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The Federal Supreme Court (F.S.C.) convened on 1.12.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

Mosaddeq Adel Talib - his attorneys are Saif Karim Jassim and Ahmed Mohamed Ahmed.

**The defendants:**

1. The Secretary-General of the Council of Ministers / in addition to his position.
2. The Prime Minister / In addition to his position.  
their deputy is the legal advisor- Haider Ali Jaber.

**The claim:**

The plaintiff claimed, through his two agents, that the Council of Ministers issued its decision dated 9/6/2021 that was informed by the letter of the General Secretariat of the Council of Ministers No. (sin.zin.lam./10/1/circulation/21028) on 5.8.2021 which includes not to allow the attending to work for the teaching personal and to consider them absent from work unless they bring a vaccination card or a negative PCR examination weekly for those who are not covered by the vaccine or those infected during the previous three months

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period (confirmed by medical reports from the competent committees) starting from the date of 1/9/2021 and obligating all government departments not to let any person attend unless the above is achieved. Thus, this decision imposed compulsory vaccination as well as excessive health measures that violate the Constitution of the Republic of Iraq for the year 2005, in violation of many of the rights and freedoms stipulated in it, so the plaintiff took the initiative to challenge it before this court, requesting a ruling of its unconstitutionality based on Article (93/Third) of The Constitution of the Republic of Iraq for the year 2005 for several reasons summed up as follows:

- 1- Violation of the right of the Iraqi citizen to life and security stipulated in Article (15) of the Constitution, which states (Everyone has the right to life, security and freedom, and these rights may not be deprived or restricted except In accordance with the law, and based on a decision issued by a competent judicial authority) in addition to its violation of many other rights and freedoms and principles stipulated in the Constitution, including those contained in Articles (14, 19/Third, 22/First, 30, 33, 37/Third and 46) of it.
- 2- The absence of an explicit constitutional text that justifies the Council of Ministers' decide the absence of the employee despite his presence due to his refusal to take the vaccine, as Article (80) of the Constitution that defines the powers of the Council of Ministers and does not include compel the employee or the citizen to receive the vaccine, and the Council of Ministers was not granted the authority to issue decisions that violate the provisions of the constitution. On the contrary, Article

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(80/Third) of the constitution stipulates (issuing regulations, instructions, and decisions to implement laws). Therefore, by using the means of measurement, the Council of Ministers may not issue decisions that contradict the constitution or that detract from the right to life or forfeit it.

- 3- The absence of an urgent health necessity in Iraq that justifies the defendants with the imposition of compulsory vaccination in an aforementioned manner, and the practical reality indicates that the Council of Ministers did not declare a state of a health emergency to allow it to issue a decision (subject of the case), as the text of Article (61 /9<sup>th</sup>) from the constitution, the Council of Representatives has the power to (a- approve the declaration of a state of emergency by a two-thirds majority, based on a joint request from the President of the Republic and the Prime Minister. B- The state of emergency shall be declared for thirty days, which can be extended after approval each time.) also, the health procedures authorized by the Prime Minister during the declaration of a health emergency in accordance with Article (61/ninth/c) of the Constitution are restricted to the obligation to organize and practice them by law and in a manner that does not conflict with the Constitution, which indicates otherwise with regard to the compulsory vaccination of employees or citizens.
- 4- The absence of a law that explicitly allows the defendants to compel the employee to do what was mentioned above. On the contrary, the Council of Representatives has enacted the Law on Providing and Using Corona Vaccines No. (9) for the year 2021 and it did not include any reference from near or far to the

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compulsory vaccination of employees or citizens, this means that the aforementioned cabinet decision lacks legal basis.

- 5- The adaptation or legal description of the corona vaccine is a “medical experiment”, especially in light of the condition imposed by the drug manufacturers on the Iraqi government to disclaim responsibility for any damages or injuries arising from the vaccine, and the same is true for the Iraqi government, which requires it dealing with the Corona vaccine as a new medical experiment, and then giving full freedom to the citizen or employee to take the vaccine or not, and in a manner that does not conflict with international conventions or constitutional texts that guarantee him the right to life, and what confirms the nature of the vaccine and considering it a new medical experiment It is the text of Article (2) of the Corona Virus Pandemic Vaccines Provision and Use Law No. (9) of 2021 which states that (the international companies that manufacture and supply vaccines for the Coronavirus and the Ministry of Health and Environment and their formations and employees shall be exempted from the damages resulting from the provision or use of Medical materials needed to prevent coronavirus. And Article (8) of the Constitution required Iraq to respect its international obligations, as the decision under appeal violates many of the conventions and treaties to which Iraq is bound and which the plaintiff detailed in his petition.
- 6- The obligation of the judiciary to prevent the citizen from entering the courts except after taking the compulsory vaccination or bringing a negative PCR examination within (3) days preceding the court’s review, involves the loss of the

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citizen's rights and endangering his life, especially in flagrante delicto or life-attack crimes or self.

- 7- The state has to take care and not achieve a result, and the Council of Ministers, in the event of its insistence on forcing employees to receive the compulsory vaccination, must prepare a draft law and send it to the Council of Representatives, for approval in accordance with the constitutional and legal contexts. Therefore, the plaintiff asked the Federal Supreme Court to rule the unconstitutionality of the cabinet's decision under appeal, due to the absence of a constitutional or legal basis forcing the employee to receive the vaccine against the Coronavirus and to consider him absent from work in the event of his refusal, and to charge him the fees and attorney's fees, as he requested the issuance of a state decision to stop the implementation of the decision. The subject matter of the appeal until the issue of the case is resolved in accordance with Article (151) of the Procedure Code.

The case was registered with this court in No. (127/Federal/2021) and the legal fee was collected for it in accordance with Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005 and informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) From the same system, their representative responded with the answer list No. (31724 on 1/11/2021) with the following: First: From a formal point of view:

1. The subject of the appeal contained only a directive to limit the spread of new strains (of Coronavirus) issued by the Prime Minister during the meeting of the Council of Ministers held in its regular session (29) dated on 3/8/2021 issued by Circular No. The decision

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of the Council of Ministers is not subject to appeal as it is merely a directive issued by the Prime Minister, and since Article (93) of the Constitution specified the jurisdiction of the Federal Supreme Court and that the directives of the Prime Minister are not included in it, the plaintiff's lawsuit is obligatory to respond from this aspect.

2. The plaintiff's attorney did not provide evidence that there was actual harm inflicted on him by applying the above directive to the plaintiff based on the text of paragraphs (Second and Six) of Article (6) of the Court's rules of procedure.

Second: From the objective point of view: 1- It was stated in the lawsuit petition that the directive included not allowing the teaching staff to work and counting them as absent from work unless a vaccination card or a negative PCR examination was brought weekly for those who were not covered by the vaccine starting from 1/9/2021, while This was not mentioned in any of the directive paragraphs.

2- The directive came to limit the spread of new breeds, and it did not mention that the employee was absent.

3- The directive of the Prime Minister included adherence to the preventive measures recommended by the Ministry of Health in its letter No. (3461) dated 3/8/2021, where the number of (Corona pandemic) infections globally reached more than (171,468) injuries and more. (3,565,000) deaths and most countries of the world were forced to take strict measures to prevent the entry and spread of the new double-mutated strain in their countries, according to what was stated in the letter of the Ministry of Health No. (2467) dated 6/1/2021, and that commitment to preventive measures represented by vaccination against (Covid-19) disease, wearing a mask,

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maintaining physical distance, and preventing human gatherings is the only way to limit the spread of the disease.

4. There is no connection between the text of Article (15) of the Constitution, as the citizen's right to life, security, and freedom must not infringe on the lives of others, on the one hand, and on the other hand, Article (17/first) of the Constitution grants every individual the right to privacy Personality in a manner that does not conflict with the rights of others and public morals, which means that an individual can do whatever he wants to be provided that it does not harm society and other citizens because it leads to the spread of the epidemic, and therefore the measures are taken by the state, including urging them to take the vaccine, aims to preserve the life of the citizen who affirmed by the constitution.

5. Maintaining public order with its three pillars (public health, security, and public tranquility) is one of the duties of the state through the administrative control authorities, and the state has the right to take the necessary measures to confront an epidemic that most countries have been unable to confront except through vaccination with the anti-epidemic vaccine.

6. Putting restrictions on public liberties in light of the spread of the epidemic is at the core of the state's duties. There is no freedom in the face of an imminent danger that threatens people's lives and portends a catastrophe unparalleled in modern history.

7. The generalization of the directive to limit the spread of new strains (of the Coronavirus) came in accordance with the provisions of Article (31) of the Constitution, where it stated (First: Every Iraqi has the right to health care, and the state is concerned with public health and ensures means of prevention and treatment...) and then the

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directive came to ensure the means to prevent the global epidemic (Coronavirus). It also came in accordance with the provisions of Public Health Law No. (89) for the year 1981 (amended) in Article (4/Second/A), which states that (the Council of the Ministry of Health is responsible for planning health, preventive, environmental and curative policy and everything related to public health in the country).

8. The plaintiff's attorney has missed the provisions of Article (7/Seventh) of the Public Health Law above, which states (obligating the citizen to carry out periodic vaccinations according to instructions issued by the competent health authority), as well as Article (48) thereof, which stipulates that ( (The Minister of Health may issue instructions regarding the measures to be taken to combat transmissible and endemic diseases that affect humans...or limit their spread or prevent their entry into the country according to their nature in cooperation with other competent authorities)), and Article (52) which states that (if any A person being a carrier of a pathogen ... The health authority has the right to take measures to monitor, isolate, or quarantine him to examine him to ensure that he is free of pathogenic microbes), and for all of the foregoing reasons, he must request a ruling rejecting the plaintiff's request to issue a state order to stop the implementation of the decision subject of the appeal. The lack of urgency in the subject matter of the appeal, based on the text of Article (151) of the Civil Procedure Law No. (83) of 1969 (amended) and the ruling dismissing the appeal in both formal and substantive terms, and charging the plaintiff with the costs of the lawsuit and attorneys' fees. After completing the procedures in accordance with the provisions of the aforementioned bylaw, a date

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was set for the pleading and the parties to the case were informed of it in accordance with the provisions of Article (2/Second) of the aforementioned system. On the appointed day, the court was formed, and the attorneys of the plaintiff, Saif Karim Jassim, and Ahmed Muhammad Ahmad, attended, and the defendants' representative attended Legal Counsel Haider Jaber Ali Al-Sufi and the pleading in the presence and publicly What is being said, the Court decided the conclusion of the pleading and set 12/1/2021 as the date for the issuance of the decision, in which the court was formed and issued the following ruling:

**The decision:**

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff, Mosaddeq Adel Talib, had claimed in his petition that the Council of Ministers had issued its decision dated 06/9/2021, which amounted according to the letter of the General Secretariat of the Council of Ministers in the number (sin.zin.lam./10/1/circulation/21028) on 5/8/2021, which includes not allowing the teaching staff to work and considering them absent from work unless they bring a vaccination card or a negative (PCR) examination weekly for those who are not covered by the vaccine or those infected during the previous three months period supported by medical reports from the competent committees and starting From 1/9/2021 and obligating all government departments of the state not to receive any references unless the above is achieved, and thus the aforementioned decision imposed compulsory vaccination and imposed excessive health procedures, in violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 for

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violating many rights and freedoms stipulated her in it. Therefore, he requested ruling the unconstitutionality of the aforementioned cabinet decision based on the provisions of Article (93/Third) of the Constitution due to its violation of the provisions of Articles (8, 13, 14, 15, 19, 22, 30, 31, 37/Third, 46) of the Constitution and the lack of the existence of a constitutional and legal document that compels the employee to receive a vaccine against Corona and to be considered absent in the event of abstaining from doing so. The Federal Supreme Court finds that the plaintiff was not accurate in what he presented in his lawsuit, as the Council of Ministers did not issue a decision on the date he mentioned, but rather issued directives to limit the spread of the Coronavirus in its regular session No. (29) on 3/8/2021, and that the aforementioned directives did not include a statement or allusion to forcing employees to take the vaccine, not allowing the teaching staff or others to work, and considering them absent from work unless they were brought in support of taking the vaccine or a negative PCR examination weekly. Therefore, there is no cabinet decision that includes what the plaintiff mentioned In his case in order for the court to be able to consider it, this is on the one hand, and on the other hand, the jurisdiction of the Federal Supreme Court in constitutional oversight includes laws and regulations in force only in accordance with the text of Article (93/First) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/First) of the Law Federal Supreme Court No. (30) for the year 2005 as amended by Law No. (25) for the year 2021 As for item (third) of Article (93) of the Constitution, it relates to the jurisdiction of this court in adjudicating cases that arise from the application of federal laws and decisions, and now Regulations, instructions and

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procedures issued by the federal authority, which means that this text is not related to the authority of the Federal Supreme Court for constitutional oversight and therefore it cannot be relied upon to challenge the constitutionality of any legislative text. Therefore, the plaintiff's lawsuit is obligatory to respond in form, as there is no text that he mentioned in his lawsuit and there is no decision of the Council of Ministers with the date and content that he mentioned. For all of the foregoing and the request, the Federal Supreme Court decided the following:

First: Refusal of the plaintiff's request to issue a loyalty order, as there is no place to issue that order.

Second: The ruling dismissed the claim of the plaintiff, Mosaddeq Adel Talib.

Third: Obligating the plaintiff to pay fees, expenses, and attorney fees for the two defendants' attorneys, the first the prime minister, in addition to his post, and the second being the secretary-general of the Council of Ministers, in addition to his post, legal advisor Haider Jaber Al-Sufi, an amount of one hundred thousand dinars.

The decision was issued by agreement conclusively and binding on all authorities in accordance with the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/Second) of the Federal Supreme Court Law amended by Law No. (25) of 2021 and was publicly understood on 25/ Rabi' al-Akhir / 1443 AH corresponding to 1/12/2021 AD.

**Signature of**  
**The president**  
*Jasem Mohammad*  
*Abbood*

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