

Republic of Iraq
Federal Supreme Court
Ref. 128 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/9/2023 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 Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Alaa Hussein Mansour – his agents the barristers Hassan Muhrij Abadi and Intisar Akram Mustafa.

The Defendant: the Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Shakour.

The Claim

The plaintiff claimed through his agent that the defendant / being in this capacity had previously issued the Diwani order No. (11) for the year 2022, on 10/11/2022, which includes the assignment of Wissam Aslan Saud - First Deputy Governor as Governor of Babylon, and because the aforementioned Diwani order was contrary to the law, the plaintiff took the initiative to challenge it before this court, as the Law of Governorates Not Organized in a Region No. (21) of 2008 with its articles (5/3rd and 25) stipulated that the governor must be of good conduct and behavior, and since the taxpayer was missing this condition, the order to assign him as Governor of Babylon is a procedure contrary to the law, the fact that it has already included the provisions of the Amnesty Law of 2016 and four criminal cases, according to the letter of the Federal Integrity Commission / Office of the Chairman of the Commission in the number (Office /Qaf. Mim/Sin/815) on 28/11/2022, in addition to many criminal cases registered against him, most notably the

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charge of forgery with official documents, which indicates that the condition of (good conduct) has not been met, and it was stated by the Federal Supreme Court's decision No. (203/Federal/2022) that the committee formed by Diwani Order No. (22024) of 2022 issued under Letter from the Prime Minister's Office, No. (3006/329/229) on 3/3/2022, evaluated the performance of Hassan Mandeel/Governor of Babylon during his tenure, paragraph (4th/1) of the committee's conclusions stated that Wissam Aslan Saud was not assigned to manage the affairs of Babylon Governorate, due to the existence of lawsuits against him, in addition to violating Cabinet Resolution No. 185 of 2019, which includes (withdrawing the hand of an employee from those who were referred to the competent court - misdemeanors or felonies - for one of the crimes of financial and administrative corruption..) Based on Article 93/3rd of the Constitution of the Republic of Iraq of 2005, and the fact that the plaintiff is a resident of Babylon Governorate, he believes that he has a direct interest in filing the lawsuit, and is financially and morally harmed by the illegal presence of a person holding the first position in the province. Therefore, this court was asked to rule to cancel Diwani Order No. (11) of 2022. The case was registered with this court at the number (128/Federal/2023), the legal fee was collected for it, and the defendant was informed of its petition and documents based on Articles (21/1st and 2nd) of the Internal Regulations of the Federal Supreme Court No. (1 of 2022). His agent replied with the reply statement dated 18/6/2023, its conclusion: The lack of interest condition in the plaintiff and the court's lack of jurisdiction to consider the violation of the Diwani order to the law and this falls within the jurisdiction of the Personnel Justice Court in accordance with Article (7/4th) of the State Council Law No. (65) of 1969, as amended, in addition, the assignment of the First Deputy Governor of Babylon to manage the affairs of the province came based on the requirements of the public interest and the approval of the Prime Minister in accordance with the powers vested in him to ensure the regular and steady functioning of the public facility and the continuation of providing services

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to the people of the province in accordance with Article (78) of the Constitution, and as the direct responsible for the general policy of the state because he has the discretionary power to assign whomever he deems appropriate, especially since this authority is subject to the control of the Federal Supreme Court in accordance with the provisions of Article (93) of the Constitution, and the legal texts In the Governorates Not Organized in a Region Law No. 21 of 2008 (as amended) on the appointment of governors, it was not possible to apply it practically after the termination of the work of the provincial and district councils under Law No. 27 of 2019, and the Governorates Not Organized in a Region Law or any other law did not address the case of the vacancy of the position of the governor, in this regard, and in order to continue the work of institutions in the governorates and provide services to citizens, the Prime Minister resorts to assigning to carry out the tasks of the governor, based on the provisions of Article (78) of the Constitution because it is necessary to work in order to ensure the functioning of public utilities, and this is confirmed by this court in its decision No. (203/Federal/2022), as the person in charge of managing the affairs of the governorate was originally a deputy governor and continued in the job before his assignment, and since holding the position of deputy governor requires The availability of the same conditions for holding the position of governor and his continuation as deputy governor before his assignment is evidence that he enjoys good conduct and behavior, as for the allegation of legal violations and lawsuits pending before the judiciary against him, they are mere reports and allegations and he has not been sentenced for a crime involving moral turpitude, so he requested that the case be dismissed and that the plaintiff be charged with expenses, fees, and attorney's fees. After completing the procedures required by the court's rules of procedure, the court set a date for the pleading based on Article (21/3rd) thereof and notified the parties, and on the specified day, the court was formed, so the plaintiff and his attorneys attended, and the defendant's agent attended, and the public presence argument proceeded, after the court heard

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the statements of the agents of the parties and nothing remains to be said, 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, it was found that the plaintiff filed this lawsuit against the defendant, the Prime Minister, being in this capacity, requesting the cancellation of Diwani Order No. (11) of 2022 issued by the General Secretariat of the Council of Ministers on 10/11/2022, which includes assigning Wissam Aslan Saud / First Deputy of Babil Governorate to manage the affairs of the governorate on the pretext that the aforementioned Diwani order is contrary to the law of governorates that are not organized in the province of Decree No. (21) of 2008. This court finds that any of the natural or legal persons have the right to institute a direct action before this court to challenge a law or regulation, provided that the lawsuit meets its conditions and that among those conditions is that the plaintiff in the subject matter of the lawsuit has a case-by-case and direct interest and affects his legal, financial or social status, provided that it is available from the filing of the lawsuit until the issuance of the judgment thereon, and this is according to what is stated in item (1st) of Article (20) of the Bylaw of the Federal Supreme Court No. (1) of 2022, It is also required in the lawsuit that the defendant must be a known, present, possible, and verified interest. The court finds that the Diwani order - the subject of the lawsuit contested as invalid and in violation of the Law of Governorates Not Organized in Region No. (21) of 2008 does not affect the legal, financial, or social status of the plaintiff, and therefore the plaintiff has no interest in challenging it, so the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Alaa Hussein Mansour) due to the lack of interest condition and his bearing of fees and expenses and the amount of one hundred thousand dinars attorney fees of the defendant's agent being in this capacity, the Legal

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Counsel Qasim Suhaib Shakour. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93/1st and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 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 26/Sufur/1445 Hijri coinciding with 12/September/2023 AD.

Judge

Jassim Mohammed Abbod
President of the Federal Supreme Court

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