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The Federal Supreme Court (F.S.C.) convened on 9.2.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The Appellant:

Judge Mohsen Abdul-Jabri/ Judge of the Nasiriyah Investigation Court/ Integrity/ Presidency of the Dhi-Qar Federal Appeal Court.

The contested article:

Article (15/First) of the Law No. 21 of 2013 of the sale and lease of state funds.

The Summary of the appeal:

Through scrutiny, it became clear that the judge of the Nasiriyah Investigation Court specialized in integrity issues in the presidency of the Dhi Qar Federal Court of Appeals is challenging the constitutionality of Article (15/first) of the Sale and Lease of State Funds law No. (21) of 2013, by his regulations dated 11/29/2021 sent to the Federal Supreme Court accompanied by the letter of the presidency of the Federal Court of Appeal of Dhi Qar / Office of the Chief of Appeal No. (8/A/Office/2021/6721 on 1.12.2021), on the occasion of its consideration of the case numbered (73/Qaf 4/2021), related to (the case of an employee of the Property Division in the Directorate of the Municipality of Nasiriyah enters an auction for the purpose of buying a property after the aforementioned department offered it for sale, and when legal measures were taken against the members of the bidding committee for allowing the aforementioned employee to enter the auction for the purpose of

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buying the property in violation of Article (5) of the Personnel Discipline of the state and the public sector Law No. (14) of 1991, which prohibited the employee in item (Fourth) thereof from participating in the auction of the department to which these funds belong, if he is an employee, and when conducting an administrative investigation in the aforementioned case, His recommendations indicated that the employee's entry was in accordance with Article (15/First) of the State Funds Sale and Lease Law No. (21) of 2013, which permitted the employee's entry for the purpose of buying his department's property), and he believes that the employee is charged with a public service and that the funds belonging to his department are entrusted to him As a matter of honesty, and that allowing him to buy these funds is a constitutional violation of the presence of favoritism and being a means of exploiting those funds and opens the doors to financial and administrative corruption and raises suspicion and challenges the integrity of the employee by the bidders, especially since the text of the aforementioned article gave preference to the employee who wants to buy the property offered for sale And for the foregoing, he challenges the constitutionality of Article (15/first) of the Law of Sale and Lease of State Funds No. (21) of 2013, based on the provisions of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) For the year 2005 amended by Law No. (25) for the year 2021.

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the judge of the Nasiriyah Investigation Court, which is competent in integrity issues, is challenging before this court the constitutionality of Article (15/first) of the Law No. 21 of 2013 of the Sale and Lease of State Funds, as amended by Law No. (21) of 2016 which stipulated ((a) Subject to the provisions of Article (12) of this law, the sale of houses, apartments, or

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residential lands whose area does not exceed 300 square meters, which belong to the state, including state funds belonging to endowment offices, shall be announced, with the exception of lands endowed with a valid endowment. or offspring to married state or public sector employees who do not own themselves, their spouses, their minor children, or those who provide for others pursuant to a judicial decision, a house, an apartment, or a residential land independently, and they have not obtained a housing unit or a residential plot of land from the state or associations Cooperative, and the sale takes place between the employees of the one ministry with priority given to the employees of the department to which the houses, apartments or residential lands belong first. If no employee of the ministry or department applies the concerned person or part of it remains, then it is announced again for sale to the state's employees in general. It is indicated in the announcement that if there is no desire to buy from them or part of it remains, it is announced again for sale to all citizens who meet the conditions of ownership. B- The provisions of Paragraph (A) of Clause (First) of this Article shall apply to employees who occupied housing units belonging to certain departments and then were transferred to other departments within the same ministry based on work requirements as long as they occupied that role), as stipulated in Clause (Second). From the same article mentioned above, the retired employee may participate in the auction allocated to all state employees for the sale of residential real estate indicated in paragraph (a) of the item (first) of this article in the event that its conditions are met, but if he is fundamentally occupying the real estate at the time of sale The real estate is treated as the employees of the department to which the real estate belongs in relation to participation in a public auction if it was affiliated with it immediately before being referred to retirement, provided that he pledges in writing to vacate the real estate within a period of (6) six months from the date of the decision to refer the auction to someone else acquiring the final degree, otherwise the real estate will be vacated Forcibly from the competent Directorate of Execution without any further respite). As for Clause (Third) of it, it stipulates (Excluding from the provision of Clause (First) of this Article the common shares in non-separable

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residential real estate, where It is announced that it will be sold to all citizens), and the Federal Supreme Court finds that the statute of appeal did not include the constitutional articles that allegedly violated the text in question, and since Article (3) of the internal system for the conduct of work in the Federal Supreme Court No. (1) of 2005 stipulated that (If a court requests on its own, while examining a case, to decide on the legality of a text in a law, legislative decision, regulation or instructions related to that case, it sends the request with justification to the Federal Supreme Court to decide on it, and this request is not subject to the fee). And the phrase “justified” referred to in the aforementioned text means mentioning the grounds, arguments, and the constitutional text that was violated by the text whose constitutionality is challenged, in the appeal list, and failure to observe this requires rejecting the appeal in form. The Federal Supreme Court: There is no need to address it because it does not violate the principles contained in the Constitution of the Republic of Iraq for the year 2005, especially the principle of (equality) stipulated in Article 14 of it, which stipulates that “Iraqis are equal before the law without discrimination based on gender, race, nationality or origin.” color, religion, sect, belief, opinion, economic or social status), but this equality does not mean that the legal rule applies to all, even those who do not meet the conditions for its application, but rather it applies to those who have the capabilities, conditions and qualifications that enable him to submit Its provisions are without prejudice to the generality and abstraction that this rule must enjoy. A constitution, between employees and citizens who do not have a job capacity. It also distinguished the employees from some of the others, as it preferred the employees of the owning department over other employees in the state departments. It also distinguished between the employees of the owning department by giving preference to the occupant of the property over others, while the retired employee was considered one of the employees of the state. The department owning by virtue of the employee continuing in service if he is an occupant of the real estate, otherwise he is treated as a non-employee, and he also distinguished between the real estate belonging to the departments of the state to be sold, some of them from others, as he excluded from the

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provisions of item (first) of Article (15) of the mentioned law the shares Communal in residential real estate that cannot be separated to announce its sale to all citizens, and there is no violation of the principle of equal opportunities stipulated in Article (16) of the aforementioned constitution, which stipulates (equal opportunities is a right guaranteed to all Iraqis, and the state guarantees taking the necessary measures to achieve this) Because the aforementioned constitutional text authorized the realization of this principle by taking the necessary measures, including the contested text, which also does not conflict with a Provisions of Article (27/First and Second) of the aforementioned Constitution, which stipulates that (First - public funds are sanctified, and their protection is a duty for every citizen. for some of these funds), as long as the text under appeal was among the provisions of the law issued in implementation of the aforementioned constitutional text, in order to protect public funds and state funds in particular, embodied in the Law of Sale and Rent of State Funds No. 21 of 2013, which nullifies the last part. Article (5) Fourth of the Law No. 14 of 1991 on State and Public Sector Employees Discipline, which stipulates that (the employee is prohibited from the following: Participating in auctions conducted by state departments and the public sector for the sale of movable and immovable property if he is legally authorized to ratify on the sale considering the final assignment, or if he was a member of the assessment or sale committees, or took a decision to sell or rent such funds, or if he was an employee in the General Directorate or its equivalent to which these funds belong), especially the phrase (or if An employee in the General Directorate or its equivalent to which those funds belong), since the aforementioned ban was for the purpose of protecting state funds and preventing corruption in its departments in a way that ensures the achievement of the public interest, and that the public interest requires the support of employees with limited income who continue to serve in the State departments who occupy real estate belonging to their departments and enable them to purchase them in accordance with the provisions of Law No. 21 of 2013 on the sale and lease of state funds, even after referring them to retirement and giving them preference over other employees of other

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departments and citizens, to ensure a free and dignified life for public officials and their families during and after service, as they are Of people with limited income, which means that the text of Article (15) of the aforementioned law of sale and lease of state funds is not in violation of the provisions of Articles (14, 16 and 27 / first) of the Constitution of the Republic of Iraq for the year 2005, which requires that the appeal be rejected in form When auditing the provisions of the Law No. 21 of 2013 amended by Law No. 21 of 2016, especially Article (24/Third) thereof, which stipulates (for the competent municipality after the approval of the Minister of Municipalities and Public Works, and for the Baghdad Municipality to sell lands allocated for housing for a real allowance) According to the prevailing prices for similar and neighboring ones, it is estimated by the estimation committee stipulated in this law and without public bidding to Iraqis who do not own a house, an apartment or a residential land independently, and they, their spouses or their minor children have not obtained a housing unit or a residential plot from the state or Housing cooperative societies), the court found that it is necessary to address them for violating the provisions of the Constitution of the Republic of Iraq for the year 2005, especially articles (14, 16 and 27 / first) of it, since the sale, with the approval of the competent minister, without an auction by the competent municipality or the Baghdad Municipality, would harm money and property The real estate state whose duty to protect and maintain falls on all, and there is a reason to override those funds without any right due to the desire to own them contrary to what is required by the public interest, in addition to the aforementioned text is familiar with two constitutional principles (the principle of equality among all Iraqis and the principle of equal opportunities), which are achieved when selling state real estate and public real estate funds by public auction in which all participate, in implementation of the provisions of the aforementioned law of sale and lease of state funds, without suspending their sale on the desire of The competent municipality or the Municipality of Baghdad and the approval of the competent minister without an auction, and saying otherwise would unjustifiably disrupt the provisions of auctions referred to in it, and that this contradicts the constitutional protection of public money

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and state property stipulated in Article 27/Second of the Constitution and the authorization issued by it to the legislator In the embodiment of that protection based on the provisions of the law on the basis of which the aforementioned law of sale and lease of state funds was issued, which requires addressing the text of Article (24/Third) of the aforementioned law of sale and lease of state funds and ruling that it is unconstitutional and cancelled. Article (15/First) of the Sale and Lease of State Funds Law No. (21) of 2013 and addressing the provisions of Article (24/Third) of the Law of Sale and Lease of State Funds No. 21 (21) for the year 2013, the rate mentioned in the original law in sequence (25 / third) and became after the amendment in a sequence (24 / third), which stipulated (for the competent municipality after the approval of the Minister of Municipalities and Public Works, and for the Municipality of Baghdad to sell lands allocated for housing for a real allowance and according to the prevailing prices for similar and neighboring It is estimated by the assessment committee stipulated in this law and without a public auction to Iraqis who do not own a house, an apartment or a residential land independently, and they, their spouses or their minor children, and they have not obtained a housing unit or a residential plot of land from the state or housing cooperative societies) and the ruling Its unconstitutionality and its repeal for violating the provisions of Articles (14, 16 and 27 / first) of the Constitution of the Republic of Iraq for the year 2005, starting from the date of issuance of this decision, and notifying the judge of the Nasiriyah Investigation Court specialized in integrity issues in the presidency of the Federal Court of Appeal of Dhi Qar, and the decision was final and binding on the authorities All based on the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First and 5/Second) of the Federal Supreme Court Law No. (30) of 200 5 Amended by Law No. (25) of 2021, and issued by agreement in the session dated 7 Rajab 1443 AH corresponding to 9/2 2022 AD.

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**Signature of
The president**

Jasem Mohammad Abbood

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