

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 31/1/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

Plaintiff: Kaesar Ahmed Okla .

Defendants:

1. The Prime Minister/being in this capacity– His agent the legal advisor Abas Majeed Shabeb.
2. Secretary General of the Council of Ministers / being in this capacity- His agent the legal advisor Hayder Ali Jaber.

The Claim:

The plaintiff claimed in the lawsuit petition that the second defendant's department issued a decision according to the letter issued by the General Secretariat of the Council of Ministers / Legal Department No. (Qaf/2/5/42/5016) on 12/10/2023 and attached to the letter of the Ministry of Industry and Minerals No. (Sin.Mim.Waw/43183) on 1/10/2023, which includes the plaintiff's occupation of the position of advisor in the Ministry of Industry and Minerals as acting and not authenticity, and since this decision was unfair and infringed on 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:

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

1- Under proper legal circumstances, the prosecutor was appointed as Inspector General of the Political Prisoners Institution under the office Order No. (28) issued in the Prime Minister's Office letter No. (Mim.Ra.Nun/Dal 2/78/3980) on 16/3/2014, and then transferred to the position of Inspector General in the Ministry of Transport in accordance with the office Order No. (11/S) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Sin/1326) on 19/6/2016. After that, he was appointed as an inspector General of authenticity in the Counter-Terrorism Service under the office Order No. (47) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/Mim.Ra.18/2602) on 7/8/2019, law No. (24) of 2019 was issued to repeal the dissolved Coalition Provisional Authority Order No. (57) of 2004, where this court confirmed the validity of Cabinet Resolution No. (389) of 2019 amended by Cabinet Resolution No. (464) of 2019, and based on paragraph (3) thereof, Transfer of the plaintiff from the Counter-Terrorism Service to the Ministry of Industry and Minerals with the job grade (Senior/ Alif) with financial allocation, then he was appointed as an advisor to the Ministry for Development Affairs under the office Order No. (55) issued in the letter of the Prime Minister's Office No. (Mim. Ra.Waw/Sin/Dal 7/20/3057) on 12/8/2021, and confirmed by the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/20/21726) on 16/12/2021, since the issuance of the office Order No. (55) and until the submission of this lawsuit, his legal status at the Ministry of Industry and Minerals has been organized on the job title as the Ministry's advisor in authenticity and with the job grade (Senior / A), which is the rank of the Inspector General under the office Order No. (28) of 2014, which is still in force until now and financial matters have been calculated accordingly, which include

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

(annual bonuses, tax accounting and retirement deductions) according to the entitlement of the degree of advisor (senior/ Alif) authenticity.

2. The Court has already rendered many judgments, including (18/Federal/2023),(120/federal/2023) and (164/Federal/2023), which included that the transfer of inspectors general appointed mainly to other positions in the ministries attributed to them, and authorize the Minister to reappoint them to a post of Deputy Minister, Advisor or Director General does not mean that they are covered by the provisions of Article (61/5th/Beh) of the Constitution, because they have acquired legal status under the office Order No. (28) of 2014, and the dissolution of the offices does not mean the abolition of their legal positions, 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 to which they are transferred, provided that they are not higher than their previous addresses, so the plaintiff asked this court to rule that the decision issued in the letter of the General Secretariat of the Council of Ministers No. (Sin/2/5/42/5016) is invalid on 12/10/2023, and obliging the defendants to implement the Office Order No. (55) issued by the Prime Minister's letter issue (Mim.Ra.Waw/Sin/Dal 7/20/3057) on 12/8/2021, and charge them fees, expenses and agent's fees. After registering the case with this court with the number (295/Federal/2023) and collecting the legal fee for it and notifying the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, their agents responded with the reply regulation dated 26/12/2023, which included that the plaintiff's request falls outside the jurisdiction of the court stipulated in Article (93) of the Constitution, the Office Order No. (55), which assigns the plaintiff the position of a

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

consultant at the highest level, has been implemented by the Ministry and the Secretariat, and the Office order searched for above did not include the appointment of the plaintiff (incumbently) to his position, but rather referred to his occupation of the position of advisor, and therefore there is no basis for filing a lawsuit against the defendants, because the litigation is not directed from this aspect in accordance with the provisions of Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, Paragraph 3 of Resolution 389 stipulates that the competent minister in the entity in which the inspector general worked shall propose the position of undersecretary, adviser or director general, the text is clear in the proposal and does not mean appointment, and if the inspector is nominated for this position, he issues a decision from the Council of Ministers appointing him and if he is nominated for a job within the positions mentioned in the provisions of Article (61/5th) of the Constitution, the Council of Ministers shall recommend the appointment in accordance with the provisions of Article (80/5th) of the Constitution, and saying that the Prime Minister has the authority to transfer the Inspector General to the position of Director General means that there is an authorization from the Council of Ministers to do so, which was stated under Cabinet Resolution (341) of 2021, which includes authorizing the Prime Minister to appoint general directors, and paragraph (3) does not apply to the plaintiff because he was not among the staff of the Ministry of Industry, especially since the Federal Supreme Court, by its decision No. (192/Federal/2023), confirmed that the Chancellor as long as he is considered a consultant with a grade (higher / Alif), this It requires compliance with the provisions of the Constitution and the provisions of Article (61/5th) thereof, and if the provision went to the mechanism of appointing advisers in the legislative authority, it is a fortiori, to adhere to this when appointing

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

advisers within the executive authority, In addition, the plaintiff was not transferred to the Ministry of Industry and assigned to the position of consultant, but was transferred to the post of Director General in the Ministry of Industry has shown in the statement of the lawsuit that he was transferred grade (higher / Alif) and did not mention the degree under which he was transferred, which is the degree of general manager (higher / b), Accordingly, the aforementioned decisions do not apply to him, especially since the Ministry of Industry did not nominate him to any job other than the text of the aforementioned decision, noting that the plaintiff on the date of issuance the Office Order No. (199) of 2020, he was not in the position of Inspector General because the law abolished this grade after he abolished the offices of inspectors general under the provisions of Law No. (24) of 2019, the plaintiff signed a contradiction, which is the reference to The Office Order No. (28) of 2014, that it is still in force, while the aforementioned law abolished the offices of the inspectors general, and that to say otherwise would mean violating explicit legal provisions, and that the Secretariat exercises its powers under the provisions of Law No. (20) of 1991, And the Internal Law No. (2) of 2019, which requires it to follow the legal procedures regarding the appointment or assignment of holders of higher degrees, and it may not act otherwise as long as its decisions or orders issued are in accordance with the provisions of the law and order above, however, the Secretariat is committed to implementing The Office Order No. (55) of 2021, the Office orders which referred to by the plaintiff were also executed by the Secretariat, so the defendants' attorneys requested that the case be dismissed and that the plaintiff be charged fees, expenses and attorneys' fees. After completing the procedures required by the Court's Rules of Procedure, the court set a date for the pleading in accordance

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

with Article (21/3rd) thereof, and notified the parties, in which the court was formed, and the plaintiff himself and the defendants' agents attended, and the public presence pleadings began, and after the court heard their statements and requests and completed its scrutinies. The end of the argument has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff kaesar Ahmed Okla had filed this lawsuit against the Prime Minister and the Secretary General of the Council of Ministers in addition to their functions, claiming that he had previously appointed, under valid legal circumstances, as an authentic inspector general of the Political Prisoners Institution under the Office Order No. 28 issued in the Prime Minister's Office letter No. (Mim.Ra.Nun/Dal 2/78/3980) on 16/3/2014 then he was transferred to the position of Inspector General (authenticity) in the Ministry of Transport under the Office Order No. (11/S) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Sin/1326). On 19/6/2016 and transferred to the Inspector General of the Counter-Terrorism Service by virtue of The Office Order issued in the letter of the prime Minister's Office No.(Mim.Ra.Waw/Sin/Dal 6/Mim.Ra.18/2602) on 7/8/2019, and after the issuance of Law No. (24) of 2019, the law of repealing the Coalition Provisional Authority Order No. (57) of 2004, And the issuance of the Council of Ministers Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019 and based on paragraph (3) of the aforementioned decision, he was transferred from the Counter-Terrorism Service to the Ministry of Industry and Minerals with the functional grade (higher Alif) with financial allocation, and appointed as an advisor

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

to the said Ministry for Development Affairs under The Office Order No. (55) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Sin/Dal 7/20/3057) on 12/8/2021, and that he continues to occupy his aforementioned job address since that date and until the establishment of this invitation, his financial matters are calculated accordingly, which include annual bonuses, tax accounting and retirement deduction according to the entitlement of the degree of advisor (higher Alif), but the second defendant, the Secretary-General of the Council of Ministers, being in this capacity, has issued his letter No. (Sin/2/5/42/5016) on 12/10/2023, which includes that his occupation of the position of advisor in the Ministry of Industry and Minerals was in acting for not fulfilling the appointment mechanism stipulated in the Constitution, Therefore, he requested that the defendants be summoned, in addition to their functions, to plead and rule that the decision issued in the aforementioned letter of the General Secretariat of the Council of Ministers is invalid, and oblige them to implement the office Order No. (55) on 12/8/2021, and to charge them fees and expenses. In addition to their functions, the defendants' agents filed the lawsuit and requested its dismissal on the grounds that the court lacked jurisdiction to appeal the administrative decisions issued by the General Secretariat of the Council of Ministers, and also requested the dismissal of the case on the merits, because the plaintiff was assigned the position of a consultant at the highest level, this order has been implemented by the Ministry and the General Secretariat of the Council of Ministers and the Office order - the subject of the lawsuit – did not include the appointment of the plaintiff in his authentic position, but referred to his occupation of the position of advisor only, and the plaintiff was not transferred to the Ministry of Industry and Minerals as a consultant, but was transferred to it as a general manager, and that the said ministry did not nominate him to the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

position of adviser as required by paragraph (3) of the decision of the Council of Ministers decree No. (389) of 2019 as amended by Resolution No. (464) of 2019, the General Secretariat of the Council of Ministers is obliged to follow the legal procedures regarding the appointment or assignment of senior graduates. After reviewing the submitted draft, the court finds that the plaintiff's lawsuit is formally admissible because the plaintiff and the defendants, in addition to their functions, are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, and that the lawsuit falls within the jurisdiction of this court based on the provisions of item (third) of Article (93) of the Constitution of the Republic of Iraq for the year 2005, and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2005 2021, the court also finds that the plaintiff's interest in this lawsuit is realized 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 Rules of Procedure of the Federal Supreme Court No. (1) of 2022, objectively, the court finds that the office Order No. 55 on 12/8/2021, which included the transfer of the plaintiff (kaesar Ahmed Okla) with the grade (higher Alif) to the position of advisor in the Ministry of Industry and Minerals for Development Affairs, came as a result of the issuance of Law No. 24 of 2019, which authorized the Council of Ministers to issue the necessary decision to address those who occupy the position of inspector general who are not covered by the retirement law, the transfer of the plaintiff to the Ministry of Industry and Minerals with the rank of advisor and the rank of (higher Alif) came in correct application of the aforementioned text and of the Council of Ministers Resolution No. (389) for the year 2019 as amended by Resolution No. (464) of 2019, and this is confirmed by the letter issued by the Prime

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

Minister's Office No. (Mim.Ra.Waw/Dal 7/20/21726) on 16/12/2021 included in ((The transfer of the services of the plaintiff kaesar Ahmed Okla Al-Hashemi grade (higher / Alif) to the position of Advisor for Development Affairs in the Ministry of Industry and Minerals does not need to be deleted and created because there is a vacant job grade within the vocabulary of the ministry's staff, as well as that those who have been transferred deserve the addresses transferred to it, provided that they are not higher than their addresses and cannot be considered appointed by acting because the inspectors general have already been appointed authentically under the powers of the Prime Minister and the rank of undersecretary based on the provisions of an authority order Coalition No. (57) of 2004, and The Office Order No. (72) of 2008, thus, the transfer of the plaintiff to the post of consultant at the same grade (higher Alif) means that he occupies this position of authenticity)), and the court finds that the plaintiff was holding the position of inspector general of authenticity, it is one of the higher grades (a), and it is not permissible for a staff member to be appointed twice in the same grade. Therefore, The Office order No. 55 of 12/8/2021 is valid, and it has arranged legal positions, rights and duties for the plaintiff and therefore since the date of its issuance, Administrative and customs decisions and orders shall remain in force and shall have their effects from the date of their issuance unless it is withdrawn or canceled by the authority that issued it in accordance with the law or judged invalid by the judiciary, this must be adhered to by all state institutions to ensure the proper functioning of public utilities regularly and steadily. For all of the above, the Federal Supreme Court decided the following:

First: Judgment obliging the defendants to the Prime Minister and the Secretary-General of the Council of Ministers being in their capacity

Zainab

Republic of Iraq
Federal Supreme Court
Ref 295/ federal /2023



Kurdish text

Implementing the Office Order No. (55) issued in the prime Minister's Office letter No. (Mim.Ra.Waw/Sin/Dal 7/20/3057) on 12/8/2021, which included the transfer of the plaintiff Caesar Ahmed Okla with the grade (Senior A) to the position of Advisor to the Ministry of Industry and Minerals for Development Affairs.

Second: Ruling on the invalidity of what was included in the letter of the General Secretariat of the Council of Ministers, Legal Department, No. (Sin/2/5/42/5016) on 12/10/2023, which included that the plaintiff kaesar Ahmed Okla occupied the position of advisor in the Ministry of Industry and Minerals by acting, and charged the defendants fees and expenses.

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 the year 2005, article (4) of the Federal Supreme Court Law No.(30) of 2005 as amended by Law No. (25) of 2021. The decision has been made clear on 19/Rajab/1445 Hijri corresponding to 31/January/2024 A.D.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

Zainab