

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

Republic of Iraq  
Federal Supreme Court  
Ref. 28/federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 27/5/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff : Minister of reconstruction, housing and public municipalities/ being in this post – his agents the legal officers Ahmed Awad Kazem and Falah Mohammed Musa.

The Defendant: the Speaker of the parliament/ being in this post – his agent the legal advisor Haytham Majid Salim.

### The Claim:

The agent of the Plaintiff has been claiming before the F.S.C. in the case No.(28/federal/2019) and according to the provision of article (4) of the F.S.C. law No.(30) for 2005 (1<sup>st</sup> and 2<sup>nd</sup>). We show your honorable court the following:

1. The letter of the general secretariat of the Council of Ministers (Qaf/2/16041) was received on (2/5/2018) with its attachment (the law of protecting the teachers, lecturer, supervisors and educational counselors).
2. After studying the content and tenor of the mentioned law, we replied the General Secretariat of the Council of Ministers has by our letter No.(4196) on (30/9/2018) which included that (the name and content of the law is contrary to the content of article (6/1<sup>st</sup>) text, as it is aimed at all that would protect that segment, therefore the allocation of the plot contradicts the reasons for the legislation of the law, moreover, the municipal institutions are self-financed, and that obliging it to allocate a plot will burdens it, especially more than (60%) of these institutions suffer from the fiscal deficit, as it carry out their tasks in the light of the allocation of annual grants from the public treasury, also this segment was and still one of the segments covered by the allocation for the applicability of the description the public service, and that the segment of employees are from the segments covered by the allocation from year 2005 until now.
3. The General Secretariat of the Council of Ministers/ the legal department has replied with its letter No.(Qaf/2/35122) on (9/10/2018) which include the possibility of challenging the text of the article (6) of the mentioned law before your honorable court according to the text of article (93/3<sup>rd</sup>) of the constitution.

4. We replied the General Secretariat of the Council of Ministers, by our litter No.(3634) on (11/12/2018), which include that no case shall be institute before your esteemed court, because your court accepts the consideration of cases when the subject matter is contrary to a constitutional text. The General Secretariat of the Council of Ministers/ the legal department/ replied/ with its letter No.(Qaf/2/44713) on (25/12/2018), which stated that the subject is related to cases arising from the implementation of federal law according to what listed in paragraph (3<sup>rd</sup>) of article (93) of the constitution and that our opinion referred to above is wrong to appraise, the General Secretariat of the Council of Ministers confirmed in its mentioned letter the possibility of instituting a lawsuit before your esteemed court. For what mentioned above. The agent of the plaintiff requested the F.S.C. to obligate the defendant to revoke the mentioned law for the reasons and justifications that where listed above, and to burden the defendant all the expenses and advocacy fees. The agents of the defendant replied on the case petition with the answering draft dated on (5/5/2019) stating that the agent of the plaintiff did not mentioned the constitutional text which he claimed that the law is violating, also the agent of the plaintiff pointed out in paragraph (2) of the case petition to the conflict between the text of article (6/1<sup>st</sup>) of the law the subject of the case with the reasons for the legislation of the law, we clear that the conflict between the text of the law is out of the F.S.C. jurisdiction that was stipulated in article (93/1<sup>st</sup>) of the constitution. The agent of the plaintiff refer in paragraph (3) of the case petition to the letter of the General Secretariat of the Council of Ministers about the possibility of challenging the text of the article (6) of the law before your honorable court, then he concludes his case by requiring the defendant to repeal the law the subject of the case, which requires

that the plaintiff's agent should limit his case. As the text or the law the subject of appeal came as legislative choice for the I.C.R. according to the provisions of the article (61/1<sup>st</sup>) of the Constitution in the legislation of federal laws, and does not constitute a financial burden as the agent of the plaintiff claimed. Therefore, for the mentioned reasons he requested the F.S.C. to reject the case and to burden the plaintiff the expenses and advocacy fees. After completing the notification the court set an appointment to processed with the case, on that date the court convened and attend for the plaintiff his agent the legal officers Falah Mohammed Musa according to his power of attorney that is linked to the case files, the agent of the defendant also attend according to his power of attorney that is linked to the case files, and proceed with the case in presence and publicly, the agent of the plaintiff repeated the case petition and requested to judge according to it, and to burden the defendant all the expenses and advocacy fees, the agent of the defendant repeated what listed in the answering draft dated (5/5/2019) and requested to reject the case and to burden the plaintiff all the expenses and advocacy fees. And where nothing left to be said the argument is closed and the decision is issued publicly.

### The Decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff the Minister of reconstruction, housing and public municipalities/ being in this post challenged in his case that the law No.(8) for 2018 (the law of protecting the teachers, lecturer, supervisors and educational counselors), for the claim of that the

provision of article (6/1<sup>st</sup>) of it which requires him/being in this post to allocate a plot of residential land for the teacher and the lecturer and the supervisor and the educational counselors, is conflict with the reasons of legislating the mentioned law, which rule to protect that segment. The F.S.C. found that the existence of a conflict between the article (6/1<sup>st</sup>) of the mentioned law with its legislation reasons, and requesting the F.S.C. to revoke it fully, its consideration is out of the court jurisdiction which is stipulated in article (93) of the constitution and article (4) of the F.S.C. law No.(30) for 2005. Accordingly the court decided to reject the plaintiff case, and to burden him the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars, the decision has been issued decisively and unanimously according to article (94) of the Constitution, and article (5) of the F.S.C. law, and issued publicly on 27/5/2019.