

Republic of Iraq
Federal Supreme Court
Ref. 268 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 22/1/2023 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, Abdul Rahman Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Ph.D. Wael Abdul Lateef Hussein.

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

2. The Minister of Finance/ being in this capacity.

3. The Director-General of State's Real Estates/ being in this capacity.

The Claim

The plaintiff claimed in his petition that the first defendant issued Resolution No. (300) of 2015, according to which the rent allowances were arbitrarily assessed in relation to properties located in the Green Zone and the Ministers' Complex in Qadisiya, and dealt in the third paragraph thereof with the subjection of tenants to the Law on the Sale and Rent of State Funds No. (21) of 2013, but he returned and recorded this again in a special schedule for the Green Zone according to the area only without taking into account the provisions of the said law, which confirmed the procedure for disclosing the money Immovable to determine its number, location, classification, type, boundaries, descriptions, inclusions and area, the period specified for this decision expired in 2018 and then its application was extended by the Prime

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Minister's Office in its letter No. (4000/2292648) on 2/6/2022, and because this decision and its extension violated the provisions of the Constitution and Law No. (21) of 2013, as it equated the property with an area of (100 m²) and the property with an area of (400 m²), and also between the property with an area of (400 m²) and the property with an area of (600 m²) without taking into account the requirements and provisions of the Law on the Sale and Rent of State Funds, this dealing with the orders and decisions of the Prime Minister intersects with the provisions of the Constitution in Articles (14, 16 and 127) thereof, which affirmed that Iraqis are equal before the law and that equal opportunities are right guaranteed to all of them, but the first defendant has owned some residential houses in the Green Zone and obligated others to pay simple installments of the rent allowance and dealt with the third section by paying amounts exceeding (four million) Iraqi dinars, and the Federal Supreme Court has addressed all these violations in the reasons for its decision No. (48/Federal/2019) on 31/7/2019, but the second and third defendants did not implement the court's decision. Therefore, the plaintiff requested this court to rule on the unconstitutionality of Resolution No. (300) of 2015 and extend it by No. (4000/2292648) on 2/6/2022 and to issue a state order to suspend all procedures taken by the defendants until the lawsuit is resolved. The lawsuit was registered with this court with the number (268/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1st) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022 and the defendants are informed of its petition and documents based on item (2nd) of the same article, and for the lapse of the period stipulated in the aforementioned item without receiving the defendants' answer, the court set a date for the pleading in accordance with Article (21/3rd) thereof, and the parties shall be

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informed of it, on the appointed day, the court was formed, and the plaintiff did not attend, and the first defendant's attorney attended, and the second and third defendants or their agents did not attend, despite the notification in accordance with the law, and the public in presence pleadings was initiated, the first defendant's agent replied requesting that the lawsuit be dismissed because the plaintiff's request to rule on the unconstitutionality of a cabinet decision was outside the jurisdiction of the court, the plaintiff and the first defendant's agent repeated their previous requests and statements, whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

The decision:

Upon scrutiny and deliberation by this court, it was found that the plaintiff (Wael Abdul Latif Hussein) had claimed that the first defendant (Prime Minister / in addition to his position), had previously issued Resolution No. (300) of 2015, according to which he estimated the rental allowances in real estate located in the Green Zone and the Ministers' Complex in Qadisiyah in violation of the provisions of the Law on the Sale and Rent of State Funds No. (21) of 2013, and the period specified for the aforementioned decision expired in 2018 and the Prime Minister's Office issued His letter No. (2292648) on 2/6/2022 extending the aforementioned decision of the Council of Ministers, and since the aforementioned decision and the letter issued to extend it intersect with the provisions of Articles (14, 16, and 127) of the Constitution, therefore, he requested to judge with its unconstitutionality. After careful consideration by this court of the plaintiff's request, which includes the ruling of unconstitutionality of Resolution No. (300) of 2015 and its extension letter No. (2292648)

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issued by the Prime Minister's Office on 2/6/2022, the court finds that the plaintiff's request according to its wording contained in the petition is outside the jurisdiction of this court because the constitutional control prescribed for the Federal Supreme Court extends to the laws and regulations in force only following what is stated in item (1st) of the Article (93) of the Constitution of the Republic of Iraq for the year 2005 and item (first) of Article (4) of the Federal Supreme Court Law No. (30) for the year 2005, as amended and clause (2nd) of Article (18) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 does not extend to considering the constitutionality of decisions or procedures issued by any of the authorities, including decisions issued by the Council of Ministers, and this is what the judiciary of this court has settled on in many of its decisions, so the plaintiff's lawsuit is lacking its constitutional and legal basis and must be dismissed for lack of jurisdiction. For all of the above, and with the request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Wael Abdul Latif Hussein) and to charge him the fees, expenses, and advocacy fees of the defendant's agent, the Prime Minister/ being in this capacity, the legal adviser Haider Ali Jaber, an amount of one hundred thousand dinars. The decision has been issued unanimously according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and article (4) 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 29/Jamada Al-Akhir/1444 Hijri coinciding 22/January/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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