

Republic of Iraq
Federal Supreme Court
Ref 127/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Minister of Defense / being in this capacity - His two agents the legal adviser Ali Talib Qasim and the official jurists Haider Kadim Jabr.

The Defendant: Minister of Finance / being in this capacity - His agent the official jurist Amer Abbas Qadir.

The Claim:

The plaintiff claimed / being in this capacity mediated by his agents that the Coalition Provisional Authority (dissolved) issued Order No. (2) on 23/5/2003 dissolving the former Ministry of Defense and the other dissolved entities mentioned in the annex to the law, and the Ministry of Defense topped the list of those entities, as Article (1) of it stipulated that ((The entities mentioned in the attached annex (dissolved entities) may be dissolved hereby and the names of other entities may be added to them in the future)), and then the Coalition Provisional Authority (dissolved) Order No. (67) was issued in 21/3/2004 for the formation of the current Ministry of Defense, Section 7 of which provides for (1. All movable and immovable property, including real estate belonging to, used by, expropriated or occupied by, or under the supervision of the Defense Support Authority, the Iraqi Armed Forces or the Iraqi Civil Defense Corps when transferred to the Iraqi Armed Forces, shall be transferred to the Ministry of Defense transferred to the new Ministry of

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Defense as needed all financial assets and buildings, including real estate belonging to, used, expropriated or occupied by the dissolved former Ministry of Defense and still committed by the Managing Director of the Coalition Provisional Authority on behalf of and for the benefit of the Iraqi people); hence, the Law No. 21 of 2005, issued on 26/12/2005, was enacted, and the Ministry of Finance issued instructions (Facilitating the implementation of the provisions of the Law on the Management of Funds of Dissolved Entities) No. 1 of 2009, and since Law No. 21 of 2005 and its instructions came to harm the rights of the Ministry because it had been robbed of its property contrary to the provisions of Article (7) of Coalition Provisional Authority Order No. 67 of 2004, which returned it to the current Ministry of Defense (in force), which Law No. (21) for the year 2005 to repeal its provisions, Therefore, the plaintiff / being in this capacity asked this court to rule on obliging the defendant / being in this capacity to apply the provisions of CPA (dissolved) Order No. 67 of 2004 (Section 7) and the re-registration of immovable property belonging to the former Ministry of Defense to the current Ministry of Defense for urgent need. After registering the case with this court No. (127/Federal/2024) and collecting the legal fee for it and informing the defendant / in addition to his job of its petition and documents in accordance with Article (21 / 1st and 2nd) of Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and in the absence of an answer from the defendant, and based on Article (21/3rd) thereof, the court set a date for considering the case without pleading, in which the court was formed and began hearing the case, the court scrutinized the plaintiff's requests, his supports and the defenses of the defendant's agent according to the response regulation dated 1/7/2024, in which he concluded the request to reject the lawsuit, due to the lack of jurisdiction of the court to consider it, as it

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reviewed the list of the plaintiff's agents dated 1/7/2024, which came in repetition, and since the court completed its scrutinies, 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, Minister of Defense, being in this capacity filed a lawsuit before this court against the defendant, Minister of Finance, in addition to his job, demanding that he be obliged by a provision to apply the provisions of Coalition Provisional Authority (Dissolved) order No. (67) of 2004 - (Section 7) thereof, and to re-register immovable property belonging to the former Ministry of Defense, to the current Ministry of Defense for urgent need to do so, and to charge him fees, expenses and attorneyship fees. The Federal Supreme Court finds that the plaintiff's claim must be rejected for lack of jurisdiction, as the powers and competences of this court are exclusively stipulated in articles (52 and 93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and some other special laws these jurisdictions and powers did not include anything that gives the court jurisdiction to respond to the claim of the plaintiff and the Minister of Defense / being in this capacity and rule in accordance with the requests contained therein, as the jurisdiction of the court is held in accordance with the provisions of Article (93/1st) of the Constitution and article (4/1st) of the Federal Supreme Court Law No. (30) of 2005, as amended, in monitoring the constitutionality of laws and regulations in force in order to decide on their constitutionality or not when challenging the constitutionality of laws and regulations in force only, and that

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jurisdiction does not exceed the obligation to apply them, as well as the case with regard to the jurisdiction of this court is contained in Article (93/3rd) of the Constitution and Article (4/3rd) of the aforementioned Court Law, as this jurisdiction relates to adjudicating cases arising from the application of federal laws and this jurisdiction does not apply to oblige the application of federal laws without adjudicating cases arising from their application, and whereas the plaintiff / being in this capacity requested in his petition to oblige the defendant / being in this capacity to apply the provisions of CPA (dissolved) Order No. (67) of 2004 (Section 7), this makes it impossible to respond to the request and rule accordingly, for lack of jurisdiction, as well as the plaintiff's request / in addition to his job to oblige the defendant / being in this capacity to re-register immovable property belonging to the former Ministry of Defense to the current Ministry of Defense for the urgent need to do so, because this court also lacks jurisdiction to do so for the reasons referred to above, and thus his claim is subject to reject for lack of jurisdiction, and for the foregoing the Federal Supreme Court decided the following:
First: Ruling on rejecting the plaintiff's lawsuit and the Minister of Defense / being in this capacity, for lack of jurisdiction.
Second: Charging the plaintiff the Minister of Defense / being in this capacity the expenses, fees and advocacy fees of the defendant's agent of the Minister of Finance / being in this capacity, human rights employee Amer Abbas Qadir, an amount of one hundred thousand dinars distributed in accordance with the law.
The decision has been issued unanimously, final and binding for all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by

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Law No. (25) of 2021, and it has been made clear in the session dated 24/Dhu al-Hijjah/1445 A.H. corresponding to 1/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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