

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/4/2023 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 Plaintiffs: 1. Sarmad Hasan Abdulla/ former inspector general of the Ministry of Oil.

2. Dr. Fayadh Mohammed Abid Khalaf Al-Dulaimi/ former inspector general of the Ministry of Water Resources.

3. Aymen Numan Ayada/ former inspector general in the Ministry of Reconstruction, Housing, Municipalities, and Public Labors.

4. Mohammed Yousef Al-Saadi/ former inspector general in the Ministry of Youth and Athletes.

5. Hussam Ali Hasan/ former inspector general in the Media and Telecommunications Committee.

6. Jassim Mohammed Musahib/ former inspector general of the Trade Bank of Iraq.

7. Baidaa Salim Suleiman/ former inspector general of Christian and other Religions Endowments.

Their agent – the
barrister Ehab Ihsan
Eidan

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

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

The Claim

The plaintiffs claimed through their agent, claimed that the Council of Ministers issued its decision No. (389) of 2019 in its forty-third regular session held on 29/10/2019, which stipulated: ((1) The inspector general appointed for the first time under Diwani Order (47) of 2019 shall be returned to his previous position if he was an employee and to the condition in which he was before he was appointed inspector general, provided that the separation of those covered by the aforementioned description from the entity in which they were before their transfer to receive the position of inspector general, 2. An inspector general who is not covered by Diwani Order 47 of 2019 shall be referred to retirement if he is 50 years of age or more, 3. Subject to the aforementioned paragraph (1), the inspector general who does not meet the age requirement shall continue with the same grade in the body in which he used to work until his fate is determined by the Council of Ministers, and the competent minister or the head of a body not associated with a ministry shall propose his appointment to the position of undersecretary, adviser, or director general within a period not exceeding 30 days)) paragraph (3) of the aforementioned decision was then amended by Resolution No. (464) of 2019 to become as follows: ((Subject to the aforementioned paragraph (1), 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 competent minister or the head of the entity not associated with a ministry shall propose his appointment as undersecretary, advisor or general manager, provided that the aforementioned grades are present in the law of the ministry or body not associated with a ministry within a period not exceeding (60) days from the date of forming the next government, and when he is not nominated to one of those jobs, he shall be returned to the condition in which he was before his appointment as inspector general without prejudice to his right to refer to retirement in accordance with the Unified Retirement Law, or his nomination to one of the senior positions from any ministry or body not associated with a ministry)), and for the aforementioned decision violating the laws in force, and its prejudice. of the rights of the plaintiffs covered by its provisions, so they took the initiative to challenge it before this court for the following reasons: 1. Discrimination between inspectors general

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

negatively in governance, and treatment while they are in similar legal positions, causing differentiation between those subject to its provisions, and differentiation between their salaries, which violates the Constitution in Articles (14, 16 and 19/6th) thereof, which affirmed the principle of equality and equal opportunities, in addition to violating the text of Article (3/1st) of Law No. (24) of 2019, which did not create any discrimination between general inspectors, which stated ((Whoever occupies the position of inspector general shall be referred to retirement following the Retirement Law). Unified No. 9 of 2014, as for those who are not covered by the retirement law, the Council of Ministers issues the necessary decision against them or they are returned to their previous government jobs exclusively in government institutions (ministries and authorities)), paragraph (1) of the resolution also violated article 41 of the Civil Service Law No. 24 of 1960 (as amended), which stipulated that (if the employee's job is abolished 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 and from his grade, he shall be considered transferred to it with his current salary. If the vacancy is of a grade lower than his grade, he shall choose to accept it or not, and if he accepts it in writing, he must be appointed for that job), and Article (14/2nd) of the General Budget Law for the year 2019 in force at the time, which applies to them as it stipulates: An employee with the grade of (Director General and above) who does not manage an administrative formation at the level of a general directorate and above shall be referred to retirement after entry into force following the provisions of the Unified Retirement Law, or transferred to another department when an available vacancy that is commensurate with his job title and with the consent of the transferee, the decision that is the subject of the lawsuit also did not include the referral of first-time appointees to retirement or their transfer to another department when the vacancy that is commensurate with the job title becomes available and with the consent of the transferee, which makes it defective by illegality, illegality and constitutional defect. Diwani Order No. 47 of 2019 is a comprehensive order for all inspectors general, so the provision for its repeal came under Article 4 of Law No. 24 of 2019 to confirm the provision contained in Article 1 of the same law, while the decision of the Council of Ministers - the subject of the lawsuit - included error in the application of the original law, as it

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

distinguished in paragraph 1 thereof between the inspector general appointed for the first time under Diwani Order No. 47 of 2019, and the one who was appointed under the same order legislature, but not for the first time, as the ruling of reinstatement of the previous job was arranged on the first category of general inspectors without the second, contrary to the generality of the text of Article (3/1st) of Law No. (24) of 2019 and its launch, Contrary to the text of the aforementioned article 4, and following the principle of hierarchy of legal rules, the decision of the Council of Ministers may not contradict the law issued by the legislative authority. 2. Violating what has been settled by jurisprudence, the Iraqi judiciary, and the comparative that it is not permissible to prejudice or exceed the final functional legal status acquired under sound legal provisions or deprive the employee of it. Whereas Diwani Order No. (47) of 2019 has established legal centers for plaintiffs and acquired rights for them, according to which they were appointed as general inspectors with the rank of undersecretary (supreme/Alif) according to Diwani Order No. (72) dated 10/7/2008, which is still in force, and was approved by the court in its decision No. (218/Federal/2022) dated (19/12/2022) and that Order (47) was issued following the due procedures decreed by Order No. (57) of 2004 and Legislative Order No. (19) of 2005, whereas the lapse of the period of appeal against the assumption of their capacity as general inspectors and the continuation of their functions without opposition from the defendant has given the decision to appoint them the proper legal form, and thus the decision to appoint them has been stabilized, and it is considered an acknowledgment by the authorities that issued the order appointing them of the validity of this order, which gave them a right that the administration may not annul, and since the employee's relationship with the administration is an organizational relationship governed by laws and legislations, and if his legal status may be changed, this is restricted provided that he is not affected by the transfer. Or accommodation in the other job materially or morally and retaining his position and job address in the department to which his services are transferred, and the downgrading of the grade is considered a penalty that requires to be imposed on the employee a proven commission of an act punishable by law or a failure to perform his duty based on a fundamental investigation conducted by a committee formed in accordance with the provisions of Article 10 of the State

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

Employees Discipline Law. Whereas their appointment to the post of (Inspector General) and their placement in the (upper/Alif) grade took place under valid legal conditions before the entry into force of Law No. 24 of 2019, which does not affect the legal conditions that existed before it entered into force, and does not include any text indicating its retroactive application, they retain their job grades and legal status arising from Diwani Order No. (47), whereas the decision of the Council of Ministers subject to the lawsuit included retroactive effect, contrary to the provisions of the Constitution and the law, and what the court confirmed in its decision No. (212/Federal/2022) dated 23/11/2022 on the importance of the principle of (immediate effect of the law), and prejudice to Diwani Order No. (47/2019), and their acquired rights and the established functional legal status with the lapse of the judicial appeal period, which requires addressing the ruling of its invalidity and canceling it following Article (93/3rd) of the Constitution in particular, and that the legislator approved by Resolution No. (207) on 14/3/1988 the person holding the position of (Senior Certified Public Accountant) before the issuance of the decision retains his salary if it exceeds the salary of a general manager. For all of the above, the plaintiffs requested this court to rule on the invalidity of paragraphs (1, 2, and 3) of the Council of Ministers Resolution No. 389 of 2019 issued on 29/10/2019 as amended by Resolution 464 of 2019 and to charge the defendant fees and expenses, the lawsuit was registered with this court No. (22/ Federal/2023) and the legal fee was collected based on the provisions of Article (21/1st) of the Court's Rules of Procedure No. (1) of 2022, and the defendant shall be informed of its offer and documents following item (2nd) of the same article, and his agent replied with the regulation Reply dated 13/3/2022, including detailed defenses, the formality of which is his plea that the court does not have jurisdiction to consider the subject matter of the lawsuit, as the decision of the Council of Ministers does not represent law or regulation, and the plaintiffs' protest against Article (93/3rd) of the Constitution is not in place, because they based their appeals on violating the Constitution. The adjudication of the validity of individual and organizational administrative orders and decisions issued by the official bodies that have not been appointed as a reference for appeal is within the jurisdiction of the Personnel Justice Court under Article (7/4th) of the State Council Law No. (65) of 1979, as amended, while the substantive defenses summarized

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

that the decision subject to the appeal was following Law No. (24) of 2019 and in application and implementation of it and all laws in force as follows: Article 4 of the law above stipulated the cancellation of Diwani Order No. 47 of 2019, and therefore the position of Inspector General was canceled from the date of entry into force of the aforementioned law, which is the date of voting on it by the House of Representatives based on Article 6 thereof, accordingly, the status of inspector general shall cease to exist for those who were appointed under Diwani Order No. (47) from the date of entry into force of the said law, and based on paragraph (1) of Cabinet Resolution No. (389) of 2019, they shall be reinstated to their positions if they are employees and to the condition in which they were before they were appointed general inspectors, while those who were not appointed as inspectors general following the order (47) and were not covered by it, the text of the article (3/1st) of the law above applies to him to be referred to retirement following the law Retirement No. (9) of 2014 Whoever was covered by its provisions under paragraph (2) of the Council of Ministers Resolution No. (389) of 2019 as amended, subject to the appeal to be referred to retirement (who was 50 years old and over), thus, whoever was not covered by the provisions of the Retirement Law above is subject to adapting his legal status to the competence of the Council of Ministers following the provisions of Law No. 24 of 2019 above, so the Council of Ministers issued its decision subject to challenge that the inspector general continues with the same rank in the entity in which he worked, and the competent minister or the head of the entity not associated with a ministry proposes his appointment as an undersecretary, advisor, or general manager, provided that these grades are present in the law of the ministry or the entity. Not associated with a ministry within a period not exceeding 60 days from the date of formation of the (next government), and when he is not nominated to one of those jobs, he shall be returned to the condition in which he was before he was appointed inspector general without prejudice to his right to refer to retirement following the Unified Retirement Law or his nomination to one of the senior positions from any ministry or body not associated with a ministry, and order 47 of 2019 established the legal center for inspectors general, and by canceling it, the legal status of inspectors is canceled accordingly from the date of issuance of the Diwani order appointing them or correcting their appointment thereto, and therefore they are not

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

subject to article 3/1st of Law No. 24 of 2019, while article 1/1st and second of the aforementioned law canceled Coalition Authority Order No. 57 of 2004, which regulated the work of inspectors general and was not the basis for establishing the legal center for general inspectors. Also, article 5 of Law 24 of 2019 governs the issuance of Cabinet Resolution No. 389 of 2019, as it stipulated that (no text that contradicts the provisions of this law shall apply) as the aforementioned law is a special law that regulated how to dissolve the offices of (general inspectors), which is their own law, while the laws mentioned by the plaintiffs are general laws and (the private restricts the year), in addition to the legislator canceling Diwani Order No. 47 of 2019 with article 4 of The law after regulating the employment status of the general inspectors appointed before the issuance of the Diwani Order (47) with the provisions of article 3/1st of the law, and if the legislator wanted to include them in the provisions of the article above, the article on the cancellation of the aforementioned Diwani order would have been legislated before the provisions of article 3/1st, and for all of the above, a request for a judgment to dismiss the lawsuit and charge the plaintiffs expenses, fees, and advocacy fees. After completing the procedures required by the aforementioned rules of procedure of the court, a date was set for the pleading based on Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the parties' agents attended and began to conduct the public presence pleading, the plaintiffs' agent repeated what was stated in the lawsuit petition and requested a judgment according to which the defendant's agent answered, and requested the dismissal of the lawsuit for the reasons stated in his response list linked to the lawsuit papers. The agent of each party repeated his previous sayings and requests, whereas nothing was left to be said, the end of the argument has been made clear and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs, Sarmad Hassan Abdullah, Fayyad Muhammad Abd Khalaf Al-Dulaimi, Ayman Noman Iyada, Muhammad Yousef Mahdi Al-Saadi, Hussam Ali Hassan, Jassim Muhammad Musahib and Beida Salem Suleiman, filed this lawsuit against the defendant, the Prime Minister – being in this capacity, and requested a

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

ruling that paragraphs (1, 2, 3) of the Council of Ministers Resolution No. 389 of 2019 as amended by Resolution No. 464 of 2019 are among the general inspectors appointed under Diwani Order No. 47 of 2019 claiming that the decision of the Council of Ministers - the subject of the appeal - distinguished a negative distinction between the general inspectors appointed under Diwani Order No. 47 of 2019 and the general inspectors appointed before that under previous customs orders, and violated the provisions of Article (3/I) of Law No. (24) of 2019 and the provisions of Article (41) of the Civil Service Law No. (24) of 1960 as amended, as well as the text of item (second) of Article (14) of the General Budget Law for the year 2019, which was in force at the time of the issuance of the decision of the Council of Ministers - the subject of the challenge - and violated the provisions of the Unified Retirement Law regarding the referral of the Inspector General to retirement if he is 50 years old or more, regardless of the amount of his service, and that the contested decision exceeded the legal positions acquired by the inspectors general by returning them to their previous jobs, or to the condition in which they were before their appointment as inspectors. public, and thus the contested decision was retroactively, also the decision - the subject of the appeal - violated the principle of equality and equal opportunities guaranteed by the Constitution, the defendant's agent pleaded/being in this capacity under its reply list numbered S/2/2/68/12220 on 13/3/2023 requesting the dismissal of the lawsuit from a formal point of view due to the lack of jurisdiction of the court because the plaintiff had indicated that the contested decision violated the provisions of Articles (14, 16 and 19) of the Constitution and that the constitutional control of the court extends to the laws and regulations in force only, and that the appeal against the decision of the Council of Ministers falls within the competences of the Council of Ministers. The state, also requested the dismissal of the lawsuit from a substantive point of view because Law No. (24) of 2019 has abolished the position of inspector general. Thus, he canceled all appointment orders issued in this position and gave the Council of Ministers the power to issue the necessary decision regarding those who did not meet the conditions for retirement or return to their previous jobs, and thus the contested decision did not violate any of the laws referred to in the lawsuit petition, and the Federal Supreme Court finds that the plaintiffs' claim is admissible in terms of litigation, because the plaintiffs and

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

the defendant, in addition to his job, are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, the lawsuit falls within the jurisdiction of this court based on the provisions of item (3rd) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and item (3rd) of Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and the court also finds that the interest of the plaintiffs is achieved in this lawsuit in accordance with the provisions of Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 with regard to paragraph (1) of the decision - subject Lawsuit -. Objectively, the Court finds the following: First: Paragraph (1) of the Cabinet Resolution No. (389) of 2019 included that the Inspector General appointed for the first time under Diwani Order (47) of 2019 shall be reinstated to his previous job if he is an employee, and to the condition in which he was before his appointment as Inspector General if he is not an employee, what is stated in this paragraph is consistent with the competencies of the Council of Ministers contained in paragraphs (first and third) of Article (80) of the Constitution of the Republic Iraq for the year 2005, which stipulated: (The Council of Ministers shall exercise the following powers: First: Planning and implementing the general policy of the state and general plans and supervising the work of ministries and entities not associated with the Ministry of third: Issuing regulations, instructions and decisions with the aim of implementing laws), and therefore paragraph (1) of the Council of Ministers decision - subject to challenge - was issued based on the competence of the Council of Ministers to supervise the work of ministries and its competence to implement Law No. (24) of 2019, which had canceled Diwani Order No. (47) of 2019 under Article (4) thereof, meaning that there are no longer two categories of general inspectors after the entry into force of the said law, therefore, the text of paragraph (1) of the Council of Ministers Resolution No. (389) of 2019 came in the correct application of the provisions of the aforementioned law to return those appointed for the first time to their previous jobs if they were employees, or to the condition in which they were if they were not, because those appointed under Diwani Order No. 47 on 7/8/2019 for the first time did not exceed two months since their appointment until the abolition of the offices of general inspectors under Law No. (24) of 2019 in force from the date of voting on it on 8/10/2019, and the competence of the

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

Council of Ministers to nominate for the position of undersecretaries of ministries, and the holders of special degrees require the availability of capabilities in the candidate that qualify him to fill the aforementioned position based on science, experience, competence, and integrity, in addition to the public interest that the decision seeks to provide the state departments with efficient elements in order to ensure the continuation of the work of public utilities regularly and steadily to provide the best services to citizens, and the plea that the aforementioned text has violated the provisions of Article (14) of the General Budget Law in force at the time of its enactment, there is no conflict between them, as the said article stipulates that an employee with the rank of general manager and above who does not manage an administrative formation at the level of a general directorate and above shall be referred to retirement in accordance with the provisions of the Unified Retirement Law, meaning that the said article has stipulated that the referral to retirement shall be in accordance with the provisions of the Unified Retirement Law No. (9) of 2014, as amended, and that All plaintiffs do not meet the retirement requirements stipulated in the said law, also, those appointed for the first time under Diwani Order No. 47 of 2019 cannot be covered by the provisions of paragraph (3) of the Cabinet Resolution No. (389) of 2019 as amended by Resolution No. 464 of 2019, meaning that no minister or head of an entity not associated with a ministry can propose their appointment as undersecretary, adviser, or director general, especially since the provision of the aforementioned paragraph, in terms of the aforementioned content, has expired even for other inspectors general at the end of the period specified therein. Which shall not exceed (60) days from the date of formation of the government. The plea of violating the text of paragraph (1) of the contested decision to the provision of Article (41) of the Civil Service Law No. 24 of 1960, as amended, which stipulated that (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 and from his grade, he is considered transferred to it with his current salary, and if the vacant position is of a grade lower than his grade, he chooses to accept it or not, and if he accepts it in writing, he must be appointed to that job) There is no conflict between the aforementioned text, and the text of the contested paragraph of the Council of Ministers' decision, as Law No. 24 of

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

2019 has decided Article (4) repeals Diwani Order No. 47 of 2019, according to which the plaintiffs were appointed for the first time, meaning that it canceled the order appointing the plaintiffs, and did not cancel their job, the abolition of the position of the Inspector General was in accordance with the provisions of Article (1) of the aforementioned law, and thus what was approved by the Council of Ministers' decision in paragraph (1) thereof to return those who were employed to their previous job and to return those who were not employees to the condition they were in before the issuance of Diwani Order No. (47) of 2019 has come in a proper application of the competencies of the Council of Ministers stipulated in the Constitution and a correct application of the provisions of Law No. 24 of 2019, which stipulates in Article (5) thereof not Work with any text that contradicts its provisions. Second: What was stated in the lawsuit petition of the plaintiffs' challenge of the invalidity of paragraph (2) of the Cabinet Resolution No. 389 of 2019, which includes (the inspector general who is not covered by Diwani Order 47 of 2019 shall be referred to retirement if he is 50 years old or over), and the court finds that the interest condition is not met by the plaintiffs to challenge this paragraph following the conditions stipulated in Article (20) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, which requires that the plaintiff in the subject matter of the lawsuit has a case-by-case, direct, and influential interest in his legal, financial, or social status and that the contested text has already been applied to the plaintiff, and that the plaintiffs have acknowledged that the said text was not applied to them as they are all not covered by its provisions because they are appointed under Diwani Order No. (47) of 2019, and since the interest condition is one of the basic conditions for filing the lawsuit and in the event of its failure, the lawsuit is subject to dismissal, the plaintiffs' lawsuit to challenge the said paragraph is subject to a response from this body. Third: What was stated in the plaintiffs' lawsuit to challenge the invalidity of paragraph (3) of Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019, the court finds that it has already decided on the subject of the aforementioned appeal by its decision No. (218/Federal/2022) on 19/12/2022 included in paragraph (1) thereof, dismissing the lawsuit regarding the challenge to the validity of the aforementioned paragraph, and since the decisions issued by the Federal Supreme Court are final and binding on all authorities and persons, any

saady

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal /2023



Kurdish text

evidence that contradicts the authority of the final judgments following the provisions of Articles 105 and 106 of the Evidence Law No. 107 of 1979, as amended, may be admissible since the judgments issued by the Federal Supreme Court are not limited to the parties to the lawsuit only, and the ruling on the validity or invalidity of a particular text has absolute authority over all institutions and individuals, the plaintiffs' appeal against the said paragraph must be answered by this authority.

For all of the foregoing and by request, the Federal Supreme Court decided to rule as follows:

1. Dismissal of the plaintiffs' lawsuit regarding the challenge of the invalidity of paragraph (1) of the Council of Ministers Resolution No. (389) of the year 2019 amended by Resolution No. (464) of 2019 for lack of prejudice to its validity.
2. Dismissal of the plaintiffs' lawsuit regarding the challenge of the invalidity of paragraph (2) of the Council of Ministers Resolution No. (389) of the year 2019 amended by Resolution No. (464) of 2019, due to the failure to achieve the interest in the aforementioned appeal.
3. Dismissing the plaintiffs' lawsuit regarding the challenge of the invalidity of paragraph (3) of Cabinet Resolution No. (389) of 2019 as amended by Resolution No. (464) of 2019 for its previous adjudication, and burden the plaintiffs with the fees, expenses, and advocacy fees for the defendant's agent, the Prime Minister, being in this capacity, the legal advisor Qasim Suhaib Shakur, an amount of (100,000 hundred thousand) dinars.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/3rd and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/3rd 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 27/Ramadhan/1444 Hijri coinciding with 18/April/2023 AD.

Judge

Jassim Mohammed Abboud

President of the Federal Supreme Court

saady