



The Federal Supreme Court (F S C) has been convened on 10.5.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Request

The Ministry of industries and minerals/ development affairs consultant office/ requested from the FSC according to its No. (20823) dated on (3.5.2018) what texts: this Ministry send you its best regards: first: the law of mineral investment No. (91) For 1988 (amended) and its instructions treats the following: 1. Provisions of mineral investment for mineral wealth in Iraq (quarries and mines) by implementing scientific methods and wise monitory to secure mineral investment processes. 2. To protect mineral wealth from transgressions and guarantees quality and protecting environment by implementing articles (13, 16, 15) of above-mentioned law. 3. Article 2nd clause (1) of mineral investment law No. (91) For 1988 (amended) indicates to the following (the facility shall carry out (the commission currently) the responsibility of overseeing implementation of this law, and monitory investment of quarries and mines all over Iraq. Also it carry out collecting, categorizing and documenting special information about these activities to encourage, economize and orienting investment. This procedure will guarantees protection of mineral wealth, and protecting environment). 4. Article (4th) clause (1) of mineral investment regulation law No. (91) For 1988 (amended) indicates to the following (quarry and mine materials considered a property for the State. The payments of

investment shall be collected by the commission. 5. The commission has the right of reconsideration in investment payments every two years as listed in article (4/2nd) of quarry instructions No. (1) For 1989 (amended) which issued according the provisions of this law. Therefore, each quarry or mine material has a value in investment payment for one cubic meter, or one ton according to its significance and the nature of its uses. 6. Items of above-mentioned law guaranteed that investing quarry and mine materials according to approved items of investment contracts, these contracts shall be drawn between our commission and the investor, or between concerned governorate and the investor after authorization by our commission according to article (4th and 10th) of the law. 7. Investment law treated the issue of transgressions on mineral wealth by articles (13, 15, 16) of it. Second: previously your honorable Court issued its decision No. (10/Federal/2013) which adjudges by deactivating provisions of articles (13, 15, 16) of mineral investment law No. (91) For 1988 (amended) which related to transgressions, and moved transgression and punishing. Third: by implementing what listed in your above-mentioned decision by Iraqi geological survey commission (one of our Ministry's formations) and concerned governorates led to the following: alif. Impossibility of following transgressors because they used mineral wealth damaging use for environment and mineral wealth because of deactivating the work of aforementioned commission in article (13) above-mentioned, and there is not legal replacement for this article. Beh. Collected amounts from transgressors (after deactivating article (13) are the lowest amounts which paid by the investor legally (according to the items and instructions of the law). Jeem. Investors avoided proceeding a proper investment request, and they headed to transgress the public property. Dal. Lowness of earnings which collected legally from investors (owners of quarries and mines) which goes to the state's treasury. Heh. Materials of quarry and mine which used with transgress. These materials enters in industries without analyzing it by Iraqi geological survey commission to know if it is valid for required industry or not. Fourth: the Ministry has a new law bill for investment regulation of minerals. This new law bill has treated the transgression issue, and it is in the Council of the State. We hope that your Court will approve to reactivate of article (13) for above-mentioned law, till the new law bill issuance. We authorizes sirs (ain.mim.nu)/ geological expert and

(kha.ain.shin.kaf)/ senior legal consultant in the commission for following up, with respect. The request set for scrutiny and deliberation by the FSC, and the Court reached the following

The Decision

After scrutiny and deliberation by the FSC, the Court found that the Ministry of industries and minerals requesting from this Court according to its letter above-mentioned to approve reactivating of article (13) of mineral investment regulation law No. (91) For 1988 which amended by the law No. (13) For 1994, and for the reasons listed in it. After scrutiny by the FSC, the Court decided according to its decision No. (10/Federal/2013) on (12.3.2013) to make articles (13, 15, 16) of aforementioned law – based on challenge against it – are deactivated because they violates the Constitution according to articles (19/5th and 6th and 37, 47, 87) of the Republic of Iraq Constitution for 2005. The FSC finds that article (13) of above-mentioned law which requested to approve reactivating it became deactivated because of the Constitution violation according to its decision aforementioned. The decision which issued from it became decisive and binding for all powers according to provisions of article (94) of the Republic of Iraq Constitution for 2005, and article (5/2nd) of the FSC's law No. (30) For 2005. These decision shall not be reviewed according to the provisions of the Constitution and the law. Therefore, the Court decided to reject the request. The decision issued unanimously on 10.5.2018.