

Republic of Iraq
Federal Supreme Court
Ref. 73/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 29. 9 .2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: The Minister of Youth and Sports / being in his capacity - his two legal agents / the assistant director-general of the legal department / Laith Hazem Abdul Rahman and the legal employee Muhannad Khair Al-Din Sabr.

The Defendant: The Prime Minister /being in his capacity - his deputy, legal advisor Haider Al-Sufi .

The Claim:

The plaintiff, through his attorney, claimed that the defendant, the Prime Minister /being in his capacity, issued Cabinet Resolution No. (62) of 2019, paragraph (2) of which stipulated (transferring the allocation of buildings and lands belonging to the Ministry of Finance previously allocated to the ministries covered by Article (45)). From these ministries to the directorates that occupy them or to the governorates if they do not have a legal personality) and since the

aforementioned decision was issued in violation of the provisions of Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008 as amended and Article (4/11th/2/1st/Jim) of Law No. (19) of 2013 (the Second Amendment Law of the Law of Governorates Not Organized in a Region No. (21) of 2008), which excludes lands on which projects are built or designated for the establishment of projects on them, and this was confirmed by State Council Decision No. (9/2018) dated 1/18/2018 containing (the transfer of powers under Article 45 of the Law of Governorates Not Organized in a Region No. (21) of 2008 does not refer to the transfer of ownership of the properties that have been clarified, and it remains designated and not inconsistent with the purposes specified by law). Since the Council of Ministers is an executive authority that does not have the power to amend the law, and amending or repealing laws is entrusted to the legislative authority exclusively, based on the provisions of Article (61/1st) of the Constitution of the Republic of Iraq for the year 2005. Also, the real estate to be allocated to the provinces according to the decision in question has been It was established by the Prosecutor's Department for the purposes of youth and sports, and huge sums of money were spent from the Ministry's budgets for the previous years, since the Prosecutor's Department is the highest governmental body concerned with the youth and sports sector in Iraq and is responsible for developing and following up the implementation of the youth and sports policy in it in line with the official directives in this regard and this is what It was stipulated in Article (2/2nd) of the Law of the Ministry of Youth and Sports No. (25) of 2011, and these buildings and sports facilities of all kinds should remain federal, since Iraq is in the process of hosting Arab and international championships in various sports and in all governorates, and Iraq is about to host the Gulf (25) The transfer of these facilities to the governorates confuses and weakens the ministry's work, and this was confirmed by the letter of the Supreme Coordination Committee between the governorates No. (6/1142) on 24/6/2019, which

states (the exception of youth and sports policy and talent centers from Cabinet Resolution No. (62) of the year 2019) as well as the book No. (7/kha/345) on 9/3/2017 issued by the same authority, which states: (What remains federal includes sports cities, spaces invested in contracts, international stadiums with special specifications, as well as the sports talent project, being central facilities, entitled Governorates may use it in agreement with the Ministry. And for all of the foregoing reasons and what the court's justice sees from other reasons, the plaintiff, in addition to his job, requested the FSC to invite the defendant to plead and oblige him to cancel Cabinet Resolution No. (62) for the year 2019 and its implications and to charge him legal fees and attorney fees. And based on the provisions of Article (1/3rd) of the Federal Supreme Court's internal system No. (1) of 2005, the case was registered with this court in the number (74/federal/2021), and the defendant, in addition to his job, is informed of its petition and documents in accordance with what was stated in Article (2/1st). From the aforementioned system, and his attorney responded with the answer draft dated 12/9/2021, requesting that the case be dismissed in terms of formality and objectivity and that the plaintiff/being in his capacity be charged with its expenses and attorney fees for the following reasons: First: In response to the list of the plaintiff's representative in terms of formality: **1.** The plaintiff's request to cancel Cabinet Decision No. (62) of 2019 and the consequences thereof, consider it outside the jurisdiction of the FSC as it is an administrative decision, because there is another appeal reference based on the text of Article (7/4th) of State Council Law No. (65) of 1979 Amended, and the FSC had previously issued its decision No. (24/federal/2018) containing that the request to cancel the Cabinet's decision is outside the jurisdiction of the FSC as it is an administrative decision. **2.** The subject of the decision subject to appeal is related to resolving the issue of transferring wheels and other property owned by districts transferred from ministries to governorates under the provisions of Article (45) of the Law on Governorates Not Organized in

a Region No. (21) for the year 2008, as amended. Therefore, the FSC does not have jurisdiction over the issue of Appeal except in matters stipulated in Article (31/11th/3) of the Law of Governorates Not Organized in a Region. The provincial law is limited to one article, which is Article (31/11th/3) of it. 3- The plaintiff's attorney's request came to cancel the Cabinet's decision for all its paragraphs, while the subject of appeal in the plaintiff's list was limited to paragraph (2) of it only, so the plaintiff's request to cancel the Cabinet's decision with all its paragraphs is without interest, considering the condition of interest is one of the conditions established for accepting the case before the FSC based on the text of Article (4) of the FSC Law and Article (6/1st) of the bylaw of the FSC, and considering the condition of interest in the lawsuit filed before it from the public order. Second: In response to the plaintiff's attorneys list on the merits: 1. The decision of the Council of Ministers subject to appeal came in implementation of the provisions of Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008 and based on the provisions of Article (7/11th/2/1st) of the Law of the Second Amendment to the Provincial Law, for local governments to advance To a level that qualifies it to manage the affairs of departments, devices, jobs, services, and transferred specializations, and this is done by preparing all requirements, including the allocation of land and buildings. 2. The decision of the State Council referred to by the plaintiff's attorney has nothing to do with the subject of the Council of Ministers' decision (the subject of the appeal) because paragraph (2) of the decision was to transfer the allocation of buildings and lands, provided that the ownership of those buildings and lands remain to the Ministry of Finance, and the Cabinet's decision did not refer to the transfer of ownership Real estate as stated in the list of the plaintiff's attorney. 3. The prosecutor did not provide evidence that the aforementioned cabinet decision violated the provisions of Article (45) of the Provincial Law and Article (4/11th /2/1st /Jim) of the Law of the Second Amendment to the Provincial Law. 4. The decision of the

Council of Ministers (the subject of the appeal) did not include the amendment or cancellation of law as stated in the list of the prosecutor's representatives. Rather, the Council of Ministers issued its decision in accordance with the powers entrusted to it in accordance with Article (80/3rd) of the Constitution, with the aim of implementing the law of governorates that are not organized in Region No. (21) for the year 2008 and to enable the facilitation of the work of the governorates in accordance with the powers transferred to them in accordance with the law. For all of the foregoing and other reasons that the FSC may deem fit, a ruling requesting the dismissal of the case in terms of formality and substance. After completing all the procedures, a date was set for the pleading and the two parties were informed of it in accordance with the provisions of Article (2/2nd) of the aforementioned bylaw. On the day appointed for the pleading, the court was formed, so the plaintiff's attorneys attended, in addition to his job, the legal staff, Laith Hazem Abdel Rahman and Muhannad Khair El-Din Sabr. The defendant's attorney/ being in his capacity, requested that the case be dismissed for the reasons mentioned in the regulations submitted on 12/9/2021, and each of the parties repeated his previous statements and requests, and where there was nothing left to say, the end of the pleading has been made clear, and set 29/9/2021 as a date for the issuance of the decision, in which the court was formed and issued the judgment decision next publicly.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff / being in his capacity claimed that the defendant / being in his capacity issued Cabinet Resolution No. (62) of 2019, which paragraph (2) of which stipulated (transferring the allocation of buildings and lands belonging to the Ministry of Finance previously allocated to the ministries covered by Article (45) above from these ministries to the directorates that to be occupied or to the governorates in the event that

they do not have a legal personality, provided that it is allocated to the aforementioned directorates that the ownership of these buildings and lands remain to the Ministry of Finance) and since the aforementioned decision was issued in violation of the provisions of Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, and Article (4/11th/2/1st/jim) of Law No. (19) of 2013 (Law The second amendment to the Law of Governorates Not Organized in a Region No. (21) of 2008, according to which the lands on which projects are built or allocated for the establishment of projects are excluded, and this was confirmed by the decision of the State Council (9/2018) on 18/1/2018, and since the Council of Ministers is an authority an executive authority does not have the power to amend the law and that amending or repealing laws is exclusively entrusted to the legislative authority, based on the provisions of Article (61/1st) of the Constitution of the Republic of Iraq of 2005. Also, the real estate to be allocated to the governorates according to the decision subject of the lawsuit has been built by the plaintiff's department / being in his capacity for the purposes of youth and sports, and huge sums have been spent from sports budgets for the previous years. The aforementioned ministry is considered the highest governmental body concerned with the youth and sports sector in Iraq, so it requested an invitation to the defendant/ being in his capacity to plead and rule to cancel Cabinet Resolution No. (62) of 2019 and its implications. This court finds that Article (5) of the bylaw of the FSC No. (1) of 2005 stipulates that (if an official body requests, on the occasion of an existing dispute between it and another party, to decide on the legality of a text in a law, legislative decision, system, or instructions Or an order, then the request is sent with a claim to the FSC, justified with its justification, in a letter signed by the competent minister or the head of an entity not affiliated with a ministry). Therefore, since the aforementioned text necessitates that the request for a lawsuit is sent to this court in a letter signed by the competent minister or the head of the entity not affiliated with a ministry, and because this

was not achieved in this lawsuit, as it was instituted by the Under-Secretary of the Minister of Youth and Sports and was not sent by a letter signed by the competent minister, the lawsuit shall be answered. From a formal point of view, for all of the foregoing, the FSC decided to dismiss the claim of the plaintiff, the Minister of Youth and Sports/ being in his capacity in the form, and to charge him the fees, expenses and attorney fees of the defendant's attorney/ being in his capacity as legal advisor Haider Al-Soufi, an amount of one hundred thousand dinars, a final and binding judgment for all authorities, and the agreement was issued in accordance with the provisions of Article (94) of the Constitution of the Republic of Iraq for the year (2005) and Article (5/2nd) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public on 21/Safar/1443 coinciding with 29/September/2021.

Signature of
The president

**Jasem Mohammad
Abod**

Signature of
The member

Samir Abbas Mohamed

Signature of
The member

Ghaleb Amer Shnain

Signature of
The member

Haider Jaber Abed

Signature of
The member

Haidar Ali Noory

Signature of
The member

Khalf Aihmad Rajab

Signature of
The member

Ayoub Abbas Salih

Signature of
The member

**Abdul Rahman Suleiman
Ali**

Signature of
The member

**Diyar Muhammad
Ali**