

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court (Emblem)

(Kurdish Text)

Ref: 66/Federal/Media/2017

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The Federal Supreme Court has convened in 18.9.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Jaefar Naser Hussain, Akram Taha Mohamed, Mohamed Saeb Al-Naqshabnde, Mikaeel Shamshon Qas Qourqis, Hussain Abbass Abo Al-timen, Farooq Mohamed Al-Sami, Mohamed Qasem Al\_Janabi and Abood Saleh Al\_Temime who are authorized to judge in the name of the people. And it issued the follow decision:

The Plaintiff: Waset Governor/ being in his post his agents the legal officials (Fa'. Alf. Alf.) and (Gain. Kaf. Ha').

The Defendant:

1. The Minister Of Electricity/ being in his post.
2. The General Director of Al-wasat Electricity Distribution Department/ being in this post.  
Their agent the legal official (Noon. kaf.).

#### THE CLAIM:

The agents of the plaintiff claims before FSC in the case no.(66/federal/2017) that Waset Governorate Council issued a decision in its session no.(155) on 9.8.2017 to reject the privatization in electricity fees collection that was directed to the plaintiff by their draft no.(1727) on 14.8.2016, according to the authorities given to him by the constitution he inquired Al-wasat Electricity Distribution Department and he knew that the aforementioned decision was send to the Ministry Of Electricity/ Al-wasat Electricity Distribution Department by draft no.(7499) on 25.8.2016 issued by Waset Electricity Distribution Department; the defendant didn't made an objection on it in that time, but the plaintiff was surprised by the action of the second defendant when he signed an investment contract no.(1) with Al-Nakhel Al-shariq Al-Awsat Trade Company to collect and maintenance and rehabilitation all of Waset Electricity Distribution Department territories on 16.4.2017 violating articles (114&115) of the Constitution. As article (114) of constitution stipulates on (The following competencies shall be shared between the federal authorities and regional authorities: Second: To regulate the main sources of electric energy and its distribution.) also article (115) that

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stipulates on (All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.)

Also that decision violated articles (32&24) of Governorate Not Incorporated Into A Region Code no.(21) for year 2008/ amended. Knowing that my client department wasn't informed formally or verbally about that contract.

For the aforementioned reasons the agents of the plaintiff requests from the FSC to cancel the contract and all of its legal trace as it is a violation to the Law and the Constitution and burden them all the fees of the case.

The two defendants were informed of the case petition and they answered by their answering draft dated 17.7.2017 that the decision of Waset Governorate Council no.(913) issued in session no.(155) on 9.8.2016 is conflicting with the laws and the instructions issued by the General Secretary of the Ministers Council and not obligated to the Ministry of Electricity according to what is mentioned in Ministry of Electricity Code in articles (2/second) and (3/first & second & sixth & eleventh) and article (9), the plaintiff claims that the Ministry violated articles (114 & 115) of the Constitution in making an investment contract no.(1) with Al-Nakhel Al-shariq Al-Awsat Trade Company to collect and maintenance and rehabilitation all of Waset Electricity Distribution Department territories on 16.4.2017, we would like to inform you that article (114) of the constitution pointed to that the competencies shall be shared between the federal authorities and regional authorities; as Waset governorate is a Governorate and not a region so it submit to the laws and instructions and decisions issued by the federal authorities regarding to the tasks of the Ministries that considers its authorities, like the Ministry Of Electricity... etc. the agent of the defendants request to reject the case and burden the plaintiff all the case fees.

The Court called the two parties to proceeding; in the appointed date the agents of the plaintiff and defendants attended and started the public proceeding, the agent of the plaintiff repeated what is listed in the case petition and request to judge by it. The agent of the defendants repeated what is listed in the answering draft and requested to judge by it.

As there was nothing left to say, the follow decision made clear.

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### THE DECISION:

In the deliberation and discussion the FSC found that the agent of the plaintiff requesting in his case petition from the FSC to judge to cancel the contract made between General Directory of Al-wasat Electricity Distribution Department (an investment contract no.(1) Trade Company to collect and maintenance and rehabilitation all of Waset Electricity Distribution Department territories) with Al-Nakhel Al-shariq Al-Awsat trade company and all of its trace conflicting with Waset Governorate Council decision no.(912) on 9.8.2017 when the council decided in it to reject the privatization in electricity in Waset Governorate as there is no economic or security stability in the country.

Returning to the Court competence stipulated on article (93) of the constitution and article (4) of its Bylaw no.(30) for year 2005; the court found that the plaintiff request is out of the FSC competence. Therefore the case will be out of the court competence.

FSC decided to reject the plaintiff case for it is out of the Court competence and burden him the expenses and the fees of the agent of the defendants amount of money (100000) one hundred thousand Iraqi dinars.

The decision was made unanimous and made clear in 18.9.2017.