

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 60/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 7.6.2015 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 Request:

The governorate of Al-Najaf/ the legal affairs has requested the F.S.C. by its letter No.(qaf/70) on (28/5/2015) the following:

After the issuance the law of sale and rent of state funds No.(21) for 2013 and according to its provision the Ministry of Municipalities and Public labors/ public municipalities directorate has issued the ministerial order No.(beh. Kaf./sin/196) on (21/1/2014) which include formation the committee of estimating and selling for movable and immovable funds that are belong to the municipalities institutions in the governorates and to authorize the Governors in the mentioned ministerial order the power to approve on the rental

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estimation minuets, and to approve the minuets of the rent committee and the referral, as for the estimation of sale minuets they are presented to the ministry the subject of the case, therefore our governorate has approached the ministry of municipalities and public labors by our letter No.(10) on (4/2/2014) and requested to re-consider the mentioned ministerial order, and that these committees shall be formed by the governorate and not by the ministry in accordance with the law and to achieve public interest, but the ministry by its letter No.(18876) on (29/5/2014) insist on implementing its ministerial order the subject of the case, after that an address between our governorate and the ministry about the same subject was included by our letters No.(51) on (18/6/2014) and No.(qaf/99) on (16/2/2014) and the ministry letter No.(30649) on (8/9/2014), and No.(5480) on (16/2/2015), and No.(15947) on (23/4/2015) but the results are the same were the ministry didn't approve on that order, therefore we presented the subject before your estimated court to adjudicate in it according to the stipulated jurisdictions of your court in article (93) of the constitution, for the following reasons:

1. The mentioned ministerial order is contradict with principal of the administrative decentralization that is stipulated in the constitution of the Iraq republic for 2005 specifically in paragraph (2nd) of article (122) of it which stipulated that governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, paragraph (8th) of article (31) of the amended law of governorates that are not incorporated in a region

No.(21) for 2008 has granted the Governor the power to take administrative and legal procedures against the state employees who are working in the governorate in accordance with their laws, and authorize the power of the competent minister, on the other hand according to article (24) of the mentioned governorates law the Governor is the superior executive president in the governorate, therefore is it possible to form such committee without his approve, knowing that the committees the subject of the case from (2003) till the issuance of the law of sale and rent the state funds No.(21) for 2013 was formed by the governor according to its stipulated powers.

2. The ministerial order the subject of the case violate the content of article (45) of law of governorates that are not incorporated in a region has obliged the higher coordination committee in paragraph (1/1st) of it to transfer the sub-directorate, units, jobs, services, jurisdictions that are practiced by the mentioned ministries in this paragraph including the ministry of municipalities and public labors with the allotments allocated to it from the general budget with the worker employees to the governorates, also paragraph (5/1st) of article (45) has ensure that the mentioned committee shall accomplish its stipulated tasks in paragraph (1) within two years from the date that this law became in force, in case that these tasks was not accomplished then these jobs consider as transferred according to law.
3. Therefore for the aforementioned as the subject that the committees formation and the approval on its minuets by the ministry and not by the governorate doesn't help in facilitating the procedures of the citizen preceding's, therefore we pleas your

estimated court to issue the right decision that serve the public interest and the citizens of the governorate interest in accordance with the provisions of the constitution and the laws in force, we attached all the mentioned addresses. With appreciation.

The F.S.C. placed the request under scrutiny and deliberation and reached the following decision:

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the governorate of Al-Najaf/ the legal affair has requested the F.S.C. by its mentioned letter to adjudicate in the conflict that arise between it and the ministry of municipalities and public labors/ public municipalities directorate -about the formation of the committees of estimating and selling the movable and immovable funds that are belong to the municipalities institutions in the governorates and authorizing the governors in the ministerial order the power to approve minuets of rental estimation, and to approve the minuets of the rent committees and the referral, as for the estimation of sale minuets they are presented to the ministry the subject of the case, according to what included in the ministerial order issued by the ministry of municipalities and public labors/ public municipalities directorate No.(beh. Kaf./sin/ 196) on (21/1/2014) and it request to form these committees by the governorate and not by the ministry, as the subject required to be adjudicated by the F.S.C. according to what mentioned is consider a conflict between the governorate of Al-Najaf and the ministry of municipalities and public labors/ public municipalities directorate which require to initiate lawsuit before the court according to the

provisions of article (1) and (5) of the F.S.C. bylaw No.(1) for 2005, and that required to pay the legal fee of the case, after listening the requests and the defenses of the litigant parties in the argument sessions that are specified for this matter and the court shall adjudicate in the subject according to the constitution and the law. The decision has been issued unanimously on 7/6/2015.