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The Federal Supreme Court (F S C) has been convened on 8/3/2023 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, Ayoob 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: Fatin Muhsin Hadi.

The Defendants: 1. The Prime Minister/  
being in this capacity.

2. The Secretary General of  
the Cabinet/ being in this capacity.

Their agent the legal  
counselor Hyder Ali Jaber  
Al-Sofi

### **The Claim**

The plaintiff claimed in the lawsuit petition that on 4/1/2023, (Diwani Order 3) No. (Qaf/2/5/55/42/81) was issued by the General Secretariat of the Council of Ministers, which included the approval of the Prime Minister to appoint her as Director General of one of the vacant directorates in the Supreme Judicial Council, and since the order in question was issued contrary to the context followed in issuing the Diwani orders related to the appointment or transfer of those who occupy the special grades from Director General and above, which are issued by the Prime Minister as they fall within the powers vested in him, Or through his office, which is considered his representative after obtaining his approval, but the aforementioned order was issued by the Secretary-General of the Council of Ministers, who is not considered a representative of the Council of Ministers, which is stated in the court's

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decision No. (28/Federal/2022), whereas previously, under valid legal conditions, she held the position of (Inspector General / Incumbently) of the Ministry of Water Resources under Diwani Order No. (21/S) issued by the Prime Minister, then she was transferred (Inspector General / Incumbently) to the High Commission for Human Rights under Diwani Order No. (47) issued by the Prime Minister, and after the dissolution of the offices of the General Inspectors under Law No. (24) of 2019, its functional services were transferred in grade and financial allocation to the Supreme Judicial Council to occupy the position of Director General of the Department of Public Relations and Legal Affairs Incumbently under Diwani Order (111) No. (Mim.Ra.Waw/Dal.6/56/3574) on 27/2/2020 issued by the Prime Minister's Office. Accordingly, administrative order No. (237 / Office/2020) was issued on 3/3/2020 by (the Supreme Judicial Council / the Office of the President of the Council), which includes the transfer of its functional services (former inspector general) in the High Commission for Human Rights to the Supreme Judicial Council with the grade and financial allocation in the position of Director General of the Department of Public Relations and Legal Affairs, and since the issuance of the Diwani order (111) until the date of submission of this regulation, its legal status has been organized in the Supreme Judicial Council (Director General / Incumbently) and Calculate finances accordingly, Which includes (annual bonuses, tax accounting, retirement deductions) all according to the merit of the grade (Director General / Asalah), as well as according to the letter of the Ministry of Finance / Legal Department / Public Service / Salaries Division No. (S/8.2/58/12190) on 18/5/2020, which stated ((The Inspector General with the rank of (Undersecretary of the Ministry) based on Order No. (72) of 2008 and as long as the Diwani Order No. (111) No. (Mim.Ra.Waw/Dal 6/56/3574) was issued on 27/2/2020 from

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the Prime Minister's Office to transfer it to the Supreme Judicial Council at the grade The financial allocation to the position of (Director General) and since her service (Inspector General) is an actual service, so it is complementary to her subsequent service and her salary is calculated on this basis (Director General), which is located in the highest grade (B) and granted her ranks for the years she spent as (Inspector General)). According to the letter from the Prime Minister's Office (urgent and immediate) No. (3056/2209230) dated 2/6/2022 addressed to the Supreme Judicial Council, which includes the directive of the Prime Minister on 1/6/2022 to adopt the Diwani Order No. (111) containing the transfer of its functional services to the Supreme Judicial Council and directing the General Secretariat of the Council of Ministers to abide by what is stated in this letter and not to take any communication outside the content mentioned therein, A photocopy of it was given to (the General Secretariat of the Council of Ministers, the Secretary's Office/ to work with its content and to mark the occupancy of the positions of the inspectors general in their originality) within the database) they have, and a reference to the court's decision No. (218/federal/2022) issued on 19/12/2022, according to which the defendant obligated the Prime Minister/ being in this capacity, to implement the two customs orders issued by the Prime Minister's Office to the plaintiff (Ali Hamid Kazim) as Undersecretary of the Ministry (Asalah) in the Ministry of Higher Education and Scientific Research after he was an inspector general (incumbently) (Formerly), since the court's decisions are final and binding on all authorities under article 94 of the constitution, all its peers (former inspectors general) have benefited from the aforementioned court decision and are currently occupying higher special grades in person under due diwani orders issued by the Prime Minister's Office, but the challenged (Diwani/3)

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order in question was issued after the issuance of the aforementioned court decision, which included her appointment as director general without indicating any date, as this order did not include the fate of her previous actual job service ( Director General of the Supreme Judicial Council) from the date of its commencement in the Council until the date of its issuance, in particular, the aforementioned court decision included in its reasoning (that the proposal for appointment of the former Inspector General does not mean re-appointing him again because the employee may not be appointed twice in the same job grade, but rather the proposal for appointment of the appointed employee is intended to be commensurate with the grades of the staff of the ministry assigned to it in accordance with the need of the ministry and the grades allowed by its staffing in light of the discretionary power possessed by the competent minister aimed at the public interest and the proper functioning of the public office to ensure the continuation of the work of public utilities regularly and steadily), due to the violation of the principle of equality based on the provisions of articles 14, 16, and 19 of the Constitution, as she is the only one among her peers of the former inspectors general who was unique to this case, which is the issuance of (Diwani Order / 3) without the need to issue it in this unfair way against her, which completely contradicts the aforementioned court decision, so the plaintiff asked this court to rule that (Diwani Order 3) is invalid and annulled, and also requested the issuance of an urgent state order to stop its effects, this is due to its impact on the legal position it occupies in the Supreme Judicial Council until the case is resolved, and the ruling obliges the defendants to implement (Diwani Order / 111). The lawsuit was registered with this court No. (18/Federal/2023) and the legal fee was collected for it based on the provisions of Article (21/1<sup>st</sup>) thereof, and the defendants shall be informed of its petition and documents in

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accordance with item (2<sup>nd</sup>) of the same Article, Their agent replied with the answering draft dated 2/3/2023, which included that the plaintiff's request is outside the jurisdiction of the court specified under Article (93) of the Constitution and Article (4) of her law, and this is what her judiciary settled on in her decision No. (209/Federal/2022), and her request does not meet the condition of interest for her to be filed before the court, because the disputed Diwani order does not violate her constitutional rights in a way that causes her harm, and the plaintiff missed the distinction between special grades in public office and the grade of Director General, and the mechanism in which the appointment is made is stipulated in the provisions of article 61/5<sup>th</sup> of the Constitution and the Civil Service Law No. 24 of 1960, and whereas the internal regulations of the Council of Ministers No. 2 of 2019 and the instructions for the formation and tasks of the departments of the General Secretariat of the Council of Ministers No. 2 of 2022 included that one of the tasks of the Legal Department in the General Secretariat of the Council of Ministers is to study issues related to the appointment of higher grades as originality, agency, rotation, or transfer, and expressing an opinion on the affairs of their professional service, as well as preparing the agenda of the meetings of the Council of Ministers after completing their study and expressing an opinion on them by the legal committee formed under Diwani Order No. (88 S) of 2017 in accordance with the provisions of Article (6/1<sup>st</sup>) of the aforementioned rules of procedure, where this committee has previously expressed its opinion on the legal status of inspectors general that their transfer is by assignment and not an appointment, Also, Article (3/1<sup>st</sup>) of Law No. (24) of 2019 empowered the Council of Ministers to issue the necessary decision against inspectors general or be returned to their previous government jobs and did not refer to the retention of their job grade as a

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legislative option for the House of Representatives, and that the State Council has resolved the issue of transferring holders of special grades by its decision No. (67/2021) dated 4/10/2021 when it approved its legal principle that the decision to transfer the appointed employee is original in one of the jobs of special grades (Alif) or one of the jobs The appointment of general managers shall be completed with the approval of the Council of Ministers following the provisions of Article (8/2) of the Civil Service Law, the Council of Ministers applied Law No. (24) of 2019 and the Court confirmed its constitutionality by its decision No. (126 and its units/federal/2019) as a legislative option that does not violate the constitution, with the presentation that the Council of Ministers had extended a helping hand to the segment of general inspectors when it allowed ministries and entities not associated with a ministry to nominate them for one of the higher degrees and that the challenged Diwani order came based on the approval of the Prime Minister and the powers vested in him based on Cabinet Resolution No. (341) of 2021, in the application of paragraph ( 3) of Law No. 24 of 2019, and implementation of the provisions of Article 80 of the Constitution, therefore, the judgment requested to dismiss the lawsuit with the plaintiff bearing the expenses, fees, and advocacy fees. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof and the parties were informed of it, and on the appointed day the court was formed, so the plaintiff attended in particular and the defendants were represented by their agent, Legal Counsel Haider Ali Jaber, and the public pleadings began to be held, the plaintiff repeated what was stated in the lawsuit petition and requested a judgment according to it, the defendants' agent answered requesting the dismissal of the lawsuit for the reasons stated in his response list, and the plaintiff

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and the defendant's agent repeated their previous statements and requests, and where It remains to be said, the end of the argument has been made clear, and the court issued the following decision:

**The decision:**

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff (Faten Mohsen Hadi) had claimed in the lawsuit that she was holding the position of Inspector General in the High Commission for Human Rights and after the dissolution of the offices of the Inspectors General under Law No. (24) of 2019 ((Law Canceling the Order of the Coalition Provisional Authority No. (57) of 2004)), which stipulated in Article (3/1<sup>st</sup>) that ((Whoever occupies the position of Inspector General shall be referred to retirement in accordance with the Unified Retirement Law No. (9) of 2014 As for those who are not covered by the retirement law, the Council of Ministers shall issue the necessary decision against them or they shall be reinstated to their previous government jobs exclusively in government institutions (ministries and authorities)), based on what was stated in the aforementioned text, Diwani Order No. (111) was issued in 27/2/2020, which includes transferring it to the Supreme Judicial Council with the grade and financial allocation to the position of Director General of the Public Relations and Legal Affairs Department, and accordingly, the Supreme Judicial Council issued Administrative Order No. (237/Office/2020) on 3/3/2020 to implement the aforementioned Diwani order, and the plaintiff began her work in her new position starting from the aforementioned date, after receiving correspondence from the

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General Secretariat of the Council of Ministers that the plaintiff is not appointed with the rank of Director General of Asala The Prime Minister's Office was approached by the Supreme Judicial Council, and the answer was received according to their letter No. (3056/2209230) on 2/6/2022 confirming the adoption of Diwani Order No. (111) On 27/2/2020. On 4/1/2023, Diwani Order No. (3) of 2023 was issued by the General Secretariat of the Council of Ministers, which includes appointing her as Director General of one of the vacant directorates in the Supreme Judicial Council, so she requested the court to issue a state order to stop the last Diwani order and rule that it is invalid and oblige the defendants, in addition to their jobs, to implement Diwani Order No. (111) of 2020. This court issued state order No. (18/Federal/2023) on 31/1/2023 to suspend the work of Diwani Order No. (3) on 4/1/2023 until this case is resolved. The defendants /being in their capacity agent pleaded to the lawsuit and requested its dismissal in form due to the lack of jurisdiction of the court in its consideration and the failure to achieve the plaintiff's interest in it, he also requested the dismissal of the lawsuit because the plaintiff's claim that she held the position of Director General of Asala in the Supreme Judicial Council was incorrect, and that the contested Diwani order did not violate the principle of equality as stated by the plaintiff in her lawsuit, but came in the application of Law No. (24) of 2019 and came based on the approval of the Prime Minister under the powers vested in him based on the provisions of Article (80) of the Constitution. Having examined the response lists submitted by the defendants' agent / being in their capacity, the court finds that the plaintiff's lawsuit is formally admissible, because the plaintiff and the defendants/ being in their capacity, are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, and that the lawsuit falls within the jurisdiction of this court based on the

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provisions of item (third) of Article (93) of the Constitution of the Republic of Iraq of 2005 and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, the court finds that the plaintiff's lawsuit is formally admissible, because the plaintiff and the defendants/ being in their capacity, are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, and that the lawsuit falls within the jurisdiction of this court based on the provisions of item (3<sup>rd</sup>) of Article (93) of the Constitution of the Republic of Iraq of 2005 and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, The court also finds that the plaintiff's interest is realized in this lawsuit following the provisions of Articles (44, 45, 46, and 47) of the Civil Procedure Law No. (83) of 1969, as amended, and the provisions of Article (20) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and objectively the court finds that Diwani Order No. (111) on 27/2/2020 includes the transfer of the plaintiff (Faten Mohsen Hadi), the former Inspector General of the High Commission for Human Rights, to the Supreme Judicial Council with the grade and financial allocation The position of Director General of the Public Relations and Legal Affairs Department came as a result of the issuance of Law No. (24) of 2019, which authorized the Council of Ministers, under Article (3/1<sup>st</sup>) thereof, to issue the necessary decision to treat those who occupy the position of Inspector General who is not covered by the Retirement Law, the transfer of the plaintiff to the Supreme Judicial Council with the rank of Director General is a correct application of the aforementioned text and is considered an appointment to this position in accordance with the provisions of Article 8 of the Civil Service Law No. 24 of 1960, as amended, because the position of Director General is not one of the special grades that the Constitution

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requires in accordance with the provisions of Article 61 thereof that the appointment shall be made upon nomination by the Council of Ministers and the approval of the Council of Representatives, but rather it is within the competence of the Council of Ministers, and that the employee may not be appointed twice in the Same grade job, therefore, the new Diwani Order No. (3) on 4/1/2023 appointing the plaintiff as Director General of one of the vacant directorates in the Supreme Judicial Council is incorrect, and the Diwani Order No. (111) on 27/2/2020 was valid and resulted in legal positions, rights, and duties for the plaintiff and her since the date of its issuance, and since the administrative and Diwani decisions and orders remain in force and have their effects from the date of their issuance unless they are withdrawn or canceled by the authority that issued them following the law or Judgment of invalidity by the judiciary, this must be adhered to by all state institutions to ensure the proper functioning of public utilities regularly and steadily, and for all of the above and the request, the Federal Supreme Court has decided the following:

First: Ruling on the invalidity of Diwani Order No. (3) issued by the General Secretariat of the Council of Ministers No. (Qaf/2/5/55/42/81) on 4/1/2023, which includes the approval of the Prime Minister to appoint (Faten Mohsen Hadi) as Director General of one of the vacant directorates in the Supreme Judicial Council.

Second: to oblige the defendants the Prime Minister and the Secretary-General of the Council of Ministers/ being in their capacity to implement Diwani Order No. (111) issued by the Prime Minister's Office No. (Mim.Ra.Waw./Dal 6/56/3574) on 27/2/2020, which includes the transfer of Ms. (Faten Mohsen Hadi), the former Inspector General of the High Commission for Human Rights, to the Supreme Judicial Council by grade and financial allocation as Director General of

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the Public Relations and Legal Affairs Department, and charging them with the fees and expenses.

The decision has been issued with majority, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and article (4) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear in the session dated 12/Ramadhan/1444 Hijri coinciding with 3/April/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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