

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/4/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid Hayder Ali Noori, Khalef Ahmed Rajab, Ayoub Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussain, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Haidar Kaim Jalan.

The Defendants:

1. The Prime Minister / being in this capacity - his agent the legal adviser Abbas Majeed Shabib.
2. Secretary General of the Council of Ministers / being in this capacity – his agent the legal adviser Haider Ali Jaber.

The Claim:

The plaintiff claimed in the lawsuit petition that the General Secretariat of the Council of Ministers issued the letter No. (Qaf/2/5/62/08724) on 7/4/2021, which includes considering his transfer from the Political Prisoners Institution to an adviser in the National Security Advisory as an acting assignment and not authenticity, and since this decision was unfair and infringed on his rights, so he took the initiative to challenge it before this court based on the provisions of article (93/3rd) of the Constitution, under proper legal circumstances, he was appointed inspector general of the martyrs foundation by virtue of the office order (14) issued in the Prime Minister's office letter No. (Mim.Ra.Nun/Dal 2/78/1856) on 5/2/2014, and then appointed Inspector General of the Political Prisoners Foundation under the office order (11/Sin) No. (Mim .Ra .Waw/Sin/1326) on 19/6/2016, in addition to the Martyrs

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

Foundation, he was then appointed as Inspector General of the Political Prisoners Foundation under the office order No. (47) issued in the Prime Minister's Office letter No. (Mim .Ra .Waw /Sin/Dal 6/3/2602) on 7/8/2019, and after the issuance of Law No. (24) of 2019 on the law to repeal the order of the Dissolved Coalition Provisional Authority No. (57) of 2004, and Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, and because he enjoys a functional legal status based on the office order No. (72) of 2008, and to include him in the provisions of paragraph (3) of the aforementioned decision of the Council of Ministers, transferred his services with the job grade (Higher /Alif) and the financial allocation to occupy the position of adviser in the National Security Advisory according to the office order (323) issued in the Prime Minister's Office letter No. (Mim .Ra .Waw/Dal 7/65/9839) on 1/12/2020, and the Ministry of Finance / Budget Department indicated the transfer of his job grade (Higher/Alif) from the Political Prisoners Institution to the National Security Chancellery according to its letter No. (269) on 7/1/2021, the implementation of the office orders issued regarding the appointment was confirmed by several communications issued by the Prime Minister's Office - including letter No. (3063/2209230) on 2/6/2022, and letter No. (Mim.Ra.Waw/Dal7/29/6153) on 14/4/2021 - including that he is appointed within the special grade (Higher/Alif) authenticity, the court had previously issued its decisions in numbers (218/federal/2022), (18/federal/2023) and (120/federal/2023), in which it confirmed that the transfer of appointed general inspectors to other positions in the ministries to which they are assigned and authorizing the minister to reappoint them as deputy minister or a consultant or a general manager does not mean that they are covered by the provisions of Article (61/5th/Beh) of the Constitution, because they have acquired legal status

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

under the office order No. (72) of 2008, which is still in force, 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 those who have been transferred deserve the job titles to which they are transferred, provided that they are not higher of their previous grades, and that the Inspector General who is not covered by retirement shall retain the same grade as his or her functional grade, in the government entity to which it is attributed and according to its staff, except that the aforementioned decision empowered the minister to propose his appointment according to the need of the ministry and its vacant cadres as deputy minister, advisor or general manager, and that the aforementioned decisions were issued against the plaintiffs who are his peers and those with similar legal positions, whereas, the judgments issued about the Federal Supreme Court Its authority is not limited to the parties to the lawsuit only, and it applies to everyone, whether the Legal Department of the General Secretariat of the Council of Ministers expresses continuous objections to the proper customs orders and the legal status of the inspectors general, which was established under significant legal conditions and conditions, in return this department shows leniency towards the legal foundations that oblige that the general directorates be created through legislation from the Council of Representatives, while the departments can be created which are less than the level of the General Directorates by a decision of the Prime Minister, based on the recommendation of the competent minister or the head of the entity not associated with a ministry, in accordance with the provisions of Article (1) of the Law No. (12) of 2011, on the development, merging and amendment of administrative formations, and this indicates the existence of a specific and organized framework

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

for the establishment of administrative structures within the State, and therefore the formation of the departments of the General Secretariat of the Council of Ministers, including the Legal Department at the level of a General Directorate without adhering to the required legal procedure, i.e. legislation from the Council of Representatives, this is a violation of established legal rules, the State Shura Council Resolution No. (5/2013) reinforces this interpretation by clarifying the legal scope of the departments that come below the general directorates, stressing the need to differentiate between the levels of administrative structures and their commitment to the legal standards specified for their establishment, 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. (Qaf/2/5/62/08724) on 7/4/2021 is invalid, the invalidity of Article (1/2nd) of the instructions of the formations and tasks of the Departments of the General Secretariat of the Council of Ministers No. (4) of 2017, and obliging the defendants to implement the office order (323) issued by letter Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020 and charging them fees and expenses and advocacy fees. After registering the case with this court No. (92/Federal/2024) and collecting the legal fee for it, and informing 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, the defendants' agents replied by the reply dated 2/4/2024 to summarize: that the plaintiff's request is outside the jurisdiction of the court specified under Article (93) of the Constitution, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended, and that the office order sought did not include the appointment of the plaintiff (authenticity) to his position, but rather indicated that he occupies the position of adviser and therefore there is no basis for filing a lawsuit

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

against the Prime Minister, being in this capacity because the order is implemented by the Chancellery, the litigation is not directed from this aspect, which applies to the Secretary-General of the Council of Ministers in accordance with the provisions of Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, the content of paragraph (3) of Resolution (398) of 2019, as amended by Resolution (464) of 2019, is clear that the competent minister in the entity in which the inspector general worked should propose a job as undersecretary, advisor or general manager, and that the text is clear in the proposal, which does not mean appointment, and the difference is clear between the two things, and that the text included that the minister proposes the competent authority to issue the necessary decision against them is the Council of Ministers, and if the Minister nominates the Inspector General for this position, he shall issue a decision of the Council of Ministers appointing him, and if he is nominated for a job within the functions mentioned in the provisions of Article (61/5th) and the appointment in accordance with the provisions of Article (80/5th) of the Constitution, 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, as Cabinet Resolution No. (341) of 2021 was issued authorizing the Prime Minister to appoint the Directors-General, and if this authority had been previously for him, we would not have needed to issue the aforementioned decision, and paragraph (3) does not apply to him in the first place, as he was not on the staff of the National Security Chancellery the Court established these principles under the provisions of Resolution (192/Federal/2023), in which it affirmed that as long as the Chancellor is considered a consultant (higher grade /Alif), this requires adherence to the provisions of the Constitution and the

Zainab



provisions of Article (61/5th) thereof, the ruling refers to the mechanism for appointing advisers in the legislative authority, as a fortiori, to abide by that when appointing advisers within the executive authority, and the aforementioned authority does not include higher ranks, including advisers during the issuance of the office order that is the subject of the lawsuit in accordance with order No. 68 of 2004, it is also the powers of the General Secretariat of the Council of Ministers, under the provisions of Law No. (20) of 1991 and the Internal Regulations No. (2) of 2019, to follow the legal procedures regarding the appointment or assignment of holders of higher degrees, and it may not work otherwise as long as its decisions or orders issued are in accordance with the provisions of law and order above, however, the Secretariat is committed to implementing the office No. (323) of 2020, as for the appeal against the invalidity of the provisions of article (1/2nd) of the instructions of the formations and tasks of the General Secretariat of the Council of Ministers No. (4) of 2017, which includes ((Second: The departments stipulated in item (first) of this article shall be managed by an employee entitled a general manager at least holds at least an initial university degree and has experience in his field of work of not less than (15) fifteen years)), it is not clear what the constitutional violation is, as the provisions of the above article regulate the legal conditions for holding the position of Director General in the departments of the General Secretariat of the Council of Ministers and are not related to the appeal filed, from the plaintiff, especially since the court had previously considered the lawsuit numbered (326/Federal/2023) and did not issue a decision on the provisions of the above article, which means that it does not violate the provisions of the Constitution, so they requested to reject the lawsuit and charging the plaintiff the fees, expenses and advocacy fees. After completing the procedures required by the rules of procedure of the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

Court a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties have been notified of it in which the court was formed, and the plaintiff and the defendants' agents attended and began to conduct the public presence pleading, and after the court heard for the statements and requests of each party and completed its scrutinies the end of the argument has been made clear and issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Haidar Kaim Jalan filed the lawsuit before this court against the two defendants (the first is the Prime Minister and the second is the Secretary General of the Council of Ministers, being in their capacity) to demand that they be obliged by virtue of the implementation of the office order (323) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020, which includes: ((Transferring the services of Mr. Haidar Kaim Jalan Al-Shahmani from the Political Prisoners Institution to the National Security Advisor (national) with the functional grade and financial allocation to occupy the position of advisor)), and the ruling on the invalidity of the decision issued in the letter of the General Secretariat to the Council of Ministers No. (Sin/2/5/62/08724) on 7/4/2021 indicating: the office order No. (323) concerning the transfer of the services of Haidar Kaim Jalan Al-Shahmani / Former Inspector General of the Political Prisoners Institution who is not considered an undersecretary, but receives the salary and allowances of an undersecretary to the position of adviser in the National Security Advisory, and considering his transfer from the institution of political prisoners to an adviser in the National Security Chancellery by way of commissioning by proxy, not

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

authenticity the plaintiff also requested a ruling that Article (1/2nd) of the iInstructions No. (4) of 2017 of the General Secretariat of the Council of Ministers Departments, which stipulates that: ((Second: The departments stipulated in item (first) of this article shall be managed by an employee entitled "Director General" at least who holds at least an initial university degree and has experience in his field of work of not less than (15) fifteen years)), on the basis that this is contrary to the provisions of the Constitution of the Republic of Iraq for the year 2005, the rulings issued by this court in this regard, the laws in force and the decisions of the Council of Relevant ministers, and he requested to charge the defendants the fees, expenses and attorneyship fees, based on the provisions of Article (93/3rd) of the Constitution of the Republic of Iraq of 2005, and the Federal Supreme Court finds that the plaintiff's lawsuit includes demanding two orders: The first - is to request a judgment to oblige the defendants / in addition to their functions to implement the office order No. (323) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020 the invalidity of the decision issued in the letter of the General Secretariat of the Council of Ministers No. (Sin/2/5/62/08724) on 7/4/2021, as for the second - it included the claim to rule the invalidity of Article (1/2nd) of the instructions of the formations of the departments of the General Secretariat of the Council of Ministers and their tasks No. (4) for the year 2017, and regarding the first request the Federal Supreme Court finds his claim admissible in form due to the fulfillment of the conditions for its establishment stipulated in the articles (44, 45, 46 and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to for the interest condition stipulated in Article (6) thereof, and for the fulfillment of the conditions stipulated in Article (25) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022,

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

which stipulates that (any interested party shall have a direct appeal to a lawsuit, submitted to the Court to adjudicate cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the Federal Authority in accordance with the following conditions: ...), in terms of Article (20) thereof, which lies in the interest of the plaintiff when filing the lawsuit, and it is a direct and influential case in his legal or financial position upon consideration of the subject matter of the first request, it was found that the plaintiff is covered by the provisions of paragraph (third) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, due to the issuance of Law No. (24) of 2019 (Law on the Cancellation of the Dissolved Coalition Provisional Authority Order No. 57 of 2004) regarding the dissolution of the offices of general inspectors, for his previous appointment as Inspector General of the Martyrs Foundation, according to the office order (14) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Nun/Dal 2/78/1856) on 5/2/2014, then he was assigned as an inspector general of the Political Prisoners Foundation under the office order (11/Sin) in the number on (Mim.Ra.Waw/Sin/1326) on 19/6/2016 being in this capacity in the Martyrs Foundation, he was then appointed Inspector General of the Political Prisoners Foundation under the office order (47) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Waw/Sin/Dal 6/3/2602) on 7/8/2019, and after the issuance of Law No. (24) of 2019 Law Repeal the dissolved Coalition Provisional Authority Order No. (57) of 2004 and Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, and because it enjoys a functional legal status based on the office Order No. (72) of 2008, transferring his services at the job grade (senior/Alif) and the financial allocation to occupy the position of adviser in the National Security Advisory,

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

pursuant to the office order (323) issued in the Prime Minister's Office letter No. (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020, and with regard to paragraph (third) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, the Federal Supreme Court finds the following:

1-The Council of Ministers, represented by its President, is one of the federal authorities provided for in article (47) of the Constitution, and is thus subject to the provisions of the Constitution, and its powers and powers are restricted by the provisions of article (80) thereof, but it has discretionary power in the application of some of these competencies, especially those stipulated in paragraph (5th) of the aforementioned article relating to the recommendation to the Council of Representatives to approve the appointment of undersecretaries of ministries, ambassadors and holders of special ranks... etc., as far as the nomination mechanism is concerned to whomever assumes the said positions, selects, recommends and withdraws them, the discretionary power of the Council of Ministers means in this field: his freedom to choose between the available alternatives that compete with each other to offer different solutions in the same subject, and the comparison between them according to logical bases, to provide the most appropriate for the public interest, and the most suitable to meet its requirements and preserve its values, provided that this is done in accordance with the principle of constitutional legality, on the basis of the foregoing, each authority, including the executive, must operate 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, thus, its use of its discretion is not absolute, but is restricted to the limits of the control exercised over it by constitutional institutions, including the Federal Supreme Court, in application of the provisions of Article 93/3rd of the Constitution.

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

2-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 of 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 machinery in the candidate that qualifies him to occupy the said position it is based on science, experience, competence and integrity, and the conditions in the decision issued for nomination and recommendation lie in the competence, place and reason, in addition to the public interest envisaged by the decision to provide state departments with efficient elements in order to ensure the regular and steady functioning of public utilities to provide the best services to citizens, provided that the candidate enjoys these conditions and the public interest so requires, until a decision is issued by the Council of Representatives on the appointment, and until after the issuance of the said decision, and if the conditions for nomination are violated in the candidate for the aforementioned position, or the public interest required the withdrawal of the recommendation for candidacy before the issuance of the Council of Representatives' decision to appoint, there is no what prevents the withdrawal of the nomination and recommendation, and this is not contrary to the provisions of the Constitution of the Republic of Iraq of 2005, in particular article (80) thereof, the competence of the Council of Ministers to nominate and recommend appointment does not preclude the said Council from 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, which is restricted by the public interest and the means of achieving it and the reason that prompted the withdrawal of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

the recommendation, provided that this is done before the appointment and approval of the recommendation of the Council of Representatives, and the withdrawal of the recommendation for candidacy, in accordance with the aforementioned detail, does not contradict the principle of the separation of powers referred to in article (47) of the Constitution, as long as the withdrawal of the nomination and recommendation took place by the same administrative authority that issued it, so that the Council of Ministers does not exceed the competencies of the Council of Representatives when the recommendation is withdrawn, and to say other wise is to unduly restrict the discretion and powers of the Council of Ministers in the exercise of its powers laid down by the Constitution, as long as the exercise of its discretionary power by the Council of Ministers in this regard shall be subject to the control of the Federal Supreme Court in application of the provisions of Article 93/3rd of the Constitution.

3-Article (3/1st) of Law No. 24 of 2019, the Law on the Repeal of the Dissolved Coalition Provisional Authority Order No. 57 of 2004, according to which the issue of the inspector general who is not covered by retirement was addressed by authorizing the Council of Ministers to process such processing, based on its decision in this regard in particular, paragraph (3) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, was consistent with the competencies of the Council of Ministers contained exclusively in paragraphs (1st and 3rd) article (80) of the Constitution of the Republic of Iraq of 2005, which stipulates (that the Council of Ministers shall exercise the following powers: First- Planning and implementing the state's general policy and general plans, and supervising the work of ministries and entities not associated with the ministry... Third- Issuing regulations, instructions and decisions, with the aim of implementing

Zainab



laws), and therefore paragraph (3) of the amended Cabinet Resolution was issued based on the competence of the Council of Ministers in supervising the work of ministries and to its competence in implementing Article (3/1st) of the law No. (24) of 2019 in application of the provisions of Article (80/1st and 3rd) of the Constitution.

4-After the repeal 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 aforementioned amended Cabinet Resolution was issued, therefore, the transfer of the mainly appointed Inspectors General to other posts in the ministries to which they are assigned 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 stipulates that (the Council of Representatives shall have the following competencies: Fifth- Approving the appointment of: B-Ambassadors and holders of special degrees, upon the proposal of the Council of Ministers), nor their inclusion in the provisions of article (80/5th) of the Constitution, which stipulates that (the Council of Ministers shall exercise the following powers: Fifth- Recommending to the Council of Representatives the approval of the appointment of undersecretaries of ministries, ambassadors and holders of special degrees, ...) , having acquired legal status, pursuant to the office order No. (72) of 2008, which is still in force, the dissolution of the offices does not mean the abolition 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 for 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, it is not permissible for an employee to be transferred to the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

permanent staff and appointed authentically to an acting employee contrary to the provisions of the law and without support from it, and this is what the Federal Supreme Court settled on in many of its rulings, including its ruling No. (218/Federal/2022) on 19/12/2022.5-The issuance of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, was the result of the issuance of Law No. (24) of 2019, the Law on the Cancellation of the order of the Dissolved Coalition Provisional Authority No. (57) of 2004, as Article (3/1st) of the aforementioned law stipulates that ((Those who occupy the position of Inspector General shall be referred to retirement in accordance with the Unified Retirement Law No. (9) of 2014, while those who are not covered the Council of Ministers shall issue the necessary decision against them or they shall be reinstated exclusively in their previous government positions in government institutions - ministries and authorities)), which means that this article empowered the Council of Ministers issuing the necessary decision to address the issue of those who used to hold the position of inspector general, who are not covered by the retirement law or reinstated to their previous functions, and the Council of Ministers issued paragraph (3) of its aforementioned amended resolution which stipulates that (the inspector general who does not meet the age requirement shall continue with the same grade in the entity in which he was working, and the minister or the head of the entity not associated with a ministry shall propose his appointment as an undersecretary or adviser or Director General), and on the basis of the foregoing, the inspector general who is not covered by retirement remains retained at the same job grade, in the government agency to which he is assigned and according to its staff, however, the aforementioned decision empowered the Minister to propose his appointment according to the need of the Ministry and its vacant cadres

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

in the position of advisor, undersecretary or director general, and the proposal for appointment does not mean re-appointing him again, because it is not permissible to appoint the employee twice in the same job grade, but rather the proposal for appointment for the appointed employee is intended to match the job grade with the grades of the Ministry's staff attributed to it in accordance with the Ministry's need and the grades allowed by its staff, in light of the discretionary power possessed by the competent minister public and the proper functioning of the public office in a manner that ensures the continuation of the regular and steady functioning of public utilities, on the basis of the foregoing, paragraph (3) of the aforementioned cabinet decision is 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 available on the date of cancellation in the department to which he is affiliated a vacant job whose work is similar to the work of his job from his grade, he is considered transferred to it with his current salary, and if the vacancy is of a grade lower than his grade, he chooses whether to accept it or not, and if he accepts it in writing, he must be appointed for that job), as for the office order requesting that the defendants be obliged / being in their capacity to implement it in No. (323) issued by the Prime Minister's Office No. (Mim .Ra.Waw/Dal 7/65/9839) on 1/12/2020, which includes under paragraph 2nd thereof ((Transferring the services of Mr. Haider Ka'im Jalan Al-Shahmani) from the Political Prisoners Institution to the National Security Chancellery with the functional grade and financial allocation to occupy the position of advisor)), general Secretariat abstention to the Council of Ministers on its implementation based on what is established by the letter of the General Secretariat of the Council of Ministers/ Legal Department No. (Sin/2/5/62/8724 on 7/4/2021), included in paragraph

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

(1) thereof ((The provisions of the aforementioned the office Order - No. 323 - issued in your letter numbered (Mim.Ra.Waw/Dal 7/5/9839) dated 1/12/2020 containing the transfer of the services of Mr. Haidar Ka'im Jalan Al-Shahmani / former Inspector General in the Political Prisoners Institution, who is not considered an undersecretary, but receives the salary and allowances of an undersecretary)), according to the detail referred to therein, and the claimant under the petition to rule it invalid, the Federal Supreme Court finds the following:

1. The plaintiff was previously appointed as an original inspector general of the Martyrs Foundation under the office order (14) issued in the letter of the Prime Minister's Office No. (Mim.Ra.Nun/Dal 2/78/1856) on 5/2/2014, then he was assigned as Inspector General of the Political Prisoners Foundation under the office order (11/S) No. (Mim .Ra.Waw/Sin/1326) on 19/6/2016 in addition to his duties in the Martyrs Foundation, then he was appointed as Inspector General of the Political Prisoners Institution under the office order (11/Sin) No. (Mim.Ra.Waw/Sin/1326) on 19/6/2016 in addition to his duties in the Martyrs Foundation, he was then appointed Inspector General of the Political Prisoners Foundation under the office Order (47) issued in the Prime Minister's letter No. (Mim.Ra.Waw/Sin/Dal 6/3/2602) on 7/8/2019.

2. With the issuance of Law No. (24) of 2019 (Law on the Repeal of the order of the Dissolved Coalition Provisional Authority No. 57 of 2004), and Cabinet Resolution No. (389) of 2019 amending Cabinet Resolution No. (464) for the year 2019 and to be covered by the provisions of paragraph (third) thereof, and to enjoy a functional legal status based on the office order No. (72) of 2008, transferred his services with the job grade (senior/A) and the financial allocation for occupancy the position of an adviser in the National Security Advisory under the office order

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

(323) issued by letter Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020.

3. Based on the provisions of the staffing Law No. (25) of 1960 as amended and the Law of the Ministry of Finance No. (92) of 1981, and the competence of the Ministry of Finance in public service affairs based on the provisions of Articles (1 and 7) of the aforementioned law, the Ministry of Finance / Budget Department / staffing 403 / Division of Entities Not Associated with the Ministry and the Three Presidencies according to its letter No. (269) on 7/1/2021, the plaintiff with the job address transferred to him in proportion to the staffing of the Ministry after the deletion and creation procedure to occupy the position of an authentic advisor at the highest grade (Alif) in the National Security Chancellery based on the aforementioned the office order in this regard, and the subsequent correspondence issued in the letter of the Prime Minister's Office addressed to the General Secretariat of the Council of Ministers No. (Mim.Ra.Waw/Dal 7/29/6153) on 14/4/2021, which conclusion: The plaintiff is appointed within the special grade (senior /Alif) authenticity, in addition to the above, the Ministry of Finance has expressed its opinion regarding the Inspector General who assumed senior positions after the issuance of Law No. (24) of 2019 (Law on the Cancellation of the order of the Dissolved Coalition Provisional Authority No. 57 of 2004), and Cabinet Resolution No. (389) of 2019 amended by Cabinet Resolution No. (464) of 2019 covered by the provisions of paragraph (3rd) thereof, according to the letter of the Ministry of Finance / Legal / Office of the Director General addressed to the State Council, No. (20944) on 1/6/2023 indicated there in ((.from the foregoing, the Federal Supreme Court decided that the incumbency of the inspectors general of their positions is authentic, and that the judgment issued the Federal Supreme Court is absolutely authoritative

Zainab



and applies to all, whether individuals or state authorities, based on the provisions of Article (94) of the Constitution of the Republic of Iraq of 2005, and its impact is not limited to the litigants of the case, but also to all those addressed by this text, which entails their benefit from the legal status that created by the referee, whether it arranges benefits or holds rights,.. the matter has been settled by the Federal Supreme Court)).

4. The office order and the aforementioned correspondence issued by the Prime Minister's Office relating to the Prosecutor indicating that he is appointed within the special grade (higher /Alif) authenticity, was valid and in accordance with the provisions of the law, in particular, the office order No. (323) issued by the Prime Minister's Office No. (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020 for its issuance based on the provisions of Article (3/I) of Law No. (24) of 2019 law No. 57 of 2004 repealing the dissolved Coalition Provisional Authority Order No. 57 of 2004, pursuant to paragraph 3 of the Resolution the Council of Ministers No. (389) of 2019 as amended by Resolution No. (464) of 2019, and in accordance with paragraph (1) of the office order No. (72) of 2008 in force, which stipulates that ((The inspector general appointed in accordance with orders (57) of 2004 and (19) of 2005 shall be at the rank of undersecretary)), this means that the office order No. (323) issued on 1/12/2020, through which it is inferred to confirm that the plaintiff is appointed in authenticity and not by agency, and that his services were transferred to the entity to which he is assigned with his grade and the financial allocation at the highest grade (Alif), to have previously been appointed as an Inspector General in authenticity and with the rank of Undersecretary of the Ministry, and that his appointment as an advisor in authenticity under the aforementioned the office order was commensurate with the movement of the staff of the department attributed to it and based on paragraph (3rd) of the Council of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

Ministers Resolution No. (389) of 2019 as amended, especially that paragraph (third) of the aforementioned decision was consistent with the provisions of Article (41) of the Civil Service Law No. (24) of 1960, as amended, which require its approval on the basis of the foregoing, it is not possible to say that the plaintiff is appointed as an agency and not authenticity.

5. The request of the defendants' agents, being in their capacity based on their submitted regulations and their arguments raised before this court, rejecting the plaintiff's claim regarding the implementation of the office order No. (323) of 2020, despite its issuance in the correct legal and constitutional form, from the Prime Minister's Office of the First Defendant in addition to his job, in addition to the issuance of the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Sin/2/5/62/8724) on 7/4/2021, which includes, under paragraph (1) thereof, ((that what was stated in the aforementioned the office order No. (323) issued in your letter numbered (Mim.Ra.Waw/Dal 7/5/9839) dated 1/12/2020 containing transfer of services of Mr. Haidar Kaim Jalan Al-Shahmani / Former Inspector General of the Political Prisoners Foundation who is not considered an undersecretary, but receives the salary and allowances of an undersecretary)), according to the details referred to therein, and the insistence of the defendants' agents, in addition to their functions, to execute the aforementioned the office order as referred to in the aforementioned letter of the General Secretariat of the Legal Department, shall be considered as a refusal to implement the office order issued from the Prime Minister's Office without justification, and this is contrary to what has been established by the judgment of this court in this regard in many of its relevant provisions, including the judgment issued No. (218/Federal/2022) on 19/12/2022, which is final

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

and binding on all authorities based on the provisions of Article (94) of the Constitution and Article (5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and Article (36) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, so such payment is payable, The Prime Minister's Office is subordinate to the Prime Minister, who is a representative of the Council of Ministers and its decisions can be issued through his office, and the first defendant (the Prime Minister in addition to his job) 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 (that whoever seeks to veto as for the arguments raised based on the list submitted by the defendants' agents in addition to their functions dated 2/4/2024, the Federal Supreme Court considers that these defences it is also obligatory to respond, as the plaintiff enjoys a functional legal status based on Legislative Order No. (72) for the year 2008, and to be included in the provisions of paragraph (3) of the Council of Ministers Resolution No. (389) of 2019, as amended by Resolution No. (464) of 2019, he transferred his job grade and financial allocation (at the highest grade /Alif), to the National Security Advisor, entitled Advisor under the office order No. (323) issued by the Prime Minister's Office with the number (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020, and lived in that degree with the approval of the Ministry of Finance after making deletion and creation based on the aforementioned the office order, and the role of the General secretariat of the Council of Ministers is limited in its implementation, then the executive authority of the Council of Ministers and its decisions, which is responsible for following up the implementation of those decisions, it shall not obstruct its implementation or object to such implementation contrary to the provisions of the Constitution and the law to say otherwise would mean

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

suspending the decisions of the Prime Minister in his capacity as a representative of the Council of Ministers, 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 presides over its meetings in accordance with the provisions of Article 78 of the Constitution, leading to the emptying of the constitutional institution of its content, especially that the decisions of the Council of Ministers or the Prime Minister issued through the Office of the Prime Minister, based on its discretion, in the light of the provisions of the Constitution and the laws in force in the public interest, and to ensure the proper functioning of public utilities regularly and steadily, subject to oversight competent constitutional institutions, including the Federal Supreme Court based on its stipulated jurisdiction in Article (93/3rd) of the Constitution, and on the basis of the foregoing, it is not permissible to suspend such decisions or suspend their enforcement without the basis of the Constitution and the law, unless challenged by the methods prescribed by the Constitution and the laws in force therefore, the refusal of the defendants (the Prime Minister and the Secretary General of the Council of Ministers in addition to their functions) to implement the the office order containing the transfer of the plaintiff's services with the job grade (higher Alif) and the financial allocation to occupy the position of an original advisor in the National Security Advisor and to place him as an advisor under the office rder No. (323) issued by the Prime Minister's Office issue (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020, and adhering to the implementation of the letter of the General Secretariat of the Council of Ministers/ the Legal Department No. (Sin/2/5/62/8724 on 7/4/2021) stating ((The office order No. (323) containing the transfer of the services of Mr. Haider Ka'im Jalan Al-Shahmani / former Inspector General in the Political Prisoners

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

Foundation, who is not considered an undersecretary, but receives the salary and allowances of an undersecretary to the position of advisor in the National Security Chancellery and considering his transfer from the institution of political prisoners to an adviser in the National Security Advisor as an acting assignment and not authenticity)), is contrary to the provisions of the Constitution and the decisions issued for this court in this regard, the laws in force, and the relevant decisions of the Council of Ministers, which requires obliging them to implement (the office order issued by the Prime Minister's Office No. (323 of 2020) and the ruling on the invalidity of the letter of the General Secretariat of the Council of Ministers No. (Qaf/2/5/62/8724) on 7/4/2021. As for the second request contained in the petition containing the claim for judgment the invalidity of Article (1/Second) of the instructions of the formations of the departments of the General Secretariat of the Council of Ministers and their tasks No. (4) of 2017, which stipulates that: ((Second: Manages the departments stipulated in item (first) from this article, an employee with the title of general manager at least holds at least an initial university degree he has experience in his field of work of not less than (15) fifteen years)), and you find the Federal Supreme Court that the plaintiff's claim in respect of him must be rejected because the condition of interest necessary for its establishment is not met in application of the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, Article (25) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, in accordance with Article (20) thereof, which requires the interest of the plaintiff when filing the lawsuit and until a judgment is issued, such interest must be a case and influential in his legal, financial or social status this is not true in the plaintiff's claim regarding his second application, so his claim

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

in this regard must be rejected, in view of the foregoing, the Federal Supreme Court decided as follows:

First: Obliging the defendants to each of the first (Prime Minister) and the second (Secretary General of the Council of Ministers) in addition to their functions to implement the office order No. (323) issued by the Prime Minister's Office issue (Mim.Ra.Waw/Dal 7/65/9839) on 1/12/2020 included in paragraph (Second) thereof ((transfer of the services of Mr. Haidar Ka'im Jalan Al-Shahmani from the Political Prisoners foundation

to the National Security Chancellery, with the functional grade and financial allocation for the post of adviser)).

Second: The incorrectness of what was stated in the letter of the General Secretariat of the Council of Ministers / Legal Department No. (Qaf/2/5/62/8724) on 7/4/2021.

Third: rejecting the lawsuit of the plaintiff Haider Kaim Jalan Al-Shahmani regarding the claim for the invalidity of Article (1/2nd) of the Instructions of the Formations and Tasks of the Departments of the General Secretariat of the Council of Ministers No. (4) of 2017, because the condition of the interest necessary for its establishment is not met.

Fourth: Charging the parties with the relative expenses and fees, and charging the plaintiff with attorneyship fees for the defendants' agents / in addition to their jobs, an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously for to paragraphs (1st and 2nd) and by majority on paragraph (3rd), final and binding on all authorities based on the provisions of Articles 93/3rd and 94 of the Constitution of the Republic of Iraq for the year 2005, articles (4/3rd and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended law No. (25)

Zainab

Republic of Iraq
Federal Supreme Court
Ref 92/ federal /2024



Kurdish text

of 2021, and it has been made clear on 19/Shawwal/1445 A.H.
corresponding to 28/4/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

Zainab