

Republic of Iraq
Federal Supreme Court
Ref 13/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/2/2024 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Kazim Jabar Hasan – His agent the barrister
Abas Fadhil Hasan .

The Defendant: The Prime Minister/in addition to his job – His agent the legal advisor Haydar Ali Jaber.

The Claim:

The plaintiff claimed through his agent that he previously obtained the investment license No. (476/2019) on 31/1/2019 to establish an investment project (public hospital) on part of the two properties (12373 and 12374/ Mim 11, Hamdy Farm), and that the Ministry of Health occupies part of the above two properties, which is built on it (Al-Salam Center for the Rehabilitation of the Disabled) and prevents him from starting his project, based on the Council of Ministers' decision No. (93) of 2022 issued in the twelfth regular session on 29/3/2022, Whereas this decision was issued by the government of former Prime Minister (Mustafa Al-Kazemi) at a time when the Iraqi Parliament had dissolved itself on 7/10/2021, so this decision came contrary to the Constitution in Articles (64/2nd) - which considered the Council of Ministers resigned in the event of the dissolution of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 13/ federal /2024



Kurdish text

Parliament and continues to conduct daily affairs and (61/2nd) - which specialized the Council of Representatives to monitor the performance of the executive authority and (76/4th), according to which the government cannot exercise its authority without granting it confidence from the Council of Representatives, as well as violating Article (42/I and II) of the Internal Regulations of the Council of Ministers No. (2) of 2019, Which affirmed the powers and functions of the Council of Ministers upon the dissolution of the Council of Representatives by conducting daily matters that cannot be postponed, which would continue the work of state institutions and public utilities regularly, and that the issuance of this decision by a government that is considered resigned and limited powers is a violation of the articles of the Constitution because it changes legal positions and restructures ministries and departments and does not fall within the conduct of the daily business of the government, therefore, the plaintiff requested this court based on the provisions of Article (93) of the constitution to annul Resolution No. (93) of 2022, and charge the defendant fees, expenses, and attorneyship fees. After registering the case with this court No. (13/Federal/2024) and collecting the legal fee for it, and informing the defendant in addition to his position with its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and at the end of the period specified for the answer and based on Article (21/3rd) of the rules of procedure of the court, a date was set for the pleading and the parties were informed of it, in which the court was formed, so the agents of the parties attended and began to conduct the public presence pleading, the plaintiff's agent repeated the following in the petition and the request for judgment thereunder, the defendant's agent

Zainab

Republic of Iraq
Federal Supreme Court
Ref 13/ federal /2024



Kurdish text

replied requesting the dismissal of the lawsuit for the reasons stated in his dated regulation on 7/2/2024, which concluded:

The plaintiff's request is outside the jurisdiction of the court specified under Article (93) of the Constitution, and Article (4) of the Federal Supreme Court Law No. (30) of 2005, Whereas its control focuses on the constitutionality of the laws and regulations in force and not on executive administrative decisions, and there is no basis for the plaintiff's claim from the Constitution and the law, since the decision of the Council of Ministers subject to the challenge stipulates, in paragraph (5) thereof, the continued use of the lands mentioned in the above paragraphs exclusively for the purposes of hospitals or health centers, Thus, his client by his decision (the subject of the appeal) does not prevent the plaintiff from starting the project according to the procedures for implementing the investment license attached to the statement of claim, His client also issued the decision – the subject of the appeal – based on his constitutional powers and duties under Article (80/1st and 3rd) of the Constitution to plan and implement the general policy of the state and issue decisions with a view to implementing laws based on Article (1/7) from the Law of ownership the Government Lands and Buildings No. 3 of 1960, and Article 40 of the Law of Sale and Lease of State Funds No. 21 of 2013, based on the powers vested therein by the Council of Ministers and the Federal Financial Management Law No. (6) of 2019, where the Ministry of Health and Environment indicated to the Council of Ministers in its letter numbered (1422) on 24/3/2021, the presence of a number of health institutions belonging to it in Baghdad and some governorates, built on plots of land belonging to ministries and other entities, which requires the ministry to pay similar wages throughout the construction period and that the sale of these properties to the Ministry of Health

Zainab

Republic of Iraq
Federal Supreme Court
Ref 13/ federal /2024



Kurdish text

based on the law of sale and rent of state funds mentioned above requires large sums of money that the Ministry of Health cannot provide due to the limited resources of the ministry, according to what was stated in the letter of the Ministry of Planning No. (2/8/7967) On 9/4/2018, The health institutions affiliated to the Ministry are also unable to carry out any rehabilitation or reconstruction of these buildings in accordance with the controls of the Ministry of Planning unless there is a fundamental document for the allocation or expropriation of the property assigned in the name of the health institution and the existence of a precedent on this subject in the letter of the General Secretariat of the Council of Ministers No. (28736) dated 25/8/2019 with its accompanying State Council Resolution No. (95) of 2017, Includes (The ownership of the lands wich belonging to the state that built on it school buildings devolves to the Ministry of Education without compensation), With reference to Cabinet resolution No.(60) of 2011, which includes most ministries and entities not associated with a ministry, The government has drawn up a policy and a general plan to adopt the treatment contained in the decision – the subject of the appeal – on all lands duly allocated from the Ministry of Finance or Amanat Baghdad to government ministries as long as the allocation was made in accordance with the law, consequently, the decision (the subject of the appeal) is not contrary to the provisions of the Constitution and the law, the plaintiff also claims that he has an investment license since 2019 and the decision - the subject of the appeal - was issued in 2022, so why did he not implement it during that period, and the court's interpretative decision No. (121/Federal/2022) and its decision No. (235/Federal/2022) stipulated (The Council of Ministers is resigned and continues to conduct daily matters that include taking decisions and procedures that will continue the work of

Zainab



public utilities regularly and the continuity of the continued provision of services to the Iraqi people and do not include decisions that involve reasons Political Influence on Iraq's Future Proposing laws, concluding loans, appointing to senior positions of the state and exempting them or restructuring ministries and departments) Whereas the content of the decision (the subject of the appeal) is not considered one of the above, and is considered one of the decisions necessary for the continued operation of public utilities regularly and permanently for the continued provision of services to the Iraqi people. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and from it the court was formed, and the representative of each party attended, and after the court heard their statements and requests and completed its scrutinies, 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 plaintiff's lawsuit is summarized in demanding a ruling to annul the Cabinet Resolution No. (93) of 2022, which includes approval for the Ministry of Finance to sell the state lands and buildings on which hospitals and health centers are built to the Ministry of Health without allowance based on the Law of Ownership the state lands and buildings No. (3) of 1960 for its issuance from a resigned government that does not have the authority to issue it, In addition to the provisions of Articles (61, 64 /2nd and 76/4th) of the Constitution of the Republic of Iraq for the year 2005, The court finds that the subject matter of the case falls within its jurisdiction provided for in Article 93 of the Constitution the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 13/ federal /2024



Kurdish text

plaintiff also has an interest in filing this lawsuit because he has an investment license to establish an investment project (public hospital). The Ministry of Health occupies part of the property on which he intended to establish his investment project, and with regard to the plaintiff's petition stating that the decision in question was issued by a caretaker government, there is nothing that prejudices the validity of the aforementioned decision because the Council of Ministers continues to conduct the daily affairs of the State when Parliament is dissolved for any reason whatsoever in accordance with the provisions of Article 64/1st of the Constitution, the conduct of daily affairs includes taking decisions and procedures that would continue the work of public utilities regularly and the continuation of the provision of services to the people, and that the sale by the Ministry of Finance and other ministries of land and buildings built on hospitals and health centers to the Ministry of Health is a provision of services to the people and to ensure that health institutions continue to provide services to citizens, because many health institutions in Baghdad and the provinces are built on plots of land belonging to some ministries or occupy buildings belonging to other ministries, and the Ministry of Health is unable to buy those properties or pay similar wages, In addition, selling it to the Ministry of Health without compensation is based on the provisions of Law No. 3 of 1960, as amended, and the Sale and Rent of State Funds Law No. 21 of 2013, And that Resolution No. (93) of 2022, the subject of the appeal, does not fall within the decisions that involve political reasons and motives that have a significant impact on the political, economic and social future of Iraq, and that the caretaker government may not issue daily affairs, Thus, the plaintiff's claim is subject to dismissal and for the above reasons, the Federal Supreme Court decided as follows:

Zainab

Republic of Iraq
Federal Supreme Court
Ref 13/ federal /2024



Kurdish text

First: Reject of the plaintiff's lawsuit Kazem Jabbar Hassan, for lack of prejudice to the validity of the Council of Ministers Resolution No. (93) of 2022.

Second: The plaintiff shall bear the fees, expenses and attorneyship fees of the defendant's agent, the Prime Minister, in addition to his position, the legal advisor Haider Ali Jaber, 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 according to the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq for the year 2005, and articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been made clear on 30/ Rajab/ 1445 AH corresponding to 11/February/2024 A.D.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

Zainab