

Republic of Iraq  
Federal Supreme Court  
Ref. 34 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17/5/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, 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: Basim Khaza'al Khashan (Member of the ICR)/ his agent the Barrister Ahmed Saeed Mousa.

The Defendants: 1. The Prime Minister Mustafa Abdul Lateef Mushatat/ being in this capacity – his agent the legal counselor Hayder Ali Al-Sofi.

2. the Minister of Electricity/ being in this capacity – his agents the Director-General of the legal department Mohammed Hameed Majeed and the official jurist Anmar Ayad Hameed.

### **The Claim**

The plaintiff claimed through his agent that based on the letter of the office of the Prime Minister in the number (3010/2290099) dated 9 January 2022, Prime Minister Mustafa Abdul Latif Mushatat agreed to sell plots of land, at the site of the Al-Sarafiya belonging to the Ministry of Electricity to the Undersecretary and a number of employees, and that his approval to sell these items violates the daily business limits of his Government, which is considered to be resigning from the date of the dissolution of the Council of

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Representatives on 7/10/2022, which is a violation of the Constitution and a constitutional oath, and therefore the plaintiff's request From the Federal Supreme Court to overturn the approval of the first and second defendants to sell the aforementioned plots of land and all procedures taken by the Ministry of Electricity based on this approval which exceeds the jurisdiction of daily affairs conducting government. The case was registered with this court in number (34/Federal/ 2022) and the legal fee for it was collected in accordance with article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005, and the defendants are informed of its petition and documents in accordance with the provisions of the article (2/1) From the same Bylaw above-mentioned, the agent of the first defendant (Prime Minister Mustafa Abdul Latif Mushatat/ being in this capacity) replied to the answering draft dated 30 March 2022, the conclusion of which is that what the plaintiff requested is considered outside the jurisdiction of the Federal Court. Supreme, defined by article 93 of the Constitution and article (4) of its law, in addition to the lack of conditions to be met, namely the interest and the damage provided for in articles (6/2<sup>nd</sup> and 3<sup>rd</sup>) of the Bylaw of Court No. 1 of 2005, the plaintiff did not indicate the legal basis and constitutional article proving his claim, and he missed that the Council of Ministers continues to conduct the daily affairs of the State until the formation of the new government, and the decisions and actions that may be taken under the caretaker government set out in the article (42/2<sup>nd</sup>) of the Bylaw of the Council of Ministers No. (2) of 2019 but rather to the Prime Minister to exercise his responsibilities and functions authorized under the Constitution and the legislation in force as the direct executive officer of the State policy based on the provisions of article (78) of the Constitution and to take action that would continue

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the work of state institutions and public facilities regularly. Moreover, the prime minister's approval of the sale of residential plots came provided that they are conducted in accordance with the sales procedures stipulated in the State Funds Sale and Lease Law No. (21) of 2013, i.e. the Ministry of Electricity is concerned with following the procedures stipulated in the said law in accordance with the powers of the Minister of Electricity as the competent minister under the provisions of article (2) of it, which stipulates (it is not permissible to sell or rent state funds, unless the competent minister or president decides The entity not associated with the Ministry or who is authorized by either of them, to sell or rent it, when the public interest is achieved, to specify in the decision the types, descriptions and quantities of funds to be sold or rented) therefore the prime minister's approval came in accordance with the provisions of the Law on the Sale and Rent of State Funds, and for all the reasons given in the formal and objective request for dismissal and the plaintiff's shall burden fees and advocacy fees. The second defendant agent (minister of electricity/ being in this capacity) replied in the answering draft dated 10 April 2022 its conclusion that the land in question is owned by the Ministry of Electricity for a long time and according to the real estate bonds attached to the regulation and located in a residential area and not exploited by the ministry and not included in the plan of future expansions of the Ministry from time to time due to the abuse of some outlaws who tried and for many times to seize and exploit it and achieve material profit through it, but the Ministry of Electricity has been Provide protection against any abuse, the Prime Minister's State was corresponded by the letter number (42598) on 16 September 2021 regarding the Ministry's request to own these plots as an exception to the provisions of

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paragraph (8) of Cabinet Resolution No. (5) 4) for the year 2009, the allocation of plots of land to ministers, deputy ministers and private grades in appreciation of the efforts of the ministry's advanced cadres in increasing the production of electricity in addition to working around the clock in dealing with the damage to the electric power transmission towers due to the fierce terrorist operations that targeting the ministry's infrastructure, noting that all those on the list did not receive any plots of land during their tenure in charge of the Ministry of Electricity, therefore; the Prime Minister's approval of this was obtained by the Prime Minister's Office letter (3010/2290099) on 9 January 2022 to own these plots for advanced cadres, to be sold in accordance with the procedures contained in the Sale and rent of state funds No. (21) for the year 2013 amended, i.e. the sale is in real allowance, and then the Ministry transferred the approval of the Prime Minister's State to the Secretariat of Baghdad for the purpose of completing legal procedures on changing the use of these lands in accordance with the laws and instructions governing these matters and this indicates the keenness of the ministry and the integrity of its intention in accordance with the legal contexts as evidenced by the fact that the issue is still in Mayoralty of Baghdad to this date. Accordingly, the agent of the second defendant judge by rejecting the case of the plaintiff and let the Ministry resume its procedures of ownership according to the law and burden him with all the fees, expenses, and advocacy fees. After completing the procedures stipulated in the rules of procedure of the Federal Supreme Court mentioned above, a date was set for the case in accordance with article (2/2<sup>nd</sup>) of it, and the parties were informed, and on the appointed day the court was formed, and the prosecutor, in particular, Bassem Khazal Khashan, a member of the Council of

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Representatives and his attorney, Ahmed Said Musa, attended for the first defendant (Prime Minister/ being in this capacity) his agent, Legal Counsel Haidar Ali Jaber, and attended for the second defendant, the Minister of Electricity/ being in this capacity as Director-General of the Legal Department, Mohammed Hamid Majid and the public in presence argument proceeded. The plaintiff and his agent repeated the petition and requested to judge according to it, and the first defendant's agent answered and requested a dismissal of the case for the reasons contained in his answering draft of 30 March 2022, the second defendant's agent responded and requested that the case be dismissed from his client for the reasons contained in his answering draft of 10 April 2022, and the agent of each party reiterated his previous statements and requests, and whereas nothing 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 the Federal Supreme Court, it was found that the plaintiff brought the case before this court against the defendants (the Prime Minister and the Minister of Electricity/ being in their capacity) requesting the ruling to revoke the approval of the first and second defendants to sell the plots, located at the Al-Sarafiya site belonging to the Ministry of Electricity to the Undersecretary and a number of employees, where the approval of the first defendant, the Prime Minister/ being in this capacity, was issued under the letter numbered (3010/2290099) issued by his office on 9 January 2022, and the plaintiff considered that this Consent is a violation of the Constitution and a constitutional oath. Upon scrutiny, it was found that the plaintiff must have an interest in the prosecution

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and that the decision issued should be influential in its financial, legal, or social status, where article (6) of the article (6) of the Bylaw of the Federal Supreme Court No. (1) of 2005 stipulated that ((the plaintiff in the subject of the case should have a direct and influential case interest in his legal, financial or social status)), as well, Paragraph (6<sup>th</sup>) of the same article stipulates (that the text to be repealed must have actually been applied to the plaintiff or is intended to be applied to it), since the interest is a basis for accepting the case and that the constitutional proceedings are present and non-existent, because the purpose of the constitutional action is to achieve judicial protection of constitutional rights and no one can use this right unless it has an interest in its initiating, and there is no interest in the case that the law challenged by its constitutionality does not apply to the plaintiff does not affect his rights and does not affect him in any way. Therefore, while the plaintiff has no interest in initiating the case, it should be rejected. The FSC decided to reject the case of the plaintiff (Basim Khaza'al Khashan) and to burden him with the fees, expenses, and the advocacy fees for the agents of the defendants, each of the legal counselor Hayder Ali Jaber the agent of the Prime Minister/ being in this capacity and the official jurists Mohammed Hameed Majeed the Director-General of the legal department and Anmar Ayad Hameed the agents of the Minister of Electricity/ being in this capacity amount of one-hundred thousand Iraqi Dinars, to be divided between them according to the law. The decision has been issued unanimously, decisive, and binding for all powers according to the provisions of the article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for

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2021. The decision has been made clear on 15/Shawal/1443 Hijri  
coinciding 17/May/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abbood**