

Republic of Iraq  
Federal Supreme Court  
Ref. 108 unified with  
124/ federal /2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 20/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

The plaintiffs in the lawsuit (108/federal/2019) :

- |                            |   |  |
|----------------------------|---|--|
| 1. Aqil Mahmod Nueman.     | } | Their agent the<br>attorney Shawket<br>Sami Alsamaraay |
| 2. Muhamad Nueman Abd.     |   |  |
| 3. Abd Allah Rashid Hamem. |   |  |
| 4. Hatem Rashid Hamem.     |   |  |

The plaintiff in the lawsuit (124/federal/2019) :

Ismael Abd Sarhan – his agent the attorney  
Mamon Yosif Yaqub.

The defendants:

1. the Speaker of the Iraqi Council of Representatives (I.C.R.)/  
being in this post- his agent the legal advisor Haytham Majid Salim.
2. The Minister of Reconstruction, Housing and Public Municipalities/ being in this post.

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3. The Minister of Finance/ being in this post –his agent the legal official Aliaa Nazar Ali.
  4. The Minister of Agriculture/ being in this post -his agents the legal officials (Qusay Hameed Husain, Muhamed Abd Alhusain Salman, and Slam Hano Hamed).
  5. The Minister of justice/ being in this post –his agent the legal official Firas Adnan Abd Alhusain.

**The claim :**

The agent of the plaintiffs claimed in the case petition that on the date 13.2.1962, the Municipalities Management Law No.(165) for 1964 has been issued, article (97\1) of it states that (all the streets within its boundaries that are left to be used for the public benefit shall be registered in the name of the municipality without compensation, that are exist when this law comes into force or that occur after that according to the laws in force, or that falls within its borders when changing it, the Land Registry departments have to correct the registration of these streets in the name of the municipality directly if they are registered in the name of others, without a fee.), as the existence of this text could cause harm to citizens, and violates many of the constitutional provisions, therefore he challenged it for being unconstitutional, and requested to repeal it for the following reasons:

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1. The legislator objectives of enacting the challenged article is to connect the present to what occur in the past, throw implementing the rule of the on the material facts prior to its issuance, and for this reason the occurrence of forcing is achieved after the issuance of the law No.(165) for 1946, the claim for a wage of similar in existence and absent, with the fulfillment of forcing, if it is a property it must be returned to its owner with a wage similar to it, according to the provisions of the article (297/civil), which requires compensation in line with the provisions of the valid constitution of 2005, the failure to register these streets in the name of the municipality is not considered a disclosure of the municipality's right to register it later without compensation according to the provisions of the challenged article, Therefore, it is required by law that legal protection be provided and that all property transactions of transferring property ownership on the properties covered by the challenged text be immunized, which is inconsistent with the provisions of the Constitution and valid laws.
  2. The interpretative direction of the Iraqi Court of Cassation, specifically the accompanying decisions (1020 and 1024/ the appellate body, property/2019) on 25.2.2019, was wrong to appraise and violated the law by including the lands of its clients with the provisions of the article being challenged,

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because the owned land is different from the abandoned land, article (5) of the property registration law No.(43) for 1971 stipulates that owned real estate its benefits and rights belongs to its owner according to the provisions of the laws, while article (8) of the same law stipulates that the abandoned lands is the properties belongs to the State, allocated for public benefit purposes or for the benefit of the people of a particular village or borough, it is not permissible to register real estate owned by people in the name of the municipality, even if it was streets, roads, or sidewalks, whereas the text being challenged is of the abandoned estates that is not registered by the name of the municipality, if this text remain in this form it may affect the stability of the real estate procedures, cause huge damages to the privet property guaranteed by the constitution and obliged the compensation in case of expropriation it even it is for the public interest.

3. The law may set restrictions on the owner's right of practicing his powers on the real state, the restriction may become expropriation for the public benefit throw the appropriation, the constitution conditioned that the expropriation is to achieve the public interest, and to be with fair compensation, accordingly the text of article (97/1) violated article (23) of the constitution which stipulates that (first: private property is protected. the owner shall have the right to benefit, exploit

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- and dispose of private property within the limits of the law.  
second: expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law.).
4. The right of ownership is protected, cannot be violated, or depriving the owner of it, unless in the cases authorized by the law . the Iraqi legislator has granted full protection to this right in many legislations including article (1050) which stipulates that (no one may be deprived of his property except in the circumstances stipulated by law and in the manner determined by it, in exchange for fair compensation paid to him in advance).
  5. The Appropriation Law No.(12) for 1981 stipulated in article (1/2<sup>nd</sup>) of it that (the objectives of this law is to set unified rules and bases for fair compensation of the owned real states, that guarantees the rights of its owners without affecting the public benefits).
  6. The Iraqi judiciary was aware of this contradicting with the constitutional text, it didn't uses the article being challenged except after the new procedure of the Iraqi Cassation Court, as article (13/2<sup>nd</sup>) of the constitution stipulates that no law that contradicts this constitution shall be enacted. Accordingly he requested the F.S.C. to rule the unconstitutionality of article

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(97/1) of the Municipality Management Law No.(165) for 1964 for violating article (23) of the constitution.

After informing the defendants with the case petition, the agents of first defendant (speaker of I.C.R. being in this post)has responded with the answering draft dated on (25.9.2019) requesting to reject the lawsuit because the challenged law is of the valid regulatory laws, it contain no constitutional violation as what the plaintiffs' agent has listed, because the streets within the municipality's borders is for public benefits, within the basic planning of cities, the Law -subject of the lawsuit- regulates the registration of these spaces by the municipality' name, especially since the judicial decisions mentioned in the lawsuit dealt with the matter according to the categories of lands covered by the Municipal Management Law, including the appeals article. The agent of third defendant (minister of finance being in this post) has responded requesting to reject the lawsuit because article (130) of the Iraqi constitution stipulates that the legislations remain valid and under implementation unless it gets revoked or amended according to this constitution, the cassation judicial decisions are plea on what was adjudicated in it. The agent of fourth-defendant (the minister of agriculture being in this post) responded with the answering draft dated on 20.11.2019 requesting to reject the lawsuit from the aspect of litigation, adding that implementing the law under challenge is specialty of municipal directorates which is not within his client

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functions. The agent of fifth-defendant (minister of justice being in this post) responded requesting to reject the lawsuit from the aspect of litigation according to article (80) of the civil procedures law, because the Ministry of Justice is party that implement the valid laws and not an legislative body, its role specifically, the real estate registration department is an executive role that specializes in procedures for registering, annulling, and changing the property category, description of the real estate area class, and to provide the official and judicial authorities with a copy of the records that has acquired the final or non-final form in case of a litigation over a specific property is occur, the primary objective of the real estate registration department is to ensure legal protection for real estate actions, he also stated that his client department dealt with the municipal management law No.(165) for 1964 under the consideration that it is valid law according to article (129) of the constitution therefore the plaintiff' lawsuit has lost it legal substantiation. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005, the date 20.1.2020 was scheduled for the argument, the court convened and call upon the parties, the plaintiffs' agent has attended, the agent of first-defendant, agent of minister of justice being in this post, agent of minister of agriculture being in this post all has attended, the agents of minister of housing being in this post and agent of minister of finance being in this post didn't attend despite the informing

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according to law, the court decided to continue with the argument with in presence and public for all, the plaintiffs' agent repeated the case petition and requested to rule according to it. Court found that there is lawsuit presented before this court with the same subject which is the lawsuit (124/ federal/2019), and in order to save many and efforts it decided to unified it with the lawsuit (108/ federal/ 2019), and to consider it the original because it was presented earlier, the agent of the plaintiff in the lawsuit (124/federal/2019), the attorney Maemon Yoisif has attended also the defendant' agent, and continue with the argument in present and public, the agent of the plaintiff in the unified lawsuit repeated the case petition and requested to judge according to it, he presented an answering draft to the defendant draft, stating that the courts has issued during the implementation of article (97/1) of the municipally law regard privet property accompanied with compensation, but the judiciary has directed in different direction contradicting the law and the constitution. the defendant agent repeated the answering draft and requested to reject the lawsuit for the reasons listed in it. The agents of ministers of justice and agriculture repeated the answering draft requesting to reject the lawsuits. 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.

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### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs in the lawsuit (108/federal/2019), and the plaintiff in the unified lawsuit (124/federal/2019) has challenged with unconstitutionality of article (97/1) of the municipally management law No.(165) for 1964 for the reasons listed in the case petitions, the defendants responded requesting to reject the lawsuit for the reasons mentioned above. The F.S.C. found throw reading and analyzing the text of article (97/1) of the municipally management law which states ((all the streets within its boundaries that are left to be used for the public benefit shall be registered in the name of the municipality without compensation, that are exist when this law comes into force or that occur after that according to the laws in force, or that falls within its borders when changing it, the Land Registry departments have to correct the registration of these streets in the name of the municipality directly if they are registered in the name of others, without fee.)). The F.S.C. finds that the challenged text for being unconstitutional, has included in part of it an adjective act which is binding the real estate registration department (Al-Tabo) to register all the streets within its boundaries that are left to be used for the public benefit, in the name of the municipality without compensation, that are exist when this law comes into force or that occur after that according to the laws in force, or that falls within its borders when changing it. The text has

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includes an implication from the adjective part of it which is registering these real estates without compensation by the municipally name, from reading the mentioned text, noticed that it didn't specified the class, type or ownership of real estate that it or part of it become streets left for public benefits within the municipally borders, and if these real states is free-hold property, privet property, or belongs to ministries and official parties not related to a ministry, according to that the courts hesitated in the meaning of the text being challenge for unconstitutionality, between covering the real estate owned privately, and between limiting its ruling on real estate belonging to the state, where the courts finally directed to that the advanced text includes real estate owned by private ownership that has become, or part of it, in the streets within the municipal boundaries and depriving their owners of compensation for registering them in the name of the municipalities without compensation, also it is deprived of demanding a wage of the similar, whether these streets are set before or after the enforcement of the municipally law. The F.S.C. finds that the generality of the article (97/1) text of the municipally management law, throw not specifying the class, type or ownership of these real estates that it or part of it become streets, before or after the validity of the mentioned law, to be registered without compensation by the municipally name as long as it is within its borders, this generality makes the text of article (97/1) of the municipally management law

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contradicting to the provision of article (23) of the constitution which protected the private property and didn't allowed the expropriation except for the purposes of public benefit in return for just compensation. Accordingly the court decided that the text of article (97/1) of the municipally management law No.(165) for 1964 is unconstitutional, regard the private property of the real states that it or part of it become new streets before or after the validity of the law with the municipally boarders. Reject the lawsuit for the defendants the Minister of Reconstruction, Housing and Public Municipalities, the Minister of Finance, the Minister of Agriculture and the Minister of justice / being in their posts from the aspects of litigation, because the text under challenge for being unconstitutional wasn't enacted by them . and to burden the defendant the speaker of the I.C.R./ being in this post the relative expenses because the litigation is directed rightly to him for the mentioned reason, and to burden him the advocacy fess for the plaintiffs agents in both lawsuits amount of IQ.D (one hundred thousand) divided on them by law. This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and to be implemented from the date of it issuance on 20.1.2020, issued publicly in the session.