

Republic of Iraq
Federal Supreme Court
Ref. 113 / federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 21.4.2015 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, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

The Plaintiff:

(beh.ha.nun.) his agent the attorney (sad.shin.).

The defendant:

the Speaker of the Iraqi Council of Representatives (I.C.R.)/
being in this post.

The claim:

The agent of the plaintiff claimed in the case petition that the plaintiff (dal.kaf.alif.) has initiated the lawsuit no.(5555/2014) before the Personal Status Court in Baghdad Algedada requesting in it the rule to obligate him to grant her compensation for the arbitrary divorce no more than her alimony of two years according to article (39 feh 3) of the Personal Status Law no.(88) for 1959 (amended) which was added under the amendment law no.(51) for 1985, he added that the divorce is sharia right granted for men willing to holed and divorced willingly, he stated that the terminology of the

Republic of Iraq
Federal Supreme Court
Ref. 113 / federal /media/ 2014



Kurdish text

jurists in divorce is the solution of the bond of marriage between the spouses. the legality of divorce has been proven from the holy Quran and the Sunnah of the Messenger, the legal rule is that the legal permissibility contradicts the guarantee, that the woman has no right in her husband's money except for the dowry and obligatory alimony, according to article (34/feh/1) of the amended Personal Status Law no.188 of 1959 that stated (divorce is eliminating the marriage restriction by the husband or the wife, if she assigned someone to, authorized someone to, or by the judge, the divorce does not take place except in the form specified for it by Sharia) the moral of divorce is to provide comfort to both spouses, as for the position of Islamic law on divorce, it authorized divorce after exhausting all possible solutions, it is allowed for the husband from Allah therefore the husband may not be punished for using his lawful right. Article (1 paragraph 2nd) of the personal status law stated that (if there is no legislative text that can be implemented, then it is ruled according to the principles of Islamic Sharia), meaning that the law, in this paragraph, referred the judge to the principles of the glorious Islamic Sharia, when it is devoid of an appropriate text, as it is not permissible to impose a fine for the legitimate use of the lawful right, also article (1 paragraph 3rd) of the same law stipulates that ((in all this, the courts are guided by the rulings approved by the Islamic judiciary in Iraq and other Islamic countries), concluded that article (39 paragraph 3rd) of the amended personal status law no.188 for 1959 which was added by the



amending law no.51 for 1985 is violating the constitutional provisions in article (2) first (b, teh/ mean c) considering that Islam is the official religious of the state, it is the main source of legislation, and (second) the constitution guarantees the Islamic identity of the majority of the Iraqi people...etc.), the challenged article violates articles (14, 15, 19, 16 and 46) of the constitution also. He requested to call upon the defendant being in this post for argument, rule to repeal paragraph (3rd) of article (39) of the Personal Status Law no. 188 for 1959 which was added by the amendment law no. 51 for 1985, according to the provision of article (93) of the constitution and article (4/2nd) of the F.S.C. law, and to burden the defendant all fees with the expenses. After registering the lawsuit according to the F.S.C. bylaw, the defendant was informed with the case petition, he responded on 20.10.2014 requesting to dismiss the lawsuit for the reasons listed in it, the date 21.4.2015 was set for the argument, the court heard the statements of the defendant agents, nether the plaintiff nor his agent attended. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff cleared in the case petition that (dal. Kaf. Alif.) has filed the lawsuit 5555/shin/2014 against him before the Personal

Republic of Iraq
Federal Supreme Court
Ref. 113 / federal /media/ 2014



Kurdish text

Status Court in Baghdad Algededa requesting in it the rule to obligate him to grant her compensation for the arbitrary divorce no more than her alimony of two years according to article (39 paragraph 3) of the Personal Status Law no.(188) for 1959 which was added under the amendment law no.(51) for 1985, claiming that the mentioned article violates the Islamic sharia as the divorce is sharia right granted for men willing to holed or divorce willingly, the legal permissibility contradicts the guarantee, in addition to violating article (34) of the valid Personal Status Law that stated (divorce is eliminating the marriage restriction by the husband or the wife, if she assigned someone to, authorized someone to,... etc.), he also cleared that article (39 paragraph 3rd) is violating the constitution in which considered the Islam is the official religious of the state, it is the main source of legislation, the constitution guarantees the Islamic identity of the majority of the Iraqi people, indicating to articles (2/1st)(a, b, c) and (14, 15, 19, 46) of the constitution. the F.S.C. finds that the principles of Islamic Sharia seek to achieve supreme justice between the spouses, which can only be achieved by compensating the woman for the injustice she suffered as a result of an arbitrary divorce, as there is no arbitrariness if the reason for the divorce is legitimate, since the marriage is a binding contract for both sides and the husband alone have the license of terminating it in an exception of the general rule, it is not permissible to use this license except within the limits of legality, if he exceeds it, then he is arbitrary in the matter of the

Republic of Iraq
Federal Supreme Court
Ref. 113 / federal /media/ 2014



Kurdish text

divorce, and this requires that the woman be compensated for the harm she has suffered, this does not contradict the established rulings of Islam, because it constitutes compensation for the wife as a result of the harm that has befallen her, and it provides compensation for that harm. For all that, the lawsuit lack it legal substantiation. Accordingly the court decided to dismiss the lawsuit and to burden the plaintiff the expenses and the advocacy fees for the defendant' agents amount of (one hundred thousand) IQ.D. This decision has been issued final publicly on 21.4.2015 .