

Republic of Iraq
Federal Supreme Court
Ref. 275 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/2/2023 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 Sulayman Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Representative Uday Awad Khadhim – his agent the Barrister Ayad Abdul Qadir Mohammed.

The Defendants: 1. The Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Shakour.

2. The Secretary-General of the Cabinet/ being in this capacity.

3. Minister of Transport/ being in this capacity – his agents are the official jurists Hala Khaleel Ibrahim and Qassim Bediwi Ali.

The Claim

The plaintiff claimed through his agent that the approval of the Prime Minister had already been obtained in 2013 to transfer the ownership of the presidential yacht (Naseem al-Basra) to the Ministry of Education and Scientific Research / University of Basra and it was allocated for scientific and tourism purposes, and all procedures for transferring ownership were completed and the registration certificate was issued to the owner (University of Basra / Marine Science Center), and after the transfer of ownership, the third defendant issued his letter No. (1518) on

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21/7/2022 requesting the second defendant to re-transfer the ownership of the yacht subject to the lawsuit to the Ministry of Transport. General Company for Shipping, the first defendant directed in the meeting of the Council of Ministers held on 16/8/2022 to form a committee from (Transport University Governorate) to determine the value of the yacht and submit a recommendation to the General Secretariat of the Council of Ministers to gift it to the Ministry of Transport and according to the letter of the General Secretariat of the Council of Ministers / Department of Cabinet Affairs and Committees No. (Shin.Zin.Lam/10/17/29202) on 17/8/2022 and because the directive of the first defendant is contrary to the provisions of the Constitution and has no basis in law, the plaintiff took the initiative to challenge it for violating the Constitution in Article (23/2nd) which affirmed that expropriation is not permissible except for the purposes of public benefit and in return for fair compensation, Article (34/ 3rd) thereof, which obligated the state to encourage scientific research for peaceful purposes because the Marine Science Center is linked to the University of Basra, which is the only specialized center in Iraq and represents an academic scientific research platform on which many research and studies relied, and that the directive of the first defendant was based on the item (2nd) of the Council of Ministers Resolution No. (14) of 2019 regarding the assignment of the General Company for Ports of Iraq to recover the boats from the territorial waters and navigational channels, and that the yacht subject of the lawsuit was located in the port of (Piraeus). Greek) at the time of the issuance of this decision and was withdrawn to the port of um Qasr on 1/11/2010 and is not one of the boats covered by the aforementioned decision of the Council of Ministers, the directive also violated the decision of the Federal Supreme Court No. (121/Federal/2022), which specified the powers of the previous caretaker government, which does

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not include obliging the subsequent government to future obligations, so the prosecutor's deputy asked this court to rule that the Prime Minister's directive in question is unconstitutional. The lawsuit was registered with this court with the number (275/federal/2022) and the legal fee for it was collected in accordance with the provisions of Article (21/1st) of the Court's Rules of Procedure No. (1) of 2022, and it informs the defendants of its petition and documents in accordance with paragraph (2nd) of the same article, and the agent of the first defendant replied with two response lists, concluding that considering the case is not within the jurisdiction of the court, also, the directive came based on what was presented in the Cabinet session by the Ministry of Transport in its letter numbered (1518) on 12/7/2022, so the challenged directive was issued, and after the committee completed its procedures, the subject was presented to the Prime Minister in the fourth session on 24/1/2023, where he directed the formation of a new committee headed by a representative of the Ministry of Finance and representatives of the ministries of (Transport, Culture, Higher Education and Scientific Research) to study resolving the issue of the presidential yacht and investing it properly and submitting its recommendations to the General Secretariat of the Council of Ministers Within (45) days. This order was reached according to the letter of the General Secretariat of the Council of Ministers No. (4470) on 26/1/2023, and thus the challenged directive is canceled by the new directive, and the request to dismiss the lawsuit and charge the plaintiff expenses, fees, and advocacy fees. The third defendant's agent replied with a detailed answering draft requesting that the plaintiff's claim be dismissed for lack of interest in its establishment. After completing the procedures required by the rules of procedure of the court, a date was set for the consideration of the case without pleading based on the provisions of Article (21/3rd) thereof, in which the

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court was formed and the argument proceeded, The court reviewed what was stated in the plaintiff's lawsuit and his requests, as well as the drafts of the first defendant's agent, the draft of the third defendant's agents, and the plaintiff's attorney's list linked to the lawsuit papers, and after the court completed its audits, the end of the minutes has been made clear and the court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focuses on demanding the unconstitutionality of the Prime Minister's directive – being in this capacity in the regular Cabinet session held on 16/8/2022, which includes the formation of a committee headed by the Director General of the General Company for Maritime Transport and the membership of a representative of the Ministry of Higher Education and Scientific Research / University of Basra / Marine Science Center and the membership of a representative of Basra Governorate to determine the value of the presidential yacht (Naseem al-Basra) and submit a recommendation to the General Secretariat of the Council of Ministers to gift it to Ministry of Transport within a maximum of (45) working days starting from the date of issuance of the directive, and the court finds through the examination of the plaintiff's lawsuit and requests that it is focused on demanding a ruling of unconstitutionality of the Prime Minister's directive and since the competences of the court contained in Article (93) of the Constitution of the Republic of Iraq are multiple, and each of them has its own procedures and conditions, which requires taking into account those conditions and procedures when filing the lawsuit, and since the plaintiff's lawsuit is filed in accordance with

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paragraph (1st) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 on monitoring the constitutionality of laws and regulations in force only, without going beyond that to directives, decisions, customs orders and others, so the plaintiff's lawsuit filed in the above form is due to its departure from the jurisdiction of the court. Accordingly, the FSC decided to reject the case of the plaintiff Uday Awad Kadhim for incompetence and to burden him with the expenses and advocacy fees for the agent of the first defendant, the Prime Minister/ being in this capacity, and the agents of the third defendant, the Minister of Transport/ being in this capacity, amount of one hundred thousand Iraqi dinars to be divided according to the law. The decision has been issued unanimously, final, and binding according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. It has been edited in the session dated 9/Rajab/1444 Hijri coinciding with 1/February/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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