st</sup>) of the Rules of Procedure of the Federal Supreme Court 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 article, and his agent replied with the reply list dated 29/12/2022, which included formal and substantive defenses, including that the plaintiff's request is outside the jurisdiction of the court specified under Article (93) of the Constitution, the lack of the interest requirement for the plaintiff to file it before the court, because the directive - the subject of the challenge - does not prejudice his constitutional rights, and there is no basis for his request to issue a guardianship order, because the requirement of urgency stipulated in article 151 of the Civil Procedure Law is not available, and the directive - the subject of the challenge - does not violate article 47 of the constitution, because it is not considered interference with the work of the judiciary, as the directive to submit complaints requests to the Prime Minister's Adviser for Human Rights regarding defendants whose confessions were extracted from them under duress or coercion, the counselor submits it according to jurisdiction to the Presidency of the Public Prosecution for consideration in accordance with the law to take what is required in accordance with the Code of Criminal Procedure No. 23 of 1971, without interfering with the work of the judicial authority, so the judgment requested the dismissal of the appeal and the plaintiff to bear the expenses, fees, and attorney's fees, and after completing the procedures required by the court's internal regulations, the court considered the case without pleading in accordance with article 21/3<sup>rd</sup> thereof and after scrutiny, and for the purpose of the court completing its investigations into the case, the court decided to conduct the pleading in presence and notify The parties to attend on 24/1/2023, and on the said day, the court was formed, so the plaintiff and the defendant's agent attended, and began to conduct the public presence pleading, the plaintiff repeated what

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was stated in the lawsuit petition and requested a judgment in accordance with what was stated in it and in the explanatory regulations linked to the lawsuit papers, the defendant's agent replied requesting the dismissal of the lawsuit for the reasons contained in the regulations submitted by him, and added that the directive - the subject of the appeal - has not been implemented so far, and no Diwani or administrative order has been issued for the purpose of implementing what was stated therein, and the directive did not delay the implementation of any judgment, the court noted the receipt of the letter of the General Secretariat of the Council of Ministers No. (S/2/2/68/42/1206 on 9/3/2023 upon its request - and attached to it a copy of the letter of the Prime Minister's Office No. (3026/2306540 on 1/3/2023 containing - Our office did not receive any complaint regarding the lawsuit of the victim Ahmed Naji Ahmed, or regarding the case of the aforementioned offender, and the complaints received by the office are received in the names of the accused through their families and are not received in the names of the victims except in a few cases, as the court noted and upon its request the letter of the same authority was received above in issue (1867) on 16/4/2023, which includes (that considering citizens' grievances stems from the government's directive to meet their requests and solve the problems and obstacles facing the people of the country, this does not intersect with the competence of the Supreme Judicial Council, especially since the implementation of judicial decisions is the competence of the executive authority and the directive is to ensure implementation following human rights and to shorten time and effort. The court noted - upon its request - the receipt of the letter of the Presidency of the Public Prosecution No. (Rights / 157/2023/ 6253 on 14/3/2023 and attached to it a table containing the details of the complaints received from the Prime Minister's Office), as well as the receipt of the letter of the Presidency of the Republic to the President's Office No. (Mim.Ra.Jim/1/3/1206) On 30/4/2023, it concludes that the Presidency of the Republic did not submit to it any request from any convict addressed to the Council of Ministers to implement the directive issued by the

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Presidency of the Council of Ministers - the subject of the case - and after the court completed its checks, and the end of the argument has been made clear, and the court issued the following ruling:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, and through reviewing the lawsuit of the plaintiff Naji Ahmed Mikhlif Al-Falahi, the court noted that the summary of the lawsuit is that the son of the plaintiff Ahmed Naji Ahmed had been exposed on 18/10/2012 to a terrorist incident that led to his martyrdom, and according to the statements of the plaintiff and after investigations, the defendants Ismail Fadel Ahmed, Kazem Abis Kazem and Amer Ali Abboud were arrested, who confessed to the incident in detail and were issued against them by the Rusafa Criminal Court /Heh 1 and in the case numbered (2124/Jim/2013) its decision dated On 22/4/2014, he was sentenced to death following Article (4<sup>th</sup>/1) and following Article (2<sup>nd</sup>/1 and 3) of the Anti-Terrorism Law, and it was ratified as a cassation by the decision of the Federal Court of Cassation No. (1671 / Expanded Criminal Authority / 2014) on 26/1/2016 and the convicts requested a retrial several times, and the requests were rejected, after which the convicted Amer Ali Abboud submitted another request to the Criminal Authority at the Court of Cassation and his request was granted, and on 11/11/2022 the Prime Minister issued a directive to submit the complaint of those who were subjected to any form of torture or forced extraction of confessions to the Prime Minister's Advisor for Human Rights or to the Personal Secretary of the Commander-in-Chief to the Armed Forces via the email mentioned by the Prime Minister's Media Office, the plaintiff believes that this directive caused a delay in the implementation of the judgments issued, including the judgment issued in the accident of the murder of his son, and that this is considered an interference with the constitutionally independent judicial authority, and contrary to the principle of separation of powers, according to the reasons

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stated in the lawsuit of the plaintiff's dismissal, and requested a ruling to cancel the directive issued by the defendant in addition to his job and all its implications, the court reviewed the answer of the defendant's attorney in its regulation dated 29/12/2022, who requested the dismissal of the lawsuit for the reasons he mentioned and its conclusion that the plaintiff's request falls outside the jurisdiction of the court, and that the plaintiff does not have the interest to file this lawsuit, and the court also reviewed the response lists submitted by the plaintiff, and reviewed the text of the directive published by the Prime Minister's Information Office, and reviewed the letter of the Presidency of the Public Prosecution / Human Rights Division / No. (6253) on 14/3/2023, which included the details of complaints received from the Office of the President of Cabinet, the court also reviewed the letter of the Presidency of the Republic 1/3/1206 on 30/4/2023, in which details of the lawsuit of the above convicts numbered (2124/Jim/2013) and the reasons for the delay in the implementation of the judgments issued therein and from the above, the court finds that the plaintiff is the father of the victim Ahmed Naji Ahmed, who is the plaintiff with the personal right in the lawsuit concerning his death in a terrorist incident, which is mentioned above and has a legal interest in the implementation of the judgment issued in the aforementioned lawsuit, and it follows that he has an interest in using Legal means to reach and complete the implementation of the judicial judgment issued, and to respond to any means, even if they are legal, that impede the implementation of the judgment issued, and the decision thereon is left to the competent authorities, regarding the directive - the subject of the lawsuit - which is fixed issued by the Prime Minister in addition to his job, according to the statements of his deputy and the letter of the General Secretariat of the Council of Ministers No. (2/2/68/42/1867) on 16/4/2023, it includes an invitation to anyone who has been subjected to torture or forced extraction of confessions to submit the complaint to the Prime Minister's Adviser on Human Rights or to the Personal Secretary of the Commander-in-Chief of the Armed Forces via the e-mail mentioned in the announcement received from

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the Prime Minister's Information Office, the doctrine of this court falls within the concept of Procedures mentioned in Article (93/3<sup>rd</sup>) of the Constitution of the Republic of Iraq for the year 2005, this directive entailed detailed procedures by the defendant's subordinates in receiving complaints concerning allegations of torture and forcibly extracting confessions, as stated in the answer of the Presidency of the Public Prosecution referred to, so deciding on its validity or not falls within the jurisdiction of this court based on Article (93/3<sup>rd</sup>) of the Constitution of the Republic of Iraq of 2005 as mentioned above, the Court also considers that the constitutional authorities established by the 2005 Constitution have drawn their features, and defined their competencies in detail under the provisions of the Constitution and the laws approved or issued pursuant to it, and the Constitution adopted in Article (47) the principle of separation of powers, so no authority can exceed the limits of other authorities in any way from a decision, procedure, exercise of jurisdiction or otherwise, and if so, the constitutional judiciary shall have the authority to adjudicate on the matter to restore the authorities exceeding their constitutional limits, also, the constitutional authorities, when exercising their powers, must also abide by the legal limits, as there is no legitimacy for decisions or procedures sent that are not based on a constitutional or legal text, and no authority can create jurisdiction for them that is not stipulated in a constitutional or legal text issued in accordance with the provisions of the constitution, and the court finds that the submission of criminal complaints and the investigation of crimes, including the crimes of torture or forced extraction of confessions, are organized and in detail under the legislative system in force in Iraq, it is within the competence of the judicial authority, which has the original competence to investigate crimes according to the Code of Criminal Procedure No. (23) of 1971, where it is stated in Article (51/Alif) (The preliminary investigation shall be carried out by investigating judges as well as investigators under the supervision of investigative judges) as well as what is stated in Articles (2 and 5/1<sup>st</sup>) of the Public Prosecution Law No. (49) of

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2017, and the Human Rights Commission, under its Law No. (53) of 2008, Article (5) thereof, receives complaints from parties and groups. and civil society organizations on violations before and after the entry into force of this law and carrying out preliminary investigations of human rights violations and referring them to the Public Prosecution, also, the Integrity Commission, under its Law No. (30) of 2011, has the right to investigate corruption crimes based on Article (3/1<sup>st</sup>) thereof under the supervision of investigative judges, and the official in the police station and members of the judicial police have jurisdiction about submitting a complaint and legal procedures regulated by law, and police officers and commissioners concerning crimes witnessed, and after the above detail, no other party may receive or investigate complaints unless the law provides for its explicit competence in We conclude that the directive issued by the defendant in addition to his position is not supported by a provision of the law, it is worthy of determination of incorrectness, accordingly, the court decided to rule that the directive issued by the Prime Minister on 11/11/2022 assigning the Prime Minister's Advisor for Human Rights Affairs and the Personal Secretary to the Commander-in-Chief of the Armed Forces to receive complaints related to exposure to any form of torture or forced extraction of a confession during the investigation stages is incorrect for violating the principle of separation of powers stipulated in Article (47) of the Constitution of the Republic of Iraq of 2005, the Code of Criminal Procedure No. (23) of 1971, the Public Prosecution Law No. (49) of 2017, the Integrity Commission Law No. (30) of 2011, and the Law of the High Commission for Human Rights No. (53) of 2008, and charging the defendant / being in this capacity judicial fees and expenses. The decision has been issued with the majority, final and binding for all authorities according to the provisions of articles (93/3<sup>rd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and article (5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 4/Dhul Qaeda/1444 Hijri coinciding 24/May/2023 AD.

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Judge  
Jassim Mohammed Abbood  
President of the Federal Supreme Court