

# The Role of Nurseries According to The Dissolved Revolutionary Command Council Resolution No. 251 of 1986 in Force<sup>1</sup>

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## ABSTRACT

The goal of the legislator since the beginning of the legislation is to create an educated generation by tracing the individual from his upbringing through a period prior to his primary schooling, i.e. the nursery period, so he proceeded to establish nurseries for children, and the low level of financial allocation for the infrastructure led to the legislator giving the private sector a role in establishing That role, as he set out in 1986 to authorize the contractor with the administration to establish private nurseries, on the terms and approvals of the Department of Labor and Social Security, with oversight by government agencies on the performance of the investor, as he granted it to specify the design of that role, in return, he made the determination of the value of the service. The performance is exclusive to the contractor, with soft loans and a subsidized piece of land. In fact, some legislations today (as in the National and Foreign Education Law) have brought the idea of private sector participation in the field of education, by reading the dissolved Revolutionary Command Council Resolution No. 251 of 1986 and looking at the advantage it provides in the field of educational building, as the legislator can benefit from it. The Iraqi legal texts, especially to the country's economic situation, are almost identical to those of past periods.

**Keywords:** *Nurseries, Decision 251*

## INTRODUCTION

In a past era, the legislator was keen to place the private sector under its guidance and care, as it granted the contracting party the right to establish a nursery house, on conditions determined by the ownership decision and according to a design prepared by the administration, and financing by it also by way of borrowing, and at the present time as. The philosophy of the legislator has begun to turn to the actual participation of the private sector in the infrastructure, and since the goal is still to provide educational services according to the required level, and this does not prevent the use of decisions at a time that achieves satisfactory goals.

## Research Essence

There are many laws and decisions issued before 2003 that are still in effect without cancellation, and perhaps the Iraqi legislator at the present time has kept them for their legislative validity, and among those decisions is the decision of the dissolved Revolutionary Command Council No. 251 of 1986, if the purpose of that decision was to establish a

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house. A private nursery in accordance with management controls, and since the legislator has approved private education, it is possible to benefit from that decision in providing private school buildings.

### **Research Significance**

The importance of this research stems from the philosophy that the legislator wanted from the approval of Resolution 251 of 1986 in that era, especially since the direction of the legislator at the present time is to strengthen the private sector and its participation in the work of the administration, in addition to that this study sheds light on the judicial decisions dealing with the case of the administration establishing the facility on a land that was owned according to the above decision, following the urban plans, and without the consent of its owner.

### **Research Problem**

When following the Iraqi laws in the field of lands, we find that once the contractor is granted a plot of land for the purpose of establishing a public facility for investment, provided that its ownership is transferred with its establishment to the state after the expiration of a specified period in the contract. He does not dispose of it during a certain period, and then it is transferred to the investor. There is also a conflict between the rights of the owner granted by the civil law in Articles (1050 and 197) and the non-implementation of the provisions of the decision in question, as practical life has revealed many problems regarding the establishment of the administration represented by the Ministry of Education in establishing its government schools on owned lands according to the decision of the Leadership Council. The dissolved Revolution No. 251 of 1986 without the consent of its owner. Among the above problems, this study has a central question that revolves around it: What is the purpose of studying the dissolved Revolutionary Command Council Resolution No. 251 of 1986 in force?

### **Subsidiary Questions**

- 1- What are the characteristics of the dissolved Revolutionary Command Council Resolution No. 251 of 1986? What are the conditions for its application?
- 2- Was the contract according to the decision of the dissolved Revolutionary Command Council No. 251 of 1986 similar to the contracts for the boots and the contract for managing the public utility?
- 3- What are the obligations established by the dissolved Revolutionary Command Council Resolution No. 251 of 1986?
- 4- Did the Iraqi judiciary distinguish between the origin of ownership in terms of Articles 1050 and 197 of the Iraqi Civil Code? Were its decisions on the same frequency?

### **Research Hypothesis**

This study assumes that ownership according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986 has an impact on the application of Articles 197 and 1050 of the Iraqi Civil Code.

### **Research Methodology**

In order to prove the research hypothesis, we will adopt the analytical research method, by analyzing the dissolved Revolutionary Command Council Resolution No. 251 of 1986 and instructions to facilitate its implementation, in addition to analyzing its judicial decisions.

### **Research Structure**

This research is divided into three parts to understand the subject: the first is titled the self-contract according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986, and it has two branches, the first is the concept of the contract according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986, and the second branch is to distinguish the contract from what is suspected. The second requirement came to clarify the obligations of the parties to the contract, and it also has two branches, the first is the obligations of management and the second branch is the obligations of the other contractor, while the third demand came with judicial decisions related

to the application of articles (1050 and 197) of the Iraqi Civil Code, and the research concluded with a conclusion of results and recommendations.

### **THE FIRST REQUIREMENT: SELF-CONTRACT ACCORDING TO RESOLUTION 251 OF 1986**

Iraq resorted to one of the past times to the participation of the private sector in the establishment of nurseries, and at that time it issued many decisions, and one of those decisions is the decision of the dissolved Revolutionary Command Council No. 251 of 1986, so we will get acquainted in this requirement with the concept of the contract according to this decision in terms of a statement of its characteristics in addition to distinguishing it from similar contracts in two branches.

#### **First Branch: The Concept of the Contract According to the Decision of the Dissolved Revolutionary Command Council**

The contract, according to Resolution 251 of 1986, is a consensual contract, like all other contracts in terms of the availability of its elements of consent, place and reason, and that this contract occupies a position of great importance in advancing economic investment and encouraging the private sector in the state's participation in the establishment of nurseries. In order to be more acquainted with this topic, we will discuss the most important characteristics of the contract according to Resolution No. 251 of 1986, as it is established and stable that the concept of any contract is not clear unless its characteristics that have a fundamental role in defining the general rules that regulate this contract are explained as follows:

##### 1- The contract according to Resolution No. 251 is a contract of compliance

There is no doubt that the protection of the weak party is one of the general issues, whatever the economic system in the country, and because of the existence of a common denominator between contracts of compliance and consumption, which is the weak party that requires protection (Tharwat Abdel Hamid:07) With regard to the protection of the weak party according to the theory of contracts of obedience, the two contracting parties do not enter into the contract, the furthest negotiations and discussions in its terms, neither of them enters into the contractual relationship, the furthest is sure that he has an interest in that, so if the contract is concluded in this way, the contract is called a contract Bargaining, in which equality is based on actual and legal equality, so that each of the two parties can discuss its terms (Al Fayyad, 1988). It is worth noting that the adhesion contract has two concepts, the first of which is: a traditional concept according to which, the adhesion contract is defined as the contract in which one party is subject to conditions that are uniquely set by the other party, meaning that the economically strong party is the one who sets the conditions and the weak party cannot discuss or modify them. The second is the modern concept, which sees: the contracts concluded between a professional or an inexperienced professional are always contracts of submission, as the adjective of submission is just a symbol indicating the presence of one of the contracting parties in a lower position than the other, and this criterion determines the status of submission. On the basis of the economic or cognitive superiority of one of the parties over the other, and the concept may be more acceptable to achieve the protection of the weak party (Jumaa, 1993), and the contract entails several results, including: interpretation of the doubt in favor of the obedient, unless he is a creditor or debtor, and this means that the interpretation of the ambiguous conditions, in the contract. The subject of the research, it must not be harmful to the contracting party.

1. While the first paragraph of the dissolved Revolutionary Command Council Resolution No. 251 of 1986 included "3- It is not permissible to exploit the project for other than the purpose for which the loan was granted throughout the loan period, otherwise the project will be confiscated as land and building" (Abu Yunis,1996).

2. It is considered one of the obligatory consensual contracts: as the contract is concluded as soon as the offer is linked to acceptance and they agree with a premium, and it is one of the binding contracts for the two sides that arise from the moment of its conclusion, corresponding obligations are owed by both contracting parties (*Al-Shahawi, 2002*), as the decision grants the citizen wishing to establish a nursery a piece of land with an area of 1200 M<sup>2</sup>.

3. A financing contract: This contract is characterized by a financing nature, as it is considered one of the means of financing medium and long-term economic investment (*Nasef, 2003*), if it came in the first item of the decision "1/ the citizen wishing to establish a nursery is granted ... b- a loan of 60% of the cost Establishment of the nursery house from the Real Estate Bank..."

4. Administrative contract: This contract is considered an administrative contract, as the administration is a party to it and it is the one that concludes it with others to develop the needs of the public utility. This contract includes privileges for the administration, which makes its position superior to that of individuals.

### **Section Two: Distinguishing the Dissolved Revolutionary Command Council Contract No. 251 of 1986 from Similar Contracts**

The contract is distinguished according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986 in force from other contracts that are similar to it in some characteristics and characteristics, including the build-operate-transfer-ownership (BOT) contract, and the public utility management contract, and we will explain the following.

#### **First: The Construction, Operation and Transfer of Ownership Contract**

UNIDO defines the International Industrial Development Organization (B-O-T contract) as “a contractual agreement whereby a private sector person undertakes the construction of one of the basic facilities in the country, including the design and financing process, and the operation and maintenance of this facility”, as he manages and operates the facility within a period of time determined by the administration, and is allowed to impose appropriate fees on the beneficiaries of this facility, and any other fees, provided that they do not exceed what is proposed in the tender, and what is stipulated in the core of the contract, so that the investor can return his money that he invested in the project, operating and maintenance expenses, in addition to an appropriate return on investment. At the end of the time-period, the investing person is obligated to return the facility to the government or to another person chosen by public practice (*Al-Tamawy, 1948*).

As for the jurists (*Al-Hamoud, 2010*) of law, they defined this contract as, “a contract under which the state undertakes to a company, whether national or foreign, from the private or public sector mostly, with a concession or license, to carry out a specific project proposed by the government, and it is often one of the projects.” The basic management, related to one of its public utilities, and the company designs, builds and exploits it commercially, for a specific period in the text of the contract, and is sufficient to reimburse the costs of the project, in addition to an appropriate profit from the proceeds of the project, through its commercial exploitation, and at the end of the period the project is transferred to the government and does not bear the latter No cost. Likewise, the contract according to Resolution 251 grants the person a land to establish a nursery house, as the applicant (the person from the private law) establishes the public facility, which is a nursery, in exchange for imposing fees by him on the individuals who exploit that facility. However, there is a difference between them: in terms of preparing designs, the preparation of the building design for the nursery is by the Ministry of Housing and Construction, which is what came in the text of Article IX of the decision in question (the Ministry of Housing and Construction prepares model designs for nurseries for the private sector). On the contrary, in the operation, construction and transfer of ownership contract, the investor prepares the design of the building to be constructed.

In addition to the difference in handing over the site after work, where the handover of the project is according to the bot contract to the state after the end of the period specified in the contract, and this is not envisaged in the contract for the establishment of the nursery and social security, as Article 1/2 of it stipulates “the nursery house may not be sold or rented except with the approval of the Ministry of Labor and Social Security and the Real Estate Bank”.

#### **Second: Public Utility Management Contract**

A contract based on a legal authorization by which a public person assigns another person to carry out public works and invest in the completed public establishment in exchange for a fee determined according to the financial results of the exploitation.

While others defined it as a contract through which the general administration undertakes to others to manage a public facility and it is under its supervision in the manner of contracting with the person authorized to him in charge of collecting the necessary funds for the facility. According to this contract, the public authority grants the management of the public facility to a person from the private law, and this facility is prepared by it in advance, and for a period specified in the contract by obtaining these wages.

The two contracts share in both of them related to the public utility, so the nursery house is a public facility, and the parties to the contractual relationship are both the administration and the person from the private law, but there is a fundamental difference between them, in terms of construction, the public facility is previously established, while the nursery is established by a provider. The request that the administration provide the plot of land and provide the loan for the construction or leasing of a house for the purpose of converting it into a nursery house by the Real Estate Bank.

The contract for the management of the public facility specifies the period that the person must abide by to manage the facility, and that the service fees are determined by the public administration, while the contract, according to Resolution 251, did not specify the period, and it made the wages to be determined by the investor, which is what Article (Eleven) states.

### **THE SECOND REQUIREMENT: THE EFFECTS OF RESOLUTION NO. 251 OF 1986**

The contract, according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986 in force, is one of the contracts that fall within the scope of private law, in a manner consistent with the principles and provisions that regulate those contracts, and because of the importance of this issue in preserving the rights of the state, as a party to the contract against the other party. The other (the investor), who tries, with his experience, in this field to achieve the largest possible amount of profits, especially since it is considered one of the contracts that generate capital, in addition to that it is one of the long-term contracts whose implementation extends for long periods of time. Therefore, the study of the subject of effects is decomposed into two branches. We devote the first branch to the obligations of the administration as a party to the contract, while we discuss in the second section, the obligations of the contractor with the administration.

#### **First Branch: The Administration's Obligations as a Party to the Contract are a Contract in Accordance With Resolution 251**

The administration is committed to the other contractor in accordance with the dissolved Revolutionary Command Council Resolution No. 251 of 1986 in force, with many obligations and grants rights to the administration only. They are binding contracts for both parties to the contract, just like the rest of the contracts, except that they give exceptional powers to the administration, as it authorizes it to intervene in order to preserve the public interest. Accordingly, we will address in this section to talk about the obligations of the administration towards the other contractor.

##### **First: The Financier**

The administration must provide a financier for the project, as the financier knows: In the contract subject of the research: he is the person who puts at the hands of the investor an amount of money to pay his obligations through a legal process that falls within the scope of the decision, and financing is not allowed from a natural person, but rather it must be in the form of an institution as in the legal personality (*Rashad, 2003*) since the contract obligated the investor to obtain a construction or modification loan from certain parties, and the following are the parties that are allowed to engage in financing activity as follows:

##### **A- Public Legal Individuals**

A "legal person" is defined as a group of legal persons that the administration enables to achieve a specific purpose, and the law grants it the legal personality that enables it to achieve this purpose.

##### **B- Real Estate Finance Companies**

They are financial institutions that were used by the Real Estate Finance Law to evaluate the real estate financing activity, along with other entities operating in this field. These companies depend mainly on loans that we obtain from other financial institutions, and they play the role of mediator between financing sources and borrowers.

## 1- Investment Banks

These banks are among the most important agencies in financing projects and have a major role in financing investment projects that contribute to comprehensive development in a society.

## 2- Banks Registered with The Central Bank

These banks are considered among the most important institutions that carry out financing activity, in general, including commercial banks, whose activity is concentrated in the field of short-term borrowing and real estate banks, which are considered non-commercial banks whose main work is real estate, agricultural or industrial financing, and they are long-term loans.

### Second: The Administration's Commitment to Implement the Contract in Accordance with The Principle of Good Faith

The administration must respect all its contractual obligations, and implement them in a proper manner, far from fraud and fraud, etc. Among the things that violate the principle of good faith, if this principle is considered one of the general rules in the law, and in the field of contractual ties, of any kind, and the meaning of this contract is that it is being implemented, in accordance with the terms and conditions contained therein, and in a manner consistent with what is required by good faith in dealing, which is stipulated in most Arab laws, including "Iraqi Civil Law No. 40 of 1951 as amended."

Among the most important obligations imposed on the administration is to work on the implementation of the contract, and the administration is not entitled to terminate the contract just to derogate from it, which imposes on it of the obligations, otherwise it will be exposed to contractual responsibility, which is one of the objective matters that are subject to "judicial control", as the judge estimates the extent availability, conditions and circumstances surrounding the contract, taking into account the emergency exceptional circumstances.

Here, the administration's commitment does not stop at the implementation of the contract and in good faith, but rather it is committed to implementing the subject matter of the contract in its entirety without prejudice to its right to revoke the contract or increase it in the works due to its sole authority to amend the obligations of the contracting party in accordance with the limits and conditions established by the law, as the conclusion of the contract entails direct legal effects. This leads to the inability of the administration to abandon its contractual obligations, resulting from the signing of the contract, and this means that the administration cannot use its authority to amend and change the terms of the contract or terminate it without a legal or legitimate justification.

It must be noted that this contract generates mutual rights and obligations between the two parties to the contract that differ according to its type, so the administration's commitment to respect all the conditions is not limited to those expressly stipulated conditions, but rather includes everything that follows from the requirements of the contract, which is implicitly assumed according to the law, custom and rules of current transactions according to the subjective nature of the contract (*Jabbar, 2009*).

**Third: The administration's obligations to respect the terms of contract implementation** and not to fail to dissipate obligations, as they are specified starting from the date of concluding the contract, and it must start implementing its obligations directly, as stipulated in the contract, and it does not entail compensating the other party for the damage incurred by him as a result of delay or procrastination to carry out its contractual duties (*Dharifi, 2012*).

### Fourth: The administration's commitment to providing the legal and administrative environment for operating the facility

The administration is committed to providing the appropriate legal environment for financing and operating projects, and this is achieved when there is an appropriate legal environment and strong and stable legislation, so the establishment of a good environment leads to the collapse of all contracts and agreements concluded according to the financing and operation system (12). In addition, the administration is obligated to provide the appropriate administrative environment, and this is achieved by facilitating the process of obtaining the licenses for the establishment of these projects by the contractor. And its cadres for the purpose of supervising the process of implementing the work of the facility based on the financing and operation system, and among the duties of the

contracting administration is to ensure that the land on which the project will be built is free from any encroachment, whether physical or legal (*Saleem, 2005*).

#### **Fifth: The Administration's Commitment to Maintaining the Financial Balance of The Contract**

The general rule in administrative contracts, including financing, is the flexibility of the obligations of the contractor with the administration and the possibility of increasing or decreasing them in accordance with the achievement of the public interest. The contractor increased his obligations for the purpose of achieving the financial balance of the project, because without achieving this balance, there would be no continuation of it, and thus lead to the facility stopping the performance of the desired function (*Mukhtar, 1993*).

#### **Sixth: The Administration Is Committed to Transferring the Ownership of The Land on Which the Nursery House Is Intended to Be Built**

The decision states in its first article, "The citizen wishing to establish a nursery house must submit an application to the Public Institution for Social Welfare in the Baghdad governorate and to the social welfare directorates in the governorates to obtain a piece of land." As the municipality of the applicant's site is approached to prepare the land for which the original approvals have been obtained in terms of the basic and sectoral design of the city, after which the Real Estate Registration Department will approach the real estate site in accordance with Article 272 of the Real Estate Registration Law No. (43 of 1971). The researcher believes that this procedure is incorrect, as the transfer of ownership directly by submitting the application entails difficulty in the procedures for retrieving it, especially if the administration has established public utilities on that plot as part of its architectural plans for public utilities buildings, which we will address in the third requirement.

#### **Section Two: Obligations of the Contractor with the Administration**

The contractor, according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986, has multiple obligations included in the paragraphs of the above decision.

First: The contractor's commitment not to sell or rent the nursery home to any other party except with the approval of the competent authority represented by the Ministry of Labor and Social Affairs, as well as the Real Estate Bank. The contractor has the right to demand the amendment of the contract, or the reduction of the obligations incurred by it, and therefore he is implicitly committed to all the amendments required by the needs of the financing project to maintain its progress regularly and steadily (*Amin, 1993*).

Second: The commitment of the other contractor not to exploit the project for other than the purpose for which the loan was granted throughout the term of the loan, as it is necessary to contract with the administration to exploit the financing project for the purpose of building the nursery house after obtaining the approval of the concerned authorities, as it is forbidden for the other party in the financing project to exploit it for a job other than the one for which the loan was granted for its sake, if he intends to do so, he will be subject to a penalty of confiscation of the project, and the confiscation of land and building will be carried out by the party stipulated in the decision of the dissolved Revolutionary Command Council (Paragraph III of Article First of Resolution 251).

It must be clarified, however, that the administrative authority contracting with the other party has no right to impose an obligation on the contractor outside the scope of the contract and is not related to its subject matter, otherwise the contract becomes void (*Adel, 1993*).

Third: The beneficiary contractor's commitment to complete construction within a specified period

The decision of the dissolved, contracted Revolutionary Command Council obligated the completion of the construction of the nursery within the period specified in the instructions for the implementation of the decision and within a maximum of two years from the date of issuance of the license to build the nursery. The financing project is that there is a force majeure or emergency circumstances that led to the delay in completing the construction, and this is what is stipulated in the ninth paragraph of the instructions for establishing, modifying, and renting nurseries No. 1 of 1986 (*Shahawi, 2002*).

Fourth: The obligation of the other contractor to pay the loan according to the percentage specified by the instructions. Establishing, transforming, and renting nurseries. Among the obligations that were imposed on the other contractor, within the decision of the dissolved Revolutionary Command Council, is to pay 25% of the value of the plot of land, to be paid in advance, and the rest of the amount to be paid within a period of five years. From the date of completion of the construction of the nursery house, noting that the plot remains reserved for the conciliation of the kingdom until the debt is paid. It must be clarified that the administration has the right to impose penalties on the contracting party with it, and this right is independent of the contractual texts, so there is nothing preventing the combination of different penalties (*Ismail, 1994*).

### **THE THIRD REQUIREMENT: THE EFFECT OF VIOLATING THE TERMS OF THE CONTRACT**

After we have clarified the obligations established by the contract according to the dissolved Revolutionary Council Resolution No. 251 of 1986, we must address the impact of violating the terms of the contract? And do the following texts (1050 and 197) of the Iraqi Civil Code apply to the right of the contractor as the owner of the land according to the decision.

#### **First Branch: The Contractor's Entitlement To Receive The Property Is Free Of Concerns**

The text of Article 1050 of the "Iraqi Civil Code" came as follows: (No one may be deprived of his property except in the cases determined by the law and by the methods he draws in exchange for a fair compensation paid to him in advance) (*Nassar, 2000*), and since the ownership of the property has been transferred to the contractor with the administration according to the concluded contract According to the decision of the dissolved Revolution Council, and it was owned in the real estate registration departments, is the contractor entitled to lift the administration's overreach in the event that the terms of the contract were not implemented?

The Diwaniyah Court of First Instance, in its decision No. 23/B/2015, went to consider the Ministry of Education as encroaching on the plot numbered 1/993 m 1, Umm Al-Khail, after the concerned ministry established a school on that plot, based on the text of the above-mentioned article. The aforementioned court, even if Article 1050 of the Iraqi "Civil Law" was applied, did not investigate the extent of the contractor's implementation of the contract in accordance with the decision of the State Council in question, and that the administration represented by the Ministry of Education, although it did not verify at the time of construction who belonged to the piece subject of the lawsuit, but it has established a public utility (School) according to the basic design of the city.

It is the observation of the Court of Appeal in its original capacity by its decision No. (218 / S / 2015), in which it stated (that the establishment of the school is for the purposes of public benefit, and it is a public facility, and the judgment of the Court of Cassation has settled on the permissibility of using private property for the purpose of achieving public benefit) (20).

It is noted on the above decision that the court neglected to verify the contract according to which the ownership of the property, the subject of the lawsuit, was transferred to the interest of the contractor. As the "Federal Court of Cassation" did not ratify the decision of the Court of Appeal on the grounds that the decision that justified what it went with in its decision (for the decision of the Court of Cassation No. 543 / General Assembly / 2011 on 3/29/2011), given that the principle referred to in the above decision does not correspond to the subject matter of the case. Elevating the school building does not cause damages as much as the damages included in the decision, and the Court of Cassation upheld the aforementioned decision of the Court of First Instance.

On 7/26/2015, the Qadisiyah Court of Appeal issued a decision in case No. 218/S/2015 to justify its decision not to raise the violation to the provisions of the dissolved Revolutionary Command Council's decision by saying (that the contractor violated the provisions of the decision because he did not build the nursery on the plot subject of the lawsuit The Diwaniyah Municipality (the list of owners) must annul the registration of the property based on the provisions of Article 139/1 of the Real Estate Registration Law) to be certified by the Federal Court of Cassation.

#### **Section Two: Entitlement of the Contracting Party to the Benefit Fee**

There is no disagreement that Article 197 of the "Civil Code" has granted a similar rent to the owner from the usurper of the property, as it states that the usurper must return the usurped property if it was real estate with a similar rent, and Article (1050) of the same law permitted the administration to benefit from private property according to the

law is in exchange for fair compensation, which makes us think about the effect of this rule when the contractor does not implement the terms of the contract that he owned through his entitlement to the same wage. The only criterion in deciding these cases is the court that locates the property, if the Diwaniyah Court of First Instance, in its decision No. (226 / b / 2006) went to the entitlement of the owner of the property 1/993 AD 1 Umm Al-Khail (the owner according to the decision of the dissolved Revolutionary Command Council No. 251 of 1986) for the same wage. For the period from 1/10/2001 until the lawsuit was filed, given that the Ministry of Education had established a school on private property and it was discriminatory approved by the decision of the “Federal Court of Cassation” No. (1692 / “The Civil Authority Real Estate” / 2006). The court did not notice that the real estate on which the school was built was owned according to the decision of the dissolved Revolutionary Command Council, as it was supposed to verify the extent of the contractor's implementation of the terms of the contract in order to decide on the case.

Then he filed another case before the Diwaniyah Court of First Instance No. 875/B/2016 to claim the same wage for subsequent years, which was similar to the court's decision of 2006 in addition to its exaggeration in obtaining that wage, which made it nullified by the Court of Cassation, as the amount was estimated without taking into account the benefit provided by the school (public benefit). In its decision No. 457/458 / S / 2016, the Court of Appeal stated that the ownership was in accordance with the decision of the dissolved Revolutionary Command Council, which is the subject of discussion, but it did not verify the contractor's implementation of the terms of that contract, as it recognized the contractor's entitlement to a similar wage despite not implementing the terms of the contract, which led to this. To overrule it before discriminatory according to Resolution No. (2432 / “Appellate Body” / 2017) in which it was stated (that the court had reached an incorrect conclusion, as the plot was allocated for the establishment of a nursery based on the decision of the dissolved Revolutionary Command Council No. 251 of 1986). The Court of Cassation finally concluded that the condition stated in the decision of the subject of the research (the establishment of a nursery house) is valid and is transferred from the back to the predecessor.

## CONCLUSION

After we delved into the depths of our tagged research (nursery homes according to the dissolved Revolutionary Command Council Resolution No. 251 of 1986 in force), we came to a number of results and recommendations:

### First. The Results

Through what was mentioned in our research above, a number of results appeared to us, as follows:

- 1- The dissolved Revolutionary Command Council Resolution No. 251 of 1986, which is in effect, has enabled the private sector to participate in the establishment of public facilities such as nurseries.
- 2- Granting the contracting decision sums of money by way of credit for the purpose of establishing nurseries.
- 3- The contractor can rent a residence for the purpose of establishing nurseries or renting a role for the socialist sector.
- 4- The building designs (nursery) shall be prepared by the Ministry of Housing and Construction.
- 5- The contractor is not entitled to the rights granted by the Iraqi civil law in Articles (1050 and 198) in the event that he does not implement the terms of the contract.

### Second. Recommendations

- 1- We call on the Iraqi legislator to reinstate the dissolved Revolutionary Command Council Resolution No. 251 of 1986 because of its influence on the participation of the “private sector” in achieving infrastructure, provided that the provision of services is under the supervision and instructions of the administration.
- 2- The “Ministry of Education” is lacking in light of the lack of allocations for the establishment of public schools. Therefore, we call on the concerned ministry to implement the decision in question, provided that the ownership of these schools is not transferred to the private sector.
- 3- In light of the approval of the Private and Foreign Education Law 5 of 2013, and in order to improve education and provide it in the regions in a fair manner, we call on the Ministry of Municipalities to provide plots for the establishment of private schools, whose designs are prepared with the approval of the Ministry of Education, provided that the license is granted by the Ministry of Education.

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