

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court

(Emblem)

(Kurdish Text)

Ref: 4/Federal/Media/2017

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The Federal Supreme Court has convened in 7.3.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Mekaeeel Shamshon Qis Qourqis , Hussain Abbass Abo Al-timen and Mohamed Rajeb Al-kobaese who are authorized to judge in the name of the people and it issued the follow decision:

The Plaintiff: Minister Of Municipalities And Public Works/being in this post, her agent's the legal official (Hae'. Aeen. Ha'. Meem.) and (Alf. Aen. Kaf.).

The Defendant: Head Of Thekar Province Council/being in this post, his legal official (Fa'. Hae'. Aen.) and (Noon. Noon. Kha').

#### THE CLAIM:

The agents of the plaintiff claims that The Head Of Thekar Province Council issued it decision no.(59) in 7.10.2015 included giving the possession to those whom took the government and municipalities lands that situated within the basic designs of the cities illegally. According to the authorities given to him by article (7/third) of Governorate Not Incorporated Into A Region Code no.(21) year 2008. That decision include a clear violation to the Federal Laws Provisions among them the violation to the Dissolved Revolution Leadership Council decision no.(154) that started to activate the complains against the transgressors, while the impeached decision stipulate on canceling all the legal procedures enacted previously. The plaintiff party also see that the impeached decision violate a letter issued by the HJC on 21.8.2013 included that the Municipalities possibility to direct the law provisions violators to the specialized Courts. The plaintiff also claims another violation exist which is its violation to the Code Of Selling And Renting Stats Funds no.(21) year 2013 that stipulate on that to sell any of the State Funds should follow the legal procedures stipulated by the Law, the plaintiff added that there is a violation to some letters issued by the Ministers Council; as the impeached decision violate the Constitution and Laws and giving the possession to those whom took the government and municipalities lands that situated within the basic designs of the cities

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illegally establish a dangerous principle is to reward the transgressors on the Stats Funds.

The plaintiff request to compel the defendant/being in this post to cancel the decision no.(59) year 2015.

After completing the required legal procedures stipulated on article (2) of the FSC Bylaw no.(1) year 2005 a date 7.3.2017 appointed as proceeding day; on it the Court convened, the agents of the plaintiff attended and repeated their request and saying, the agents of the defendant attended and repeated what is listed in the answering draft and request to reject the case for the rezones they mentioned in the draft.

The two parties repeated their saying, where is nothing left to say the end of the proceeding announced and the decision made clear.

#### THE DECISION:

In the deliberation and discussion the FSC found that the defendant Head Of Thekar Province Council/being in this post issued it decision no.(59) in 7.10.2015 included giving the possession to those whom took the government and municipalities lands that situated within the basic designs of the cities illegally. According to the authorities given to him by article (7/third) of Governorate Not Incorporated Into A Region no.(21) year 2008. The plaintiff Minister Of Municipalities And Public Works/being in this post claims that the impeached decision include a clear violation to the Federal Laws Provisions among them the violation to the Dissolved Revolution Leadership Council decision no.(154) that started to activate the complains against the transgressors, also it consider a violation to the Code Of Selling And Renting Stats Funds no.(21) year 2013 that stipulate on that to sell any of the State Funds should follow the legal procedures stipulated by the abovementioned Law. While the agents of the plaintiff insured that the impeached decision violate the Constitution but it surly violate the Law, as the FSC insured that the impeached decision is an administrative decision that is out of this Court competence, also the Governorate Not Incorporated Into A Region Code no.(21) year 2008 restricted the competence of this Court regarding the applying of the Governorate Code no. (28) year 2008 restricted in article (31/eleventh/3) of it; that give the power to the Governor to direct the Governorate

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Council decision impeached by the Governor when the Governorate Council insist on its decision or if the Council amend it without removing the violation marked by him to the FSC to judge in it and what came in the aforementioned is restricted in the Governorate Not Incorporated Into A Region Code no.(21) year 2008. So the hearing in the plaintiff request is out of the FSC competence. According to that the plaintiff case lost its legal proof, therefore the Court decided to reject the plaintiff case and burden the plaintiff/being in this post the expenses of the case and the fees of the agents of the defendant amount of (100000) one hundred thousand Iraqi dinar to be divided among them in half. The decision was made with unanimous agreement according to article (94) of Constitution and article (5) of the FSC Bylaw no.(30) year 2005 and made clear in 7.3.2017.