

Republic of Iraq  
Federal Supreme Court  
Ref. 169 / Federal / 2021



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The Federal Supreme Court (F.S.C.) convened on 2.3.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

Hamdawi Awaid Maarij - his attorneys are Ali Rahim Obaid, Raad Arhim Jassem and Maher Bayan Kazem

**The defendant:**

The Prime Minister / in addition to his position - his deputy, the legal advisor Haider Ali Al-Sufi.

**The claim:**

The plaintiff claimed, through his attorneys, that the defendant had previously issued Diwani Order No. (29) for the year 2020, which includes the formation of an investigative committee specialized in looking into cases of corruption and important crimes, provided that the results are presented before him and in view of the unconstitutionality of the committee's formation, and due to the harm affected his so in the lawsuit no. (2378/Jim/2021) the date of the pleading coincides with 12.14.2021 before the Rusafa Criminal Court. Therefore, he challenged before this court the constitutionality of the formation of the committee for the following reasons:

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First: His violation of the powers and competencies of the Prime Minister stipulated in Article 80 of the Iraqi Constitution of 2005.

Second: Violation of the principle of separation of powers stipulated in Article (47) of the Constitution, where the executive authority has interfered in the affairs of the judicial authority. In the first paragraph of it, it is stated that the Prime Minister is the one who refers the important crimes to the committee formed under it, then presents the results of the investigation to him, and that this is not within his constitutional competencies.

Third: The formation of that committee leads to the formation of special committees that are similar to the special courts, which are constitutionally prohibited because they contradict freedoms and rights, as they lead to the concentration of power and the expansion of the powers of the executive authority at the expense of the judicial authorities, which is inconsistent with the constitution.

Fourth: It was stated in the decision that this committee looks into corruption cases, and these issues fall within the competence of the Integrity Commission, which is an independent body that was included among the independent bodies to which the constitution referred to in chapter four article (102) which is under the oversight of the I.C.R., not the prime minister as mentioned in the Diwani order, therefore, the plaintiff requested the Federal Supreme Court, based on Article (4/first and third) of the amended Federal Supreme Court Law No. (30) for the year 2005 to cancel the Diwani Order No. (29) for the year 2020 issued by the defendant and notify the Rusafa Criminal Court to suspend considering the case No. (2378/jim/1/2021) until this case is resolved, as the investigative

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procedures in it were carried out by the committee formed under the order (subject of the appeal). The case was registered with this court in No. (169/Federal/2021) and the legal fee was collected for it, according to what was stated in Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005 and informs the defendant of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw above, his agent responded with the answer draft dated 9.1.2022, which included the following:

First: From a formal point of view: What the plaintiff requested is to be considered outside the jurisdiction of the Federal Supreme Court specified in Article (93) of the Constitution and Article (4) of its Law No. (30) for the year 2005, and his lawsuit does not meet the condition of interest and the damage that must be met in accordance with Article (6) of the Civil Procedures Law No. (83) of 1969.

Second: From the objective point of view:

1. Article (80) of the constitution came with the powers of the Council of Ministers, consisting of the prime minister, his deputies, and ministers, and not as stated in the prosecutor's draft of the powers of the prime minister, and that Article (78) of the constitution entrusted the prime minister with direct responsibility for the state's general policy, and that fighting financial corruption and administrative of the most important priorities of the Prime Minister.

2. The Diwani order does not violate Article (47) of the Constitution, and is not considered interference by the executive authority in the work of the judiciary, because the work of the committee formed according to it is carried out in accordance with the law, as it was stated in Clause (Fourth/2) of the Diwani order that the accused are not brought before unless with a decision of the

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investigative judge, in addition to what was stated in Clause (Fifth) thereof, that he assigns (25) investigators to assign the work of the Committee, and Clause (Sixth) ensures that the Counter-Terrorism Service implements decisions issued by investigative judges and from the courts concerned with cases related to the work of the Committee in accordance with the law, though, the supervision of the investigation procedures is carried out through the investigative judge and the deputy public prosecutor, in coordination between him and the Supreme Judicial Council, as stated in paragraph (seventh) of the Diwani order, which means that the role of the committee is limited to verifying the validity of the information it receives in cases of financial and administrative corruption so that a judge can assume the appropriate procedures within the tasks entrusted by law.

3. The claim that the formation of special committees similar to special and exceptional courts has no basis in the law and the constitution because the work of the committee is in accordance with the law and under the supervision of the judiciary and the public prosecution. As the plaintiff stated that his son was referred to Resafa Criminal court, in addition, the formation of the committee considered that the integrity committee is part of it and that the Diwani order came in implementation of the government program presented by the Prime Minister and approved by the Council of Representatives, so the defendant's attorney requested that the plaintiff's case be dismissed in form and objective and that he be charged with the costs and fees of the case. After completing the procedures stipulated in the aforementioned bylaw, a date for the pleading was set in accordance with Article (2/second) of it, the two parties were informed of it. On the appointed day, the court was

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formed, the attorneys of the plaintiff, Ali Rahim Obaid, and Raad Arhim Jassem, attended, and the defendant's attorney, Legal Counsel Haider Ali Jaber also attended, and proceeded to plead in the presence and publicly. The plaintiff's attorneys repeated what was stated in the lawsuit petition and requested the ruling in accordance with what was stated in it. The defendant's attorney responded requesting that the lawsuit be dismissed on behalf of his client for the reasons stated in his answer list dated 9.1.2022. Both the plaintiff's attorneys and the defendant's attorney repeated their statements and requests. Since there is nothing left to say, the court decided the conclusion of the pleading, and issued the following ruling:

### **The decision:**

Upon review and deliberation by the Federal Supreme Court of the plaintiff's claim and the defendant's attorney's defenses through the regulations submitted by him and during the pleading, the court reached the following conclusions:

First: The Constitution of the Republic of Iraq for the year 2005 linked the formation of the federal authorities and constitutional institutions and between guaranteeing rights and public freedoms and making every constitutional authority and institution has a role in preserving those rights and freedoms to build a society based on equality before the law without discrimination for any reason, in accordance with Article 14 of the Constitution, where the Constitution attaches great importance to safeguarding rights and freedoms and makes it the first pillar of building society. The second chapter of it dealt with rights and freedoms, and the first chapter of the aforementioned chapter included addressing the issue of rights,

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while the second chapter of it included provisions related to the preservation of human freedom and dignity in accordance with what was stated in Articles (37 and 38) of it, where Article (37/first stipulates / a) on (human freedom and dignity are preserved), and item (b) of the same article stipulates (it is not permissible to arrest or interrogation of anyone except under a judicial decision), which requires that the federal authorities when exercising their powers, take into account this and not infringe on those freedoms and constitutional rights of all components of the Iraqi people.

Second: The building of the state of constitutional institutions is based on respect for the constitution and commitment to what is stated in it and that those authorities do not exceed the limits of their competencies established under the constitution, and that the constitution of the Republic of Iraq for the year 2005 distributed the tasks of the federal authorities according to the competence of each authority, provided that they perform their work on the basis of the principle of separation of powers In accordance with what was stated in Article (47), with the need for integration and cooperation between all authorities in accordance with the criterion of the supreme interest of the people, and since the constitution defines the jurisdiction of the judiciary under Articles (87, 88, and 89) of it, including investigation and trial of all crimes, according to what is stated in the law Criminal Procedure No. (23) of 1971, as amended, this requires non-interference in the judiciary and in the affairs of justice, as courts of all types and levels undertake to do so, and that what was stated in the contested Diwani order to give authority to the Prime Minister's office to approach the Supreme Judicial Council to nominate a judge or more and a deputy public prosecutor to supervise investigation

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procedures is considered a grave breach of the principle of separation of powers and the principle of judicial independence.

Third: According to the provisions of Article 102 of the Constitution, which stipulates that (the High Commission for Human Rights, the Independent High Electoral Commission, and the Integrity Commission are independent bodies subject to the oversight of the Council of Representatives, and their work is regulated by law), Law No. (30) of the Integrity and illegal Gain Commission was issued as amended on the year 2011, where Article (2) of it stipulates (The Integrity Commission is an independent body, subject to the oversight of the Council of Representatives, has a moral personality and financial and administrative independence, and is represented by its chairman or whomever he authorizes). Contribute to preventing and combating corruption, and adopting transparency in the management of government affairs at all levels, through: First: Investigation of corruption cases in accordance with the provisions of this law, by investigators, under the supervision of the competent investigative judge, and in accordance with the provisions of the Code of Criminal Procedure. The corruption that the Commission's investigators do not investigate, through a legal representative of the Commission, with an official agency issued by its head. Issues and preparing draft laws that contribute to preventing or combating corruption and submitting them to the legislative authority and enhancing the confidence of the Iraqi people in the government by obligating its officials to disclose their financial receivables and issuing codes of conduct that include rules and standards of ethical behavior to ensure the correct and honorable performance of the duties of public office and to take any action that contributes to

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combating corruption Or to prevent it, so the Integrity Commission is obligated to implement this, given that the purpose of its existence is to combat corruption and prevent it, and therefore the competence of this commission may not be stripped by a Diwani order because this is an amendment to the Law of the Integrity and Illicit Gain Commission and is contrary to the provisions of the Constitution.

Fourth: The main factor on which the anti-corruption policy is based in the presence of a political will on the part of all officials to confront and combat corruption by eradicating its causes and liquidating its consequences. Where corruption is rooted in society, this indicates a weak political will and vice versa. If corruption is marginal and does not exceed simple individual crimes, this indicates the presence of a strong political will that believes in the dignity of the country and the welfare of the citizen. As for the weak political will that coexists with corruption and its causes have not been eradicated. It remains a will that cannot build the country properly, and even if it announces attempts to combat corruption, it remains absurd, and that confronting corruption will remain limited to form only, and the role of reformers remains limited to appeals that do not help in that until a correct policy to combat this is established. Corruption Senior administrative positions must be entrusted to people who are competent, honest, and experienced, far from factional political interests that stray from that, and the fight against corruption is not right without it being accompanied by radical political and administrative reforms.

Fifth: Administrative and financial corruption represents one of the main threats to the administrative apparatus, and the diversity of its means and methods that are followed by the corrupt has led to

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corruption becoming a threat to the development process and the future of peoples. Bad exploitation and the public function in the presence of corruption turns from a means of managing and serving public affairs and from being a legal mandate and a sacred national secretariat to a commodity that is traded to achieve the private interest at the expense of the public interest. His job and the legitimate trust for this job and about deliberate deviation and non-compliance with the foundations and ethical rules regulating administrative work, and that corruption is associated with bribery, abuse of influence, forgery, and embezzlement and indicates a defect in the value system of the individual and society and its spread in state institutions and indicates the deviation of those institutions from practicing the goal for which they were found It is serving the citizen and achieving his interests, so the nature of the political system and the style of governance have a big role In the spread or non-proliferation of this phenomenon, the state's prestige, and credibility depend on reputation, and the corruption of the administrative apparatus leads to a loss of citizen's trust and credibility in the state. Therefore, the seriousness of confronting and combating corruption requires adherence to constitutional and legal rules, respect for the rule of law, and support for all institutions authorized by the constitution and law to combat corruption and prevent the occurrence of its causes, as preventing the occurrence of crime reduces the spread of its phenomenon better than standing at the limit of its discovery. Maintaining the independence of the bodies and bodies specialized in combating corruption from the executive authority is a major factor in the performance of these bodies in performing their role without the influence of being monitored by the performance of

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employees affiliated to the executive authority and for all the foregoing, the Federal Supreme Court decided the following:

1. ruled that the Diwani Order No. (29) issued by the Prime Minister's Office on 27/8/2020 is invalid and cancels it as of the date of this decision.
2. Charge the defendant with fees, expenses, and attorney fees for the plaintiff's attorneys, attorneys (Ali Rahim Obaid, Raad Arhim Jassem, and Maher Bayan Kazem) an amount of one hundred thousand dinars distributed according to the law.

The decision was issued by the majority and is final and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5) of the Supreme Federal Law No. (30) of 2005 amended by Law No. (25) of 2021 and publicly understood on Rajab 28/1443 Hijri, corresponding to 2/3/2022 AD.

Signature of  
The president

***Jasem Mohammad Abbood***

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