

Republic of Iraq  
Federal Supreme Court  
Ref. 102/federal/media/2014



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 2.12.2014 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, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Ade Hatif Jabar whom are authorized in the name of the people to judge, they made the following decision:

**The plaintiff:** (ain.ha.ha.shin.) his agent the attorney (mim.kha.mim.).

**The defendants:**

1. The president of Iraq republic/ being in this post, his agent the legal official (feh.jim.).
2. the Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).
3. the Prime Minister/ being in this post, his agent the consultant (ain.sin.ain.).

**The claim:**

The agent of the plaintiff claimed before the F.S.C. that the central committee in the secretariat in the council of ministers of compensating those affected by war operations, military mistakes and terrorist operations, has issued the decision No. (lam.mim.ain./ 10445/theh/ Babil damage/2013) on 18.4.2013 which rule to

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compensate his client amount of (18.000.000) dinars instead of the amount mentioned in the recommendation of the sub-committee in Babylon governorate for the damages that affects his house due to terrorist acts, as this decision contradicts the law and injustice his right, he initiate this lawsuit according to the provision of article (93/3<sup>rd</sup>) of the constitution of 2005 for the following reasons:

First: the Sub-Committee of compensating the affected in Babylon governorate in it decision No.(214) on 19.4.2012 has recommended the coverage of his client with the law No.(20) of 2009 and the instructions No.(4) for 2011, with the amount of compensation (27.000.000) dinars with the ratio of (50%) of the damage cost that affected his house built on the plot No.(4/5) mim (8) Alshwafie village on the accident date (3/9/2006), despite the injustice that came with the estimate and the fact that it is not commensurate with the size of the damage affected him, and the rise in the value of the construction between the date of the damage and the date the decision was issued, he signed and accepted the mentioned decision and did not object to it despite the prejudice, as he demanded compensation for the furniture of the house, which was completely destroyed by improvised explosive devices, the disclosure committee had informed his client that there is a second committee specialized in compensation for the furniture, which did not happen, although this is proven in the investigation papers pending

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before you, the reconstruction of such a property costs one hundred and fifty million dinars, and the ruling is for you.

Second: the Central Committee to compensate the afflicted has decided, after scrutiny and deliberation, that the decision of the sub-committee in Babylon No.(214) on (19/4/2012) is incorrect and contrary to the law, on the pretext that estimating the value of the damages in it was exaggerated, this reason has violated the validity of the decision therefore decided to repeal the decision and return the file to its subcommittee in Babylon to process it according to the above.

Third: the Central Committee to compensate the affected in its final decision (lam.mim.ain./10445/ theh/ Babylon damage/ 2013) on 18.4.2013, found that the amount of compensation estimated by the three experts was overstated, therefore according to the provisions of article (5/1<sup>st</sup>) of the law No.(5) for 2009 and its powers, decided to amend the estimate to an amount of (eighteen million dinar) instead of the amount mentioned in the recommendation for the damages to his client's house, the Central Committee, by this decision, has violated the law, as it had established itself in the place of the experts, even though the issue of expertise is a technical issue, it was not based upon the issuance of the decision on the report of the first expert, nor even the report of the three experts who went out to the site of the damaged property and submitted their

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detailed report that showed the severity of the damage to the home.

Fourth: the Central Committee in its last decision, estimated the value of the damage in an abundant manner and did not depend on legal foundations or technical controls in force, which is what the decision reveals, on the other hand, we note that the committee has estimated in similar decisions compensation amounts much more than the amount estimated for his client, despite the fact that the area of those properties is much less than the area of his client's house, which indicates the mood of the committee in estimating compensation that it is not subject to any controls or instructions.

Fifth: when he reviewed the subcommittee in Babylon to object on the first decision of the central committee, he was told that the decisions of the central committee are not subject to appeal or cassation, which is violation to the provisions of the article (100) of the constitution which stipulated (it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision) this is a clear violation of the constitution.

Sixth: the Prime Minister, based on the request submitted to him, has recommended by his margin dated on (9.10.2013) the Compensation Committee of the General Secretariat to reconsider the amount of compensation for the demolition of

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their homes and grant the right of martyrs to their children, but the Central Committee did not take that margin and did not give it the necessary attention.

Seventh: the Law No.(20) for 2009 the compensation law for victims affected by war operations, military errors, and terrorist operations did not stipulate in its articles or paragraphs that its decisions should be immunized from appeal and cassation, but the Central Committee in the Secretariat of the Council of Ministers stated that its decisions are not subject to appeal and discrimination and this is a clear constitutional violation.

Therefore he requested the F.S.C. to amend the law No.(20) of 2009 and to add paragraph stating that the decisions of the central committee in the Secretariat of the Council of Ministers are submitted to appeal and cassation in order to save the public interest retroactively, he also requested to repeal the committee' decision and to consider the experts reports with the decision of the subcommittee in Babylon, and to burden them the expenses and the advocacy fees. After registering the lawsuit before this court according to paragraph (3<sup>rd</sup>) of article (1) of the F.S.C. bylaw No.(1) for 2005 and completing the required procedures according to paragraph (2<sup>nd</sup>) of article (2) of the same bylaw, the court call upon the parties of the lawsuit, the agent of the plaintiff and the agents of the defendant has attended and continue with the argument in present and public, the first-defendant agent repeated the answering

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draft dated on 11.9.2014 requesting to reject the lawsuit for lacking the jurisdiction, the agents of second-defendant repeated the answering draft dated on 8.9.2014 requesting to reject the lawsuit for lacking the jurisdiction, the agent of third-defendant repeated the answering draft dated on 16.9.2014 requesting to reject the lawsuit for lacking the jurisdiction. during scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

### **The decision:**

During scrutiny and deliberation by the F.S.C. found that the plaintiff' agent requested the F.S.C. to amend the law No.(20) of 2009 to add paragraph stating that the decisions of the central committee in the Secretariat of the Council of Ministers are submitted to appeal and cassation in order to save the public interest retroactively, he also requested to repeal the committee' decision. As the F.S.C.' jurisdictions are stipulated in article (4) of its law No.(30) for 2005 and article (93) of the constitution of 2005, which didn't included what the plaintiff has requested in his case petition therefore, the F.S.C. is not competent to consider the lawsuit, this obliged to reject the lawsuit of the second defendant/ being in this post, we found that first and third defendant/ being in their posts are not litigants in this lawsuit because they don't have power to enact or amend laws which obliged to reject the case of them for the

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aspect of litigation according to article (4) and (1/80) of the amended civil procedures law No.(83) for 1969. For the mentioned reasons the F.S.C. decided to dismiss the plaintiff' lawsuit and to burden him the expenses and the advocacy fees for the defendants' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, publicly on 2.12.2014 .