

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 110/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21.4.2015 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff : (ha. mim. ain.) his agent (ain. feh. ta.).

The Defendants : 1- Speaker of House of Representatives/ being in this capacity- his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

2- Minister of Finance / being in this capacity – his jurist (alif. feh. ha.) .

3- Head of Tourism Authority/ being in this capacity his agent is the legal counsel (kaf. ha. dal.).

4- Registrar of Public Companies/ being in this capacity

The Claim:

The prosecutor claimed that the decision of the Dissolved Revolutionary Command Council No. (83) on 15/6/1986 took ownership of the private sector of (51%) of the shares in the tourist city company in Habbaniyah, a mixed company, he decided to assign those shares, including the plaintiff's shares to the Tourism Authority, to be paid by the Ministry of Finance in nominal and unfair, the contested decision violates the provisional and permanent constitutional principles, especially Article (16/jim) of the Constitution of the Republic of Iraq of 1970, which grants immunity to private property. So article (13/4) of the Expropriation Law is also violates article (23/2) of the Constitution of the Republic of Iraq of 2005, which may remove private property only for public benefit purposes in exchange for fair compensation. Based on the above, the prosecutor requested the ruling that the decision of the (Dissolved) Revolutionary Command Council No. (83) of 1986 was unconstitutional, as well as the cancellation and annulment of the decision of the fourth defendant, the Registrar of Public Companies/ being in this capacity , which included delete of the company and its return to its previous status as a joint stock company and the names of former shareholders, after registering the case with the court and completing the required procedures, a date was set for the case and the parties attended, and the plaintiff repeated the petition and requested the verdict, and the defendants' agents repeated their regulations submitted to the court and requested that the case be dismissed because of the court's jurisdiction, and the parties repeated their statements, the end of argument has been made clearly, the decision had made clear public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent claimed in the petition that the (Dissolved) Revolutionary Command Council insisted on its resolution No. (83) on 15/6/1986, under which he took ownership of the private sector in the capital of the tourist city company in Habbaniyah, which is (51%), a mixed company and assignment those shares, including the plaintiff's shares to the Tourism Authority, to be taken over by the Ministry of Finance to pay the shares in nominal terms, since this decision violates Article (16/jim) of Constitution of 1970 and Article (23) of the Constitution of the Republic of Iraq in 2005. For the above, the prosecutor is requesting a ruling that the decision of the (Dissolved) Revolutionary Command Council is unconstitutional. The FSC finds after scrutiny and deliberation that the contested decision against its unconstitutionality has been enforced and no longer exists after implementation and since the terms of reference of the FSC are limited to Article (93/1st) of the Constitution of the Republic of Iraq in 2005 by controlling the constitutionality of applicable laws and regulations, thus challenging the unconstitutionality of the said decision is outside the jurisdiction of the FSC stipulated in article above. Accordingly, the ruling decided to reject the plaintiff's case of non-jurisdiction and to charge him with the costs of the lawsuit and the fees of the lawyers of the defendants, President of the House of Representatives the Jurists (sin. ta. yeh.) and (ha. mim. sin.), Minister of Finance, jurist (alif. feh. ha.), President of the Tourism Authority, legal advisor (kaf. ha. dal.) and the fourth defendant's attorney, Registered Companies amount of one hundred thousand dinars distributed between them equally and the decision was issued decisively and by agreement and understood publicly 21/4/2015.