

Republic of Iraq
Federal Supreme Court
Ref. 195 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/11/2023 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Head of Counter-Terrorism Service/ being in this capacity- his agent is the jurist brigadier Asaad Mohammed Khaleel.

The Defendant: Speaker of the ICR/ being in this capacity- his agent the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed, through his agent, that the plot numbered (3/5630 District 19/Ghazaliya) had previously been allocated, from which the plot numbered (3/6029 District 19/Ghazaliya) had been separated, belonging to the Baghdad Municipality and allocated to members of the Counter-Terrorism Service, according to the approval of the Prime Minister, number (Mim Ra.Waw/Sin/Dal 7/27/1166) on 10/21/2020, where the Committee for Implementing Resolution (168) of 2014 was instructed to complete the procedures and carry out the necessary procedures in coordination with the relevant authorities, and while the procedures for implementing the sorting were in progress, the Baghdad Municipality responded: The Real Estate Department in the letter number (10900) on 7/12/2023 to wait with the procedures for secretion and allocation of real estate secretions (3/6029, District 19 / Ghazaliya), due to the receipt of the letter of the Iraqi Parliament / Office of the President with the number (Mim. Ra/ 1444 on 9/30/2021) which includes the recommendations of the Parliamentary Investigative Committee formed under Parliamentary Order No. (1/7/105) dated 6/21/2021, without right and with illegal procedures, ignoring all the procedures that were taken concerning privatization and fundamental approvals, which led to harming the interests of the service, its legitimate and acquired rights, and the confiscation of the rights of its members, its sacrifices of martyrs and wounded,

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and the heroic and honorable role it played in defending the land of Iraq. Therefore, he took the initiative to appeal before this court the aforementioned parliamentary order and the procedures resulting from it for the following reasons:

1 - The letter of the Council of Representatives and its annex to the order Parliament came in violation of the law and without valid legal support from a formal, objective, and factual standpoint, and in violation of Article (47) of the Constitution regarding the separation of powers. It is an executive measure taken without notifying the competent authorities of the violation and its justifications, and without explaining what legislation and decisions were violated, and it was not supported by the authorities. The competent authority of the Baghdad Municipality was responsible for violating the basic design of the city of Baghdad, as a site inspection was conducted and the borders were established duly. 2 - Parliamentary Order (105) indicated that the formation of the committee came after receiving many complaints from residents of the Bakria area in Al-Ghazaliya, while the complaints themselves were submitted to the competent judicial authority and they were rejected by the courts, and the decisions issued became final because they lost legal support. The parliamentary order was not based on, and Articles (82, 83, 84, and 85) of the Council's bylaws were not taken into account when issuing it. 3- There are no agricultural contracts on the plot allocated to the service, according to the letter (Abu Ghraib Agriculture Directorate, No. 13824 dated 9/13/2018), attached to the service's letter, No. (6/270) dated 1/29/2020, addressed to the General Directorate of Agriculture in Baghdad/Al-Karkh. 4- The Minister of Agriculture obtained approval to lift the hand of agricultural reform from the allocated plot, according to the letter of the Ministry of Agriculture/Legal Department/Lands Department, No. (30282) dated 11/14/2021. 5 - The allocated plot is located outside the boundaries of the irrigation projects mentioned in the outputs of the strategic study of water and land resources in Iraq, and it does not have a water share, according to the letter of the Ministry of Water Resources/Department of Operation and Maintenance of Irrigation Projects, number (9734) on 4/19/2021. 6 - The facilities and plants indicated in the list are for public benefit and not for private benefit, according to the letter of the Agricultural Lands Department, No. (18157) dated 11/11/2021, and referred to in the letter of the Ministry of Agriculture/Legal Department, No. (33082) dated 12/6/2021. 7 - The service did not benefit, in whole or in part, from this allocation

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of the plot of land, and no judicial decision was issued to stop the allocation, so the plaintiff's agent requested this court to rule to cancel the letter of the Iraqi Council of Representatives/Office of the President, No. (Mim.Ra./1444 on 9/30/2021) Attached is the parliamentary order No. (105) dated 6/21/2021, charging the defendant with the legal expenses. The case was registered with this court under the number (195/Federal/2023), and the legal fee was collected for it, and the defendant was notified of its petition and documents in accordance with Article (21/First and Second) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and his agent responded with the answering draft dated 20/ 8/2023, the bottom line is that the court does not have jurisdiction to consider the plaintiff's requests, as the parliamentary order - the subject of the appeal - is an administrative order, the investigative committee was formed based on Article (61) of the Constitution and Article (27) of the Council of Representatives Law and its formations No. (13) of 2018 to monitor the performance of the executive authority by stopping the allocation of plot numbered (3/6029 District 19/Ghazaliyya) due to its violation of the legislation in force and the decisions issued by the Council of Ministers prohibits the conversion of agricultural lands into residential ones, and the committee recommended allocating alternative lands to members of the Counter-Terrorism Service as a deserving and appreciation of the heroic sacrifices they made to defend Iraq, and the matter - the subject of appeal - is within the powers of the Council of Representatives, as Article (35/Fourth)) of the bylaws of the Council of Representatives stipulates ((The Speaker and his two deputies may jointly form temporary committees, investigation committees, and joint parliamentary committees as an exception to the provisions of Article (83) of this bylaw)), so he requested the lawsuit be dismissed. After completing the procedures required by the court's bylaws, a date for the pleading was set in accordance with Article (21/Third) thereof, and the two parties were notified of it. The court was formed and the representative of each party was present and the public pleading process began. After the court heard their statements and requests, it decided to include (the Prime Minister And the Mayor of Baghdad / being in their capacity) and appointed third persons in the case to clarify what was necessary to resolve it. Then, on behalf of the first, his representative, the legal advisor Haider Ali Jaber, appeared and presented the answer statement dated 10/22/2023, which the court reviewed and linked to the case papers, sis agent, the official jurist Saad Abdel

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Anis, was present on behalf of the second, and presented the letter of the Baghdad Municipality/Real Estate Department, number (16145 on 10/19/2023), which the court reviewed and linked to the case papers. After the court completed its clarification from them, it was decided to remove them from the case, and the attorney for each party repeated his previous statements and requests, since there was nothing left to say, the end of the argument has been made clear and the court issued the following decision:

The Decision

Upon scrutiny and deliberation, it was noted that the summary of the claim of the plaintiff, head of the Counter-Terrorism Service, in addition to his job, is the ruling to cancel letter No. (1444) on 9/30/2021 issued by the Office of the Speaker of the Council of Representatives and attached to Parliamentary Order No. (105) on 6/21/2021 for the reasons stated in the lawsuit petition, which was detailed in the introduction to this decision, including the letter No. (1444) of 9/30/2021, the recommendations of the committee formed according to Parliamentary Order (105 of 6/21/2021) to cancel the decisions issued by the Council of Ministers to allocate the plot numbered (3/ 6029 District 19/Ghazaliya) and allocating alternative lands to the Counter-Terrorism Service and charging it with fees and expenses. The court reviewed the list of the defendant's agent, the Speaker of the Council of Representatives, in addition to his position dated 8/20/2023, in which he requested that the case be dismissed for lack of jurisdiction for the reasons stated in the list and referred to above in detail, then the court reviewed the letter of the Prime Minister's Office ((No. Mim.Ra.Waw/Sin/Dal 7/27/1166 on 10/21/2020) containing the allocation of the provinces mentioned in the Counter-Terrorism Service's letter No. (6/8725) on 1/ 9/2020 to the agency in coordination with the relevant authorities)), the court also reviewed the letter of the General Secretariat of the Council of Representatives, No. (1/7/105) dated 6/21/2021, containing Parliamentary Order (105), according to which it was decided to form a parliamentary committee to investigate the sorting and distribution of plots (lands of the Bakriyah/Ghazaliya area) belonging to the district. Al-Mansour in Baghdad. The court also reviewed the recommendations of this committee, which recommended: ((Approaching the Prime Minister to stop allocating agricultural lands and converting them to residential ones based on the decision of the Opinion

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Committee in the Baghdad Municipality No. 5134 on 11/29/2018 and approved by the Mayor of Baghdad in 4/8/2019, which returned the agricultural lands of the plot numbered (3/6029 District 19/Ghazaliya) to agricultural lands according to the basic design numbered (17112) on 5/18/1980 attached herewith when it was allocated to residential through the Investment Authority and finding an alternative to The plot - the orbit of the research - above, and obligating the Municipality of Baghdad and the relevant competent authorities to adopt special Council of Ministers decisions to prevent changing the use of agricultural lands and converting them to residential ones, including Cabinet Resolution of 2016 and Resolution No. 418 of 2019, which specified a mechanism for changing the use of agricultural land to residential, which is outside the limits of the basic design, and Cabinet Resolution No. 185 of 2014, which authorized the Ministry of Agriculture to carry out legal actions on agricultural land, including selling or Renting it or transferring the rights to dispose of it, referring negligent parties to the Integrity Commission and the competent courts, filing criminal cases..., changing the use of agricultural lands to residential ones, and withdrawing the hands of the farmers contracting on these lands..., it constitutes a dangerous societal phenomenon that threatens societal peace, and the Counter-Terrorism Service has great achievements, victories, and sacrifices, and for these heroic stances in serving our dear country, it is necessary to find suitable lands instead of the plot under investigation, in appreciation of their efforts and sacrifices.) The court also reviewed the letter of the Council of Representatives/President's Office, numbered (MOR). /1444) on 9/30/2021, addressed to the Prime Minister, subject to the piece numbered (3/6029, District 19/Ghazalia) containing ((recommendations of the committee formed according to Parliamentary Order (105) on 6/21/2021), and copies of this letter to the Ministry Agriculture Minister's Office to take the necessary action and stop the allocation of the plot, and the violator shall bear all legal consequences, and to the Baghdad Governorate, the Integrity Commission, and the Baghdad Municipality to take the necessary action)), The court also included the Prime Minister / in addition to his job and the Mayor of Baghdad / in addition to his job, as third persons for the purpose of clarifying who sent their agents, as the Deputy Prime Minister responded that his client rejects what was stated in the letter of the Council of Representatives - the subject of the appeal - and what was stated in the parliamentary order, and that this is considered

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Interference in the work of the executive authority (the Council of Ministers), in addition to many interventions by the Council of Representatives in the work of the executive authority. The court also reviewed the list submitted by the third person's representative, the Prime Minister, in the session of 10/25/2023. The court also reviewed the answer of the third person, the Baghdad Municipality. According to the letter numbered (16145) dated 10/19/2023, which was presented by his representative and his statements before this court, which included that the approval of the Prime Minister had previously been obtained by writing numbered (1166) on 10/21/2020, several plots were allocated to the Counter-Terrorism Service following Resolution (168) of 2014, and parts of the above plots were divided into residential plots of different areas (600,400,200) square meters, and they were allocated to those included in Resolutions (168) of 2014 and (254) of 2021, (380) of 2021, and Legislative Order (21) for the year 2005, After that, the letter was received in number (Q/5/107) on 1/9/2022 containing the state order issued by the Karkh First Instance Court, number (5902/Beh/2021) on 12/7/2021 regarding canceling the distribution of the two properties (3/5630/19). Ghazaliyya and 3/6029/19 Ghazaliyah), after which the letter was received in number (Qaf/5/3199) on 3/16/2022 and was attached to the decision of the Karkh First Instance Court, number (5902/grievance/2021) on 3/3/2022, which included the cancellation of the guardianship order. Issued regarding the property (3/5630/19/Ghazalia) and based on the letter of the Council of Representatives No. (1444) dated 9/30/2021 containing the recommendations of the parliamentary investigative committee formed according to Parliamentary Order No. (105) which included stopping the allocation of the plot numbered (3/6029/). District 19/Al-Ghazaliya) The mayor of Baghdad received approval on 10/19/2020 to wait on the matter until the replacement of the piece was decided by the committee formed in this matter. A committee was formed by Administrative Order (4335) on 11/1/2022 to choose a replacement piece, and several pieces were nominated. The topic is currently under study, after All of the above, this court finds that the 2005 Constitution of the Republic of Iraq adopted the principle of separation of powers in Article (47) thereof, which means that each of the legislative, executive, and judicial authorities shall have tasks, powers, and functions that it exercises based on the principle of separation of powers, thus preventing any authority from overstepping or attacking other authorities in this regard and that no authority

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should replace the other in exercising powers and functions that do not belong to it under the Constitution, except This chapter is not a rigid chapter that cuts off the parts of the state, so there is no connection between these authorities. Rather, this chapter is a flexible chapter whose features are defined by the constitution, making there a balance between these authorities, so that no authority is superior to another. For example, it gave the President of the Republic the power to call the Council of Representatives to meet based on Article (54) of the Constitution. He is the one who ratifies the treaties and laws enacted by the Council of Representatives based on Article (73) of the Constitution. He is the one who ratifies the death sentences issued by the courts, the President of the Republic is elected by the Council of Representatives based on Article (61) of the Constitution. The Council of Representatives, in the same article, has the right to approve the appointment of senior positions in the judicial and executive branches as specified therein in detail. The Council of Representatives also has the right to withdraw confidence from the Prime Minister or one of them. Ministers interrogate them to hold them accountable in matters that fall within their jurisdiction following the details set out in the constitutional articles. However, this association and interference by one authority in the work of another authority is not considered legitimate except based on a constitutional authority guaranteed by the Constitution. It is not permissible for any authority to exercise any interference without constitutional support and It has the authority to exercise the powers of other authorities unless the Constitution stipulates that. Regarding the subject of this case, the court believes that although the Council of Representatives has the authority to form committees to research a specific topic, the results of this research and the ongoing investigations must not reach the level of recommendations or orders to the government or its affiliates from ministries, departments, or entities not affiliated with a ministry, the government and its affiliates may not comply with these recommendations or orders, otherwise, both legislative and executive powers will have violated and undermined a feature of the democratic system in Iraq adopted by the 2005 Constitution, that this system is a representative republic according to what is stated in Article (1) of the Constitution, and it is not a system of council democracy in which the council elected by the people exercises both legislative and executive powers, as it is assumed that the Council of Ministers when it gained the confidence of the

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Council of Representatives by approving the names of the members of the ministry, as well as the ministerial curriculum Based on Article (76/Fourth) of the Constitution, he must strive to implement the ministerial curriculum or the so-called government program, all of this under the supervision of the Council of Representatives, based on Article (61/2nd) of the Constitution, and after all that, the Council of Representatives must use the powers contained in Article (61/Seventh) It is the prerogative of every member of the Council of Representatives to direct questions to the Prime Minister or to the ministers through its members, provided that the topics of the questions are within the jurisdiction of the ministers and the Prime Minister, or to raise a general topic for discussion to clarify the government's policy and management by their presence in the Council of Representatives or to question the Prime Minister. The Council of Ministers or Ministers to hold them accountable in matters falling within their jurisdiction, Then the Council has the right, by an absolute majority, to withdraw confidence from one of the ministers after questioning him. The Council of Representatives can also withdraw confidence from the Prime Minister after questioning him, and based on the request of the President of the Republic or one-fifth of the members of the Council of Representatives, as detailed in Article (61) of the Constitution. However, the Council of Representatives has no right to direct the government to do a specific job and obligates it to do so because the responsibility for the government's actions falls on it before the Council of Representatives and it is held accountable based on what it pledged to do when presenting the ministerial curriculum. It is the determinant of the extent of the Council of Ministers' success or failure in implementing the ministerial curriculum. The contents of this curriculum and the Council of Representatives authority to approve it are under Periodic popular oversight of the Council of Representatives when elections are held, given that the people are the source of powers and their legitimacy is exercised through direct public secret ballot and its constitutional institutions based on Article (5) of the Constitution, for all of the above, the court finds that the defendant has exceeded his constitutional limits by issuing Parliamentary Order No. (105) with the number (1/7/105) on 6/21/2021 and has entered into a position that falls within the jurisdiction of the executive authority represented by the Prime Minister, which requires a ruling that it is invalid. Accordingly, based on the above, the court decided the following:

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First: Ruling the invalidity of the parliamentary order issued by the General Secretariat of the Council of Representatives No. (105) No. (1/7/105) on 6/21/2021 and canceling the procedures resulting from it, including the letter issued by the Office of the Speaker of the Council of Representatives No. (M.R./ 1444) on 9/30/2021.

Second: Charge the defendant, Speaker of the Council of Representatives, being in this capacity, with the expenses, fees, and advocacy fees of the plaintiff's representative and head of the Counter-Terrorism Service, in addition to his job, the jurist Brigadier Asaad Muhammad Khalil, an amount of one hundred thousand dinars, to be distributed following the law.

The decision has been issued with majority, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Republic of Iraq Constitution for 2005 and article (5/2nd) of the Federal Supreme Court law No. (30) for 2005 which was amended by the law No. (25) for 2021. The decision has been made clear on 27/Rabea Al-Akhir/1445 Hijri which coincided with 12/November/2023 A.D.

Judge
Jassim Mohammed Abboud
President of the Federal Supreme Court

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