

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 80/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 6 . 10 .2021 headed by the 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 whom are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Riyadh Abbas Abdullah Al-Tamimi / Member of Parliament
- Attorney General Shawkat Sami Fadel Al-Samarrai.

The Defendants: 1-The Prime Minister /being in his capacity - his deputy, legal advisor Haider Ali Jaber.
2- Chairman of the National Investment Commission / being in his capacity - his deputy, Legal Counsel Hamed Abed Hassoun.

The Claim:

The plaintiff, through his attorney, claimed that the first defendant had previously issued Regulation No. (6) of 2017 (the system for selling and renting real estate, state lands and the public sector for the purposes of investment and leasehold), which was published in the official Iraqi Gazette No. 4458 on 8/21/2017, based on the provisions of item (3) From Article (80) of the Constitution and Paragraph (a) of Clause (5th) of Article (10) and Clause (1st) of Article (30) of Investment Law No.

(13) of 2006, and Article (4/1st) of it stated (Owning the lands allocated for residential projects within the basic design at a selling allowance of 10% of the value of the land, provided that the investor undertakes the delivery of the external infrastructure of the project free of charge, and allocating 10% of the space allocated for the residential project to the owner for the purpose of investing it). This paragraph has been amended in accordance with the provisions of Article (1) of Regulation No. (5) of 2018 published in the Iraqi Gazette No. (4491) on May 14, 2018 (Amendment of the system of selling and renting real estate, state lands and the public sector for the purposes of investment and leasehold No. (6) for the year 2017), which made the sale allowance 2% of the value of the land instead of (10%). Also, Article (4/3rd/alif) of the system, subject of the lawsuit, stipulates that (ownership of the land allocated for industrial projects outside the basic design for a sale consideration of (15%) of the real value of the land). And since these articles contradict what was stated in Article (9/6th/1 and 3) of Investment Law No. (13) of 2006, which stipulates (the Authority aims to encourage investment by working on the following: Sixth: Facilitating the acquisition of real estate needed to establish projects In the manner determined by the Authority in coordination with the relevant authorities, as follows: 1. An allowance for housing projects that fall within the basic design, an allowance for the rest of the non-residential projects.) The Parliamentary Committee on Economy and Investment / the Investment Subcommittee, headed by the plaintiff, demanded that each of the defendants, in more than one official address, suspend the work of this law because it contradicts the provisions of the investment law in force, and causes it to waste and damage public money that the constitution requires. It is enforceable to protect it in accordance with the provisions of Article (27/1st) thereof, which stipulates that “public funds have sanctity, and their protection is the duty of every citizen.” Paragraph (2nd) of the same article also required the preservation and management of state property and the conditions for disposing of it, and clarified the limits within

which it is not permissible to waive any of these funds, except by a clear, specific, binding and just law regulating all these actions in order to preserve public money, which is not achieved in The system under constitutional challenge in which investors will enrich themselves at the expense of public money and cause great harm to it, but the defendants continued to work with this system despite the receipt of the letter of the Federal Financial Supervisory Board No. (19/2/12205) on 28/9/2020, which confirmed the existence of this contradiction and what was mentioned in the paragraphs (first and third) of Article (4) of the system came with new provisions that contradict what was stated in the investment law, and the Council of Ministers must amend them by making the land offered for investment in exchange for a fee. And since Article (23) of the Constitution stipulates in Paragraph (1st) thereof, “Private property is safeguarded, and the owner has the right to benefit from, exploit and dispose of it, within the limits of the law.” It also stipulated in Paragraph (2nd) thereof that “property may not be expropriated.” except for the purposes of public interest in return for fair compensation, and this shall be regulated by law). If the constitution has guaranteed and safeguarded private property and granted it legal protection, and associated its acquisition with fair compensation to citizens, It is a fortiori to protect public funds and keep them away from the suspicion of waste and damage as they are the property of the Iraqi people, their development projects and the future of their generations, and they must be preserved by all legal means in order to achieve the public interest, just as the State Council is also in its interpretation of the text of Article (40) of the Law No. (21) of Sale and Rent of State Funds No. (21)) for the year 2013, which gave the Council of Ministers the decision, when necessary, to sell and rent movable and immovable state funds as an exception to the procedures stipulated in this law and by its decision No. It is stipulated in the law, and it does not include the sale or rent allowance, which is one of the substantive provisions of the law). Article (13/2nd) of the constitution stipulates: “Second: No law that

contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.” Accordingly, and for the foregoing, and because the FSC undertakes the process of monitoring the constitutionality of the laws and regulations in force in accordance with the provisions of Article (93) of the Constitution, the plaintiff requested to invite the defendants/ being to their capacity to plead and rule the unconstitutionality of Article (4/first and third) of Regulation No. (6) of 2017 amended by Regulation No. (5) of 2018, for violating the provisions of Articles (23/1st and 2nd) and (27/1st and 2nd) of the Constitution and Article (9/6th/1 and 3) of Investment Law No. (13) of 2006 as amended, And obligating the defendants to issue new regulations that facilitate the work of the law and do not violate it, while charging them with expenses, fees and attorney fees. He requested, based on the provisions of Articles (151) and (152) of the amended Civil Procedures Law, to issue an urgent state order to stop the work of the system under constitutional challenge on the grounds of preserving state property from waste. The case was registered with this court in No. (80/federal/2021), and the legal fee was collected for it, in accordance with the provisions of Article (1/3rd) of the FSC’s bylaw No. (1) of 2005, and the defendants were notified of its petition and documents in accordance with the following in Article (2/1st) of the aforementioned bylaws. The first defendant’s attorney (the Prime Minister / being in his capacity responded with the answer list dated 15/7/2021, which included the following: **First:** In terms of the constitutional and legal authority: If the plaintiff’s appeal against Regulation No. (6) of 2017, the amended, the consideration of it is outside the jurisdiction of the court Supreme Federalism contained in Article (93/1st) of the Constitution and Article (4/1st) of its Law No. (30) of 2005 (amended), and thus the plaintiff’s appeal is obligatory to respond from this authority. Article (13/2nd) of the constitution stipulates that (Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or

any other legal text that contradicts this Constitution shall be considered void.), This text did not address the regulations in force, and the regulations are issued in accordance with the laws and not directly in accordance with the provisions of the Constitution, which is what Article (80/3rd) of the Constitution stipulates that the issuance of regulations, instructions and decisions is for the purpose of implementing laws, so it is not within the jurisdiction of the FSC to consider the extent of conformity. What is the text of the laws, and that their jurisdiction is to consider the constitutionality of laws without regulations, so the appeal against the regulations is before the Administrative Court based on the text of Article (7/4th) of the State Consultative Council Law No. The validity of individual, organizational and administrative administrative orders and decisions issued by employees and bodies in ministries and agencies not affiliated with a ministry and the public sector and for which no reference has been appointed to challenge them.), And since the system in force that claims to be in violation of the laws in force did not specify a reference to challenge it, the Administrative Court of Justice is a reference to challenge it, which requires that the plaintiff's appeal be rejected from this authority. **Second:** In terms of the constitutional and legal basis for the defendant, the Prime Minister: Article (26) of the constitution stipulates that (the state guarantees the encouragement of investments in various sectors), and Article (40) of the Sale and Rent of State Funds No. (21) of 2013 stipulates: (The Council of Ministers may decide, when necessary, to sell or rent movable and immovable state funds as an exception to the procedures stipulated in this law), so the Council of Ministers, when necessary, shall have the power to make an exception from the procedures related to the sale and rent allowance, especially not to form a committee to determine the estimated value of the property stipulated in Article (8) of the aforementioned law, and what enhances this push and this authority and determine what is necessary is the competence of the Council of Ministers and based on its constitutional

powers in accordance with Article (80/1st) of the constitution to plan and implement the state's general policy and general plans and Article (78) of the constitution as the Prime Minister is the direct executive responsible for the state's general policy, including the state's general policy regarding investment, project construction and infrastructure reconstruction, including housing projects to solve the aggravating housing problem, especially with the state's insufficient financial resources to establish housing projects, planning them to activate investment projects for the private sector. **Third:** In terms of the plaintiff's lack of litigation: the plaintiff was not harmed by the implementation of the system subject of the appeal and has no direct and effective case interest in his legal, financial or social position, and he did not inflict actual, theoretical, future or unknown harm to him as a result of the system under appeal, and the plaintiff was not Benefiting from the decision, which was settled by the judiciary of the FSC in many of its rulings, including the two decisions numbered (5 / federal / 2020) and (143 / federal / 2019). Thus, the plaintiff's appeal does not comply with the text of Article (6) of the Civil Procedure Code No. (83) for the year 1969 and its amendments, and Article (6) of the rules of procedure of the court No. (1) for the year 2005, so the appeal is obligatory to respond from this body, because the litigation is not achieved by the plaintiff in order to file such a lawsuit. **Fourth:** The consideration of the plaintiff's request to issue a state order to stop the work of the system under challenge is considered an interference with the functions and powers of the Council of Ministers specified in Articles (78 and 80 / 1st and 3rd) of the Constitution, which is a violation of the principle of separation of powers stipulated in Article (47) of the Constitution. Against him and for all of the foregoing reasons and for the reasons that the court deems appropriate, the first defendant's attorney requested a ruling to dismiss the appeal due to the lack of jurisdiction of the FSC to consider it, and because the plaintiff did not rely on a document from the Constitution, and for his claim of violating the law, and for his client's reliance on a

document from the Constitution and the law. The second defendant (the head of the National Investment Commission /being in his capacity answered according to the letter No. (qaf/6560) dated (8/11/2021), including the same payment made by the agent of the first defendant in paragraph (1st) of his regulations above, in addition to the fact that he had previously The Council of Representatives stated, by virtue of Book No. 382 on November 23, 2019 that Articles (4 and 5) of the amended Law No. (6) of 2017 violate the provisions of Article (9) of the Investment Law No. (13) of 2006, as amended, as Article (9) has stipulated the ownership of real estate and land in exchange for an allowance, and this means that the allowance is real and not symbolic, and since the word allowance has been mentioned at all, the interpretation of the opinion of the members of the Council of Representatives went to the fact that the allowance referred to in this article is a real allowance. The General Secretariat of the Council of Ministers also indicated its opinion in its letter No. (43786 on 29/12/2019) that item (6th) of Article (9) of the Investment Law indicated that the Investment Authority aims to encourage investment by facilitating access to real estate needed to set up projects (In exchange) for residential projects that fall within the basic design, and the aforementioned item did not stipulate that the allowance be real, but only indicated that the allocation of real estate is with an allowance, and the general rule is that the absolute is based on its release, and that Articles (4 and 5) of Regulation No. (6) of 2017 do not contradict Provisions of Article (9) of the Investment Law that did not require that the allowance be real, and that the Council of Representatives, according to Article (60/2nd) of the Constitution, can propose an amendment to the Investment Law to the effect of providing for the ownership of land for residential projects within the basic design with a real allowance. And the National Investment Commission indicated, in its letter No. (160) on 16/1/2020 that the word for allowance contained in Article (9/6) of Investment Law No. (13) for the year 2006 was mentioned in absolute

terms, and that the general rule is that the disposal of state-owned real estate must be in real value. However, what came in the Investment Law is an exception to this rule for the following reasons:

A. Achieving the objectives of the law by providing adequate housing for the citizen and reducing the cost, since the investor will reflect the value of the land on the beneficiary citizen in accordance with the provisions of Article (4/1st) of Regulation No. (6) of 2017. **B.** The aforementioned item of the aforementioned system holds the investor responsible for delivering the external infrastructure of the project and allocating, initially, a percentage not exceeding (10%) of the area allocated to the housing project to the owner for the purpose of its investment, as well as allocating (5%) of the allowances for selling housing units for the infrastructure only Article (7/1st) of Regulation No. (6) of 2017. **C.** Article (41) of the Law No. (21) of 2013 of Sale and Rent of State Funds excluded projects subject to the provisions of the amended Investment Law No. (13) of 2006, or any law replacing it from the provisions of this law, and Article (10/5th/alif) of The Investment Law has excluded real estate that is designated for the establishment of investment projects from the provisions of the Law of Sale and Lease of State Funds No. (21) of 2013, provided that the basis for calculating sale and rent allowances shall be determined according to a system issued for this purpose, even if the legislator's intention in the Investment Law is that the estimate is a real allowance for what Real estate designated for the establishment of investment projects is excluded from the provisions of the Law of Sale and Lease of State Funds, bearing in mind that Regulation No. (6) of 2017 referred in Article (2) of it to the formation of committees for the purposes of estimating sale and rent allowances by being guided by the assessment controls in force at the General Tax Authority And the Department of Real Estate Registration and the assistance of the legal legislations concerned with estimating the value of the property and specialized experts, and similar to what the legislator did in Article (8/2nd) of the Law of Sale and Lease of State Funds, which

gave the option to the evaluation committees to be guided by the estimation of the value of the money that was not The movable property or its rental allowance at the value assessed for it from the Real Estate Registration Department and the value of neighboring or similar properties or their sale or real or estimated annual rent for tax purposes, and it may seek the assistance of specialized experts in this field. The State Council Resolution No. (105/2017) included a statement of opinion regarding the competence of the Council of Ministers with the exception stipulated in Article (40) of the Law No. (21) of 2013 on the sale and lease of state funds, and that investment projects are excluded from the provisions of the above law as indicated in paragraph (jim) above. As for the letter of the Office of Financial Supervision No. (19/2/12205) dated 28/9/2020 and presented by the plaintiff, it relates to Article (9/6th) of the amended Investment Law No. (13) of 2006 and did not address or refer to Article (10/5th) of the Investment Law, and it did not address Article (41) of the Law No. (21) of 2013 on the sale and lease of state funds. The State Council was approached by virtue of letter No. (696 on 01/24/2021) to express an opinion on the extent of conflict between the provisions of Article (9) of the Investment Law and the provisions of Articles (4 and 6) of Regulation No. (6) of 2017. The issue is still under consideration by the State Council. The plaintiff's appeal does not comply with the text of Article (6) of the Civil Procedures Law No. (83) of the year 1969 as amended and Article (6) of the internal system of the FSC No. (1) of 2005. For all of the foregoing, I requested a judgment dismissing the plaintiff's suit. After completing the required procedures, a date was set for the pleading, and the parties were informed of it in accordance with the provisions of Article (2/2nd) of the aforementioned bylaw. On the appointed day, the court was formed, so the plaintiff's attorney, Shawkat Sami, attended, and his representative, the legal advisor, Haider Ali, attended on behalf of the defendant. The second, his attorney, the legal advisor, Hamed Abd Hassoun, and he started the public pleading, the plaintiff's attorney repeated the pleading

of the case and requested a ruling according to which the attorney of the first defendant and the attorney of the second defendant answered and requested that the case be dismissed for the reasons stated in their answer lists detailed above. Closing of the pleading and 6/10/2021 was set as the date for issuing the decision, in which the court was formed and issued the following ruling.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff Riyadh Abbas Abdullah Al-Tamimi - Member of the Council of Representatives filed the case before this court challenging Regulation No. (6) of 2017 (Regulation of Sale and Rent of Real Estate and State Lands and the Public Sector for Investment Purposes and leasehold on them) Article (4/1st) thereof, as amended under the provisions of Article (1) of Regulation No. (5) of 2018, which made the sale allowance for lands allocated for residential projects (2%) of the land value instead of (10%), as well as Article (4/3rd/alif), which states (owning lands designated for industrial projects outside the basic design for a sale allowance of (15%) of the real value of the land) and claimed that these articles violate what was stated in Article (9/6th/1 and 3) of the Investment Law No. (13) of 2006 and caused waste and damage to public funds that the constitution required to protect based on the provisions of Article (27/1st) of it as required Article (27/2nd) of the Constitution: Preserving and managing state property and the conditions for disposing of it. Article (13/2nd) of the Constitution stipulates that “No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.” The FSC finds, by examining what was stated in the petition, the defenses of the first and second defendants, and the mutual regulations, that what is stated in the aforementioned articles does not include the existence of any

constitutional violation and does not contradict the provisions of the constitution, as the Council of Ministers and based on its powers contained in Article (80/1st) of the Constitution is responsible for planning and implementing the state's general policy, including investment and establishing projects, including housing projects, to solve housing problems and build infrastructure, as Article (26) of the constitution stipulates the following: (The State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law.) As it is the duty of the state, according to the above-mentioned text, to encourage investment in various sectors, including the industrial and residential sectors, and the Council of Ministers, when necessary, has the power to exempt from the procedures related to selling and renting state funds under Article (40) of the Sale and Renting State Funds Law No. (21) of 2013 Which stipulates that ((The Council of Ministers may decide, when necessary, to sell or rent movable state funds, as an exception to the procedures stipulated in this law)). Thus, there is freedom for the Council of Ministers when selling and renting state funds to exclude part of this real estate from the procedures stipulated in the law in order to encourage investment. The plaintiff is obligated to respond, because there is no constitutional violation. Moreover, what the plaintiff relied on violating the texts under appeal Article (9/6th/1 and 3) of Investment Law No. (13) of 2006 and his request for a ruling obligating the defendants to issue new regulations, this court does not It is concerned with looking into this as its terms of reference are specified under Article (93) of the Constitution of the Republic of Iraq for the year 2005 and Article (4) of its amended Law No. (30) for the year 2005, and none of these competencies were mentioned by the plaintiff above, which requires dismissal of the case in this regard. When the foregoing, the FSC decided the following:

First: The plaintiff, Riyadh Abbas Abdullah Al-Tamimi, dismissed the lawsuit for the aforementioned reasons.

Second: To charge the plaintiff the fees, expenses, and attorney fees for the attorneys of the first and second defendants, legal advisor Haider Ali Jaber and legal advisor Hamed Abd Hassoun, an amount of one hundred thousand dinars, to be divided equally between them and (5) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021, a final and binding ruling for all authorities and the decision had made clear public on 28/Safar /1443 coinciding with 6/October/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**