

Republic of Iraq  
Federal Supreme Court  
Ref. 52 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/5/2023 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: Basim Khazaal Khashan/ member of the ICR/ - his agent the barrister Ahmed Saeed Mousa.

The Defendants: the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

### **The Claim**

The plaintiff claimed through his agent that the defendant issued Diwani Order No. (94) in 4/7/2020, which includes (assigning Muhammad Hashim Al-Ani to the duties of the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations), despite his inclusion in a general amnesty for the crime of intentionally damaging the funds and interests of the entity in which he works, after paying the amount stolen from state funds amounting to (540,000,000) five hundred and forty million dinars, in addition to his direct or indirect involvement in the Sumer cigarette deal, which caused the state to lose hundreds of millions of dollars, and his inclusion in the amnesty after it was proven that he was involved in the aforementioned crime made him disqualified for this position, which the budget law put huge funds at the disposal of those who hold it, and the Emergency Support Law for Food

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Security granted him the authority to contract directly, despite the fact that his job record and behavior proved that he is not faithful to state funds and interests, but the defendant (Prime Minister Muhammad Shia Al-Sudani) refrained from correcting the mistake made by his predecessor, because this position falls within the share of the Sunni component and does not want to take a decision that affects the agreements to form his quota government, so this was a reason for the continued waste of public funds through the corrupt contracts concluded by the head of the Fund that were not subject to objective control by the competent regulatory authorities, and therefore he resorted to the court requesting the cancellation of the contested Diwani order, and obliging the defendant to dismiss the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations. The lawsuit was registered with this court No. (52/Federal/2023) and the legal fee was collected following Article (21/1<sup>st</sup>) of the Court's Rules of Procedure No. (1) of 2022 and the defendant is informed of its petition and documents following item (second) of the same article, and his agent replied with the reply list dated 7/5/2023 that the plaintiff's request is outside the court's jurisdiction specified under Article 93 of the Constitution and Article 4 of the Court Law, his request does not meet the condition of interest to be filed before the court, and the plaintiff, as a deputy in the Iraqi parliament, does not fulfill the condition of interest that entitles him to file the case before the court, as the court had previously issued in its decision No. (140 and its unified 141 / federal / 2018) that issued a ruling on the unconstitutionality of Article (6/2<sup>nd</sup>) of the Law of the Council of Representatives and its formations No. (13) of 2018, which includes that the deputy has the right to litigate before judicial bodies as a representative of one hundred thousand people, and the plaintiff did not provide evidence It is proved that the defendant has been sentenced to a final degree, especially since the accused is innocent until proven guilty, the Fund for the Reconstruction of Areas Affected by Terrorist Operations is linked to the Council of Ministers following Article (1/1<sup>st</sup>) of the Regulation of the Fund for the Reconstruction of Areas Affected by Terrorist Operations No. (3) of 2017, and the Board of Trustees of the Fund must prepare quarterly and annual reports to be submitted to the Council of Ministers that include the basic aspects of the results of the

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implementation of the annual reconstruction plan, including problems, obstacles, and proposals related to the reconstruction process and evaluating the government's procedures to ensure the completion of reconstruction effectively and transparently in accordance with Article (7/2<sup>nd</sup>/7) of the said system, for the powers granted to the Prime Minister to issue the necessary directives to the Fund and its Chairman to ensure the achievement of its objectives in accordance with Article 13 of the aforementioned system, the Cabinet shall control the work and management of the Fund, which shall achieve good performance and the preservation of public funds, and the Federal Financial Audit Office shall supervise the work and functions of the Fund - the subject of the appeal - in terms of financial and good performance in accordance with articles 3, 4 / 1<sup>st</sup> and 6 of the Federal Financial Audit Bureau Law No. 31 of 2011, the statements contained in the appeal list that disturb public order and are offensive to official institutions are an act punishable by law in accordance with article 227 of the Penal Code No. 111 of 1969, and are considered a violation of article 65 of the Civil Procedure Law No. 83 of 1969, so he requested the dismissal of the lawsuit and the plaintiff to charge fees and expenses, after completing the procedures required by the Court's Rules of Procedure, a date shall be set for the consideration of the case without pleading in accordance with Article (21/3<sup>rd</sup>) thereof, On the appointed day, the court was formed and the case began to be heard, the court reviewed the petition and the plaintiff's requests and evidence, as well as the list of the defendant's agent and his request to dismiss the lawsuit for the reasons stated therein, it also reviewed the list of the defendant's attorney and his request to dismiss the case for the reasons stated therein, and after the court completed its checks, the end of the minutes 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 plaintiff Bassem Khazal Khashan, a member of the House of Representatives, had asked this court to cancel Diwani Order No. (94) on 4/7/2020 containing ((assigning (Mr. Muhammad Hashim Al-Ani) the duties of

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the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations)) and obliging the defendant, the Prime Minister, in addition to his job, to relieve him of his position because he had previously been accused of the crime of intentional damage to the funds and interests of the entity in which he worked and included him in the amnesty law after paying the amount that He stole from the state funds amounting to (540,000,000) five hundred and forty million dinars, in addition to his direct or indirect involvement in the Sumer cigarette deal, which caused the state to lose hundreds of millions of dollars, which made him ineligible to assume the aforementioned position, the challenged Diwani order has placed large sums of funds at its disposal based on the Emergency Support Law for Food Security, which has caused the continued waste of public funds through contracts concluded that have not been subject to objective control by the competent regulatory authorities. The court, after reviewing the defendant's defenses being in this capacity under the answering draft submitted by his agents, finds that the plaintiff's claim is admissible in terms of litigation, because the plaintiff and the defendant, in addition to his job, 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 following the provisions of item (third) of Article (93) of the Constitution of the Republic of Iraq for the year 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, as for the interest, the court finds that the interest condition is not fulfilled by the plaintiff to challenge the aforementioned Diwani order under the conditions stipulated in Article (6) of Civil Procedure Law No. (83) of 1969 as amended and the provisions of Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which requires that the plaintiff in the subject matter of the lawsuit has a case-specific, direct, and influential interest in his legal, financial, or social status and that the contested text has been applied to the plaintiff. Indeed, 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 plaintiff's lawsuit is obligatory to be dismissed from this aspect, accordingly , and by the request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit

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(Bassem Khazal Khashan) for not accomplishing the interest in it and charging him fees, expenses and attorney fees for the defendant's agent, the Prime Minister, in addition to his position, the legal adviser Haider Ali Jaber, an amount of (100,000) one hundred thousand dinars distributed in accordance with the law. The decision has been issued with the majority, final, and binding for all authorities according to the provisions of articles (93/3<sup>rd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/3<sup>rd</sup> and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 16/Shawwal/1444 Hijri coinciding with 7/May/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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