

Republic of Iraq  
Federal Supreme Court  
Ref. 60/ federal /media/ 2014



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 16.6.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

### **The Request:**

The presidency of Ninawa Federal Court of Appeal /administrative affair department requested the F.S.C. by its letter No.(3552) on 4.5.2014 to consider the constitutionality of the council of ministers' decision no.(198) of 2011 submitted to it by the letter of the Mousil first instant court no.(9629\2013) on 13.4.2014, which included ((according to the initial lawsuit no.(6929\2013) filed before this court by the plaintiff (dhal.mim.mim.) against the defendants being in their posts requesting in it the appropriation of the house no.(10) that built on part of the property no.(19/4128) district (43) Aljilla Bulbul-Taba according to the council of ministers' decision no(198) of 2011, for the conflict between the mentioned decision with the method of selling the state funds under the law of selling and renting state funds no (21) for 2013 with its amendments which limits selling the non-transfer funds without public auction in specified cases listed in

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article (25) of the mentioned law, as the Iraqi constitution of 2005 stated in article (27) of it ((first: Public assets are sacrosanct, and their protection is the duty of each citizen. Second: The provisions related to the preservation of State properties, their management, the conditions for their disposal, and the limits for these assets not to be relinquished shall all be regulated by law.)), the court heard the statements of the financial minister' agent in the minute of the session dated (10.3.2014) that considering such lawsuits is out of the courts' jurisdiction as it is administrative subject. The decision (198) of 2011 didn't prevent the courts of considering the lawsuits resulting from implementing the mentioned decision. in addition that he didn't answer the court' question about the covering of who is overtaking of the real states occupiers with the provision of the decision by the supervising committees, which it certainly does not achieve the desired justice from the decision with the results of implementing it of wasting the state funds and property, which cannot be treated unless by a law as stated in the constitution, the estimated court can enquire the State real-estate department about the persons that the decision granted them the houses, and do they include powerful peoples or not, do they include forcing overtaking or not, accordingly the advantage of the required justice of achieving save residential home for the middle and poor class in accordance with the legal eligibilities that achieve settlement. For these reasons and others reasons seen by your courts, please to consider the constitutionality of the council of ministers decision no.(198) of 2011)).

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### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the decision was issued according to the provision of the law of selling and renting state funds no (32) for 1986 before the issuance of law of selling and renting state funds no (21) for 2013, as the decision (198) of 2011 is still in force and wasn't repealed within the decisions of the dissolved revolutionary command council that was repealed under article (42/2<sup>nd</sup>) of the law of selling and renting state funds no (21) for 2013 above mentioned, as estimating the price of the flats and houses the subject of the case is done under article (6) of the decision (198) of 2011 by specialized committees under consideration of the real price of the estate, this sale does not take place until all the minutes of the evaluation have been submitted to the Central Committee formed according to the decision of the Council of Ministers taken in its regular session (16<sup>th</sup>) on 8.4.2008, those sales are not considered effective until after the approval of the competent committee, and thus full protection of the state's funds from waste is achieved, and none of these funds are waived without return, accordingly there is no violation to the provision of article (27) of the constitution. for that the court decided to dismiss the challenge, the decision has been issued unanimously and final, issued publicly on 16.6.2014.