

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 148/federal/media/2018



Kurdish text

The Federal Supreme Court (FSC) has been convened on 9.10.2018, headed by the Judge Madhat Al-Mahmood and the membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Saib Al-Nagshabandi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen, Mohammed Rajab Al-Kubaise and Mohammed qassem Al-Janabi who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (Ain. Ain. Qaf), his agent the attorney (Kaf. Ain. Za).

The Defendant:

1. The Prime Minister/being in this post - his agent the Legal Adviser (Ha. Sad) .
2. The General Director of the Privet Transport Company/being in this post - his agent the Attorney (Mim. Jim. Kaf) .

THE CLAIM:

The agent of the plaintiff claims that on date 30/6/2010 an investment license were issued by Baghdad Governorate Investment Commission to his client that concern the property (46/2010) for establishing deferent tourist facilities (restaurants, gardens, cafes and tourist facilities) in the central reservation of (Abbas Bin Fernas) yard, located before arriving and entering the airport check point. His agent signed the contract with Baghdad Mayoralty_ The Real Estate Department/ Technical Section; the work were proceeded letter on, after the making of the designs, the maps, the quantum chart, the economic feasibility study and contracting with the consulting offices. All the maps and designs were approved by Baghdad Mayoralty, the technical and engineering staffs started working on the project day and night, the product percentage of the investment project exceeded the (25%) of the total investment amount of the yard aforementioned according the attached chart regarding the work achievement issued by Baghdad Mayoralty. After that his client was surprised by the letter no.(1) in (8/11/2010) issued by department of the project resident engineer to

shut down the work until resolving the subject with the Real Estate Department. A letter (which were annulled) issued by the General Commander Of The Armed Forces Office no.(2/2/649) in 15/4/2010; the summary of it is for security necessity deliver this yard to the General Company Of Managing The Privat Transportation. The agent of the plaintiff wondering if this company considers one of the security agencies ? as this company used this order to rent the aforementioned yard to another person unduly.

A decision issued by the Ministers Council no.(360) year 2010 specialized the lands located within the security fence of Baghdad International Airport to the General Facilities of Civil Aviation, not to the General Company Of Managing The Privat Transportation and submitted the discretion of these lands to the approval of the Ministers Council, also the Ministers Council issued decision (190) year 2011, stipulate on (dis-investment) for the lands is in the ownership of the Ministry Of Transport. As these tow decision conflict with the investment code no.(13) year 2006 in article (13) of it stipulates on (any amendments to this law do not entail any retroactive effect to the guaranties and the exemption and rights established by it) .

Also article (33) of the same code stipulate on (any text conflicts with investment code can't be activated) . the agent of the plaintiff adds that upon enquiring the Ministry Of Transport _ the Minister office _ about the ownership fate of this yard, it becomes clear that the yard (the case subject) located in the travelers area of Baghdad Airport its ownership belongs to the Baghdad Mayorality as it showed in latter no.(1309) in 7/2/2011 (annexed) issued by Facilities of Civil Aviation, and in returning to Ministers Council decision no.(360) year 2010, as the FSC issued decision no.(97/Federal/2015) concern the same subject in Al-Najaf Airport.

The FSC insured that it cannot take the land from the investors or canceling the investment approval as this will conflicts with the provisions of the investment code no(13) year 2006. According the letters from Baghdad Mayorality to the Ministry Of Transport _ the Minister office _ in the letter no.(Mim2/1352) in 12/4/2010, and from Baghdad Mayorality to the General Commander Of The Armed Forces Office no.(Shin/84) in 25/4/2010 the aforementioned yard where been invested, and there wasn't any reluctant from any Ministry or department _related_ before signing the investment approval and the work start-up while all the approval of all related department were obtained, knowing that the General Company Of The Privat Transport rented the aforementioned yard to another person after the Minsters Council issued it decision no.(360) year 2010.

The agent of the plaintiff declared that the accomplish that were made by his client is part of his receivables from the investment contract until a decisive decision issued on the subject, the aforementioned decision also conflict with the Law of Governorates Not Incorporated Into A Region no.(21) year 2008 article (31/seventh/3).

The agent of the plaintiff request to give a judge to cancel the following :

1. The Ministers Council decision no.(360) year 2010.
2. The Ministers Council decision no.(190) year 2011.
3. The General Commander Of The Armed Forces Office decision no.(2/2/649) in 15/4/2010.

and returning the investment yard to his client and give him the financial compensation for the financial damage caused to him from making the designs, the maps, the quantum chart, the economic feasibility study and contracting with the consulting offices and engineers and technicians and experts cost nearly (3000000) three million American dollar, and the earnings he lost estimated to (80000000) eighty million American dollar. The agent of the first defendant the Prime Minister/being in this post replied on the case petition the following : the FSC competences mentioned in article (93) of the constitution, and his client (impeached) decisions were been made according to his authorities stipulated in article (80/third) of the Constitution ; therefore it can't be impeached before FSC as it is out of the mentioned court competence , and the litigation can't be directed to his client according to the prevention of article (4) of the Civil Proceeding Code no.(83) year 1969 (amended) and article (6) of FSC bylaw no.(1) year 2005, for the aforementioned the agent of the first defendant request to reject the case for incompetence and litigation.

The agent of the second defendant/being in this post replied on the case petition as the following :

1. His client department is not related with the contract between the plaintiff and Baghdad Mayoralty therefore the plaintiff case should be rejected for litigation .
2. The Ministers Council decision no.(190) year 2011 in 31/5/2010 stipulates on (to put a termination of a contract and the investment of the travelers building and(Abbas Bin Fernas) yard as it considered the property of the Minister of Transport). Therefore the act of Baghdad Mayoralty doesn't have law substantiation as the yard is out of the Mayoralty properties.
3. The two decisions _(360) year 2010 and (190) year 2011 of the Ministers Council and the General Commander Of The Armed Forces Office decisions has been issued for the public interest necessities and the securities necessities.

Therefore canceling those decisions will cause waste and lost in the public found and security breaches as the yard located in sensitive and strategic place.

After registering the case according to clause (third) of article (1) of the FSC bylaw and completing the needed procedures according to clause (second) of article (2) of the FSC bylaw, 9/10/2018 were set to be a date for proceeding. On it the Court convened and the agents of the plaintiff and the defendants attended and started the proceeding in presents and publicly. The agent of the plaintiff repeated what is listed in the case petition and requested to judge by it and

presented a draft on what mentioned by the agent of the second defender and summarize this draft. The agent of the first defendant repeated his answering draft and has no commentary on the draft presented by the agent of the plaintiff this day. The agent of the second defendant request to reject the case for litigation and added that Baghdad Mayoralty give financial compensations to the plaintiff; also the decision grant him the right to tack replacement yard for his project. The agent of the plaintiff adds that the decision issued by the Ministers Council was based on security motivation to reclaim the yard to hand it over to another person , the two parties repeated their sayings. As the case completed its judgment procedures, the end of the proceeding has been made clear, and the Court issued the following decision publicly.

THE DECISION:

During scrutiny and deliberation by the FSC, the Court found that the agent If the plaintiff impeached the decisions issued by the Minister Council no.(306) year 2010 and (190) year 2011 and the letter issued by the General Commander Of The Armed Forces Office no.(2/2/649) in 15/4/2010 (which were annulled). This two decisions ended the investment license which were issued by Baghdad Governorate Investment Commission to his client that concern the property (46/2010) for establishing deferent tourist facilities (restaurants, gardens, cafes and tourist facilities) in the central reservation of (Abbas Bin Fernas) yard, located before arriving and entering the airport check point. The FSC finds that the impeached decisions weren't issued by the second defendant (The General Director of the Privet Transport Company/being in this post) therefore; as the litigation isn't directed to him according to the provisions of article (4) of the Civil Proceeding Code no.(83) year 1969 (amended), the case shall be rejected for the second defendant as the litigation isn't directed to him. From another point the FSC finds that the aforementioned impeached decisions are administration decisions; individual not general, the Law named a reference party to impeach in the unconstitutionality of these decisions, not before the FSC which specified it competence in article (93) of the constitution and article (4) of FSC Bylaw no.(30) year 2005. For the aforementioned the FSC decided to reject the case for the litigation and the competence and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision has been issued decisively, unanimously and obliging according to the article (94) of the Constitution, and article (5/second) of the FSC's law no.(30) For 2005. The decision has been made clear publicly on 9.10.2018.