

Republic of Iraq  
Federal Supreme Court  
Ref. 242 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27/12/2022 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, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Waleed Hamza Shukhir.

The Defendants: 1. The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

2. Minister of Construction, Housing, and Public Municipalities / being in this capacity – his agents the official jurists Rusul Kamil Jawad and Haytham Ali Khudhair.

### **The Claim**

The plaintiff claimed in his petition that the defendants issued instructions and controls for the distribution of residential plots to segments of society, including ((political prisoners and detainees, those injured in terrorist operations, military mistakes, families of martyrs, displaced persons, immigrants, civil servants (civil and military), retirees, journalists, people with special needs, widows and divorced women...)) According to the place of birthplace, place of residence of the grantee's relatives, his place of work, or the last ten years he lived in, with the exception of the lawyers, where granting them these lands according to the place of birth only, which violates the Constitution in Articles (14, 16, 19 / 6<sup>th</sup> and 23 / 3<sup>rd</sup> / Alif), which emphasized the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 242 / federal /2022



Kurdish text

principles of equality, equal opportunities, the right of everyone to fair treatment, and ownership anywhere in Iraq, because these instructions affect an important segment of society, including the plaintiff being a lawyer and living in the center of Diwaniyah governorate since 1989, but his hometown is (Sumer district), which deprived him of benefiting and obtaining a piece of land in the center of the governorate, so the plaintiff asked this court, Based on its powers under Article (4/1<sup>st</sup> and 3<sup>rd</sup>) of its law, the ruling to cancel the instructions issued by the defendants regarding the category of lawyers and to join them with their peers from the rest of the community who were granted the right to own property in the workplace, place of residence, last ten years in which he worked or his place of birth. The lawsuit was registered with this court with the number (242/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1<sup>st</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendants were informed of its petition and documents following item (second) of the same article, and the agent of the first defendant replied with the reply list dated 14/11/2022, the conclusion of which is that the court does not have jurisdiction to hear the case in accordance with Article (93/1<sup>st</sup>) of the Constitution and that the controls for allocating residential plots are the subject of the challenge, Sent to the Ministry of Municipalities and Public Works by the letter of the General Secretariat of the Council of Ministers No. (20092) dated 25/9/2013, which was circulated by it to the governorates in its letter No. (4263) dated 7/10/2013 highlighted by the plaintiff, Article X of it stipulates (according to the margin of amending the text indicated by the Prime Minister to include segments of syndicates that have a certified internal system that requires the cooperation of the state with them, such as lawyers, teachers, engineers...) According to his office's letter No. (9656) dated 21/8/2013

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 242 / federal /2022



Kurdish text

for ratification The recommendations and controls related to the allocation of residential plots accompanying the letter of the Ministry of Municipalities and Public Works No. (2175) dated 27/5/2013 after making the amendments indicated by him on it, the plaintiff's lawsuit is unsupported by law and is useless against his client, so he asked this court to dismiss the lawsuit and charge the plaintiff the expenses and advocacy fees. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff attended in particular and the defendants' attorneys attended and the public pleading began, the plaintiff repeated what was stated in the lawsuit petition and requested a judgment according to what was stated in it, The agent of the first defendant replied and requested the dismissal of the lawsuit for the reasons stated in the reply list linked to the case papers, and the agent of the second defendant replied by highlighting a reply list, the first paragraph of which included his request to dismiss the lawsuit in formal terms because it does not fall within the competences of the court specified under Article (93/1<sup>st</sup>) of the Constitution, he added that the controls for the distribution of land include all syndicates, including the Journalists Syndicate, and have equalized all syndicates with all their professional affiliations, including journalists and lawyers, according to what was stated in the Prime Minister's letter No. (6184) on 26/4/2015, and each party repeated its previous statements and requests, and where there was nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision:

*saady*



### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff, lawyer Walid Hamza Shakhir, claimed in his petition that the defendants (the Prime Minister, the Minister of Construction, Housing and Public Municipalities / in addition to their functions) issued instructions and controls for the distribution of residential plots to segments of society, including (prisoners, political detainees, those injured in terrorist operations, military mistakes, families of martyrs, displaced persons, migrants, civil and military employees, retirees, journalists, people with special needs, widows and divorced women). According to the place of birthplace, place of residence of the relatives of those covered by the grants, his place of work, or the last ten years in which he lived, except the lawyers, where granting them these lands is according to the place of residence only, which violates the Constitution in Articles (14, 16, 19 / 6<sup>th</sup> and 23 / 3<sup>rd</sup> / Alif), which emphasized the principles of equality and equal opportunities, and the right of everyone to fair treatment and ownership anywhere in Iraq, and because these instructions affect an important segment of society, including the plaintiff being a lawyer and living in the center of Diwaniyah Governorate since 1989, but his hometown is the district of Sumer, which deprived him of benefiting and obtaining a piece of land in the center of the governorate, so he asked this court, based on its powers under Article (4 / first and third) of its law, to cancel the instructions issued by the defendants regarding The segment of lawyers and their attachment to their peers from the rest of society who were granted the right to own property in the workplace, place of residence, or the last ten years in which he worked or his hometown. This court finds that its competences, functions and powers have been

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 242 / federal /2022



Kurdish text

contained in Articles (52/II and 93) of the Constitution of the Republic of Iraq of 2005, as well as in Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it does not include within its competencies the requests contained in the aforementioned lawsuit petition, so the plaintiff's lawsuit loses its legal basis and must be dismissed for lack of jurisdiction, so the Federal Supreme Court decided to dismiss the plaintiff's lawsuit, Walid Hamza Shakhir, and hold him accountable. Judicial expenses, including attorney's fees, the agent of the first defendant, the legal counsel Haidar Ali Jaber, and the second defendant, in addition to his position as attorneys, the legal counsel Haitham Ali Khudair and the human rights employee Russell Kamel Hafiz, an amount of one hundred thousand dinars to be distributed between them in accordance with the law. The decision has been issued unanimously, final, and binding for all authorities 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. The decision has been made clear on dated 3/Jamada Al-Akhir/1444 Hijri coinciding 27/December/2022 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

*saady*