

Republic of Iraq
Federal Supreme Court
Ref. 115 /federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16/12/2019 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Salem Mahdi Saleh -his agent the attorney Saheb Abd Alrasol Ouainat.

The defendant: The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

The claim:

The agent of the plaintiff claimed in the case petition that the court of first instant in Karbala on 19/8/2019 issued a judgment in the lawsuit (429/beh/2019) that obliged his client amount of double the comparable wage of the shop which is part of the property (20/12 Abasya/ endowment of Saleh Mahdy Abo Frosh) to endowment trustee according to the provision of article (12/2) of the endowment management law No.(44)-the correct No. (64)- of 1966 the amended, amount of (49.676.666) dinar, he appealed the

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mentioned judgment before Karbala court of appeal in the lawsuit No.(530/sin/2019) which is still under consideration, as the text of article (12/2) of the law violated the constitution in articles (2/c- no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), and article (14) of it which stipulate the (principle of equality), therefore he initiated a challenge against it before this court because it exceeded this constitutional rule by discriminating between Iraqis, for example the Iraqi who encroach on any of the state estates then he is obligated to return it to the owner with it comparable wage (article 197 civil), also the state institutions of the ministries and municipalities if it exceeded of the people money or on the estates of other departments or other ministry then its obligated to give comparable wage for the owner of the estate without doubling it (article 197 civil). For the aforementioned reasons the agent of the plaintiff requested the F.S.C. to rule (the unconstitutionality of paragraph (2) of article (12) of the amended endowment management law No.(64) for 1966 and to make it the same as article (197) of the civil law). The agents of the defendant responded with the answering draft dated on 22/10/2019 stating that the text under challenge is of the in force laws which was legislated decades ago and it doesn't contain constitutional violation and represent a legislative choice that don't contradict the constitutional text according to what that agent of the plaintiff has listed, as for the request of the plaintiff agent to make



the challenged text the same as article (197) of the civil law, that is out of the F.S.C. jurisdictions according to the provision of article (93) of the constitution, for the aforementioned reasons the agents of the defendant requested to reject the case and to burden the plaintiff the legal expenses. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 16/12/2019 was scheduled for the argument, the court convened and call upon the parties, the agent of the plaintiff attended, and the agent of defendant the director Salim Taha Yasein attended and continue with the argument in presence and public, the agent of the plaintiff repeated the case petition and requested to judge according to it challenging the unconstitutionality of paragraph (2) of article (12) of the endowment management law, the agent of the defendant repeated the answering draft and requested to reject the case for the reasons listed in it. The court found that the case is completed for reasons of judgment and 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. the court found that the plaintiff with unconstitutionality of paragraph (2) of article (12) of the endowment management law No.(64) for 1966 which fine who encroach on the endowment estate double the comparable wage unlike who encroach on other estate than the endowment

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estates, requesting to equalize the provision of the challenged article with the provision of article (197) of the civil law which fine who encroach on other than the endowment estates with comparable wage, the plaintiff based his claim on the provision of articles (14 and 16) of the constitution, the F.S.C. found that the text of article (14) of the constitution stipulate that Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status and it is irrelevant to the subject of this case because the inequality between encroaching on the endowment plot govern by paragraph (2) of article (12) of the endowment management law, with the encroaching on plot rather than the endowment plot which is govern by article (197) of the civil law, doesn't require equality between the financial implications on each of them regardless the capacity of the encroacher, therefore it shouldn't equalize between encroachers in this case, because the property being encroached is the one must be taken into account when estimating the comparable wage and not the capacity of the encroacher, because the property being encroached differ in the objectives allocated for it, as the endowment estates in its multiple forms has its specificity resulting from the relation to the right of Sharia and belief in it, or the existence of such a right and another right that is the right of the beneficiaries in it, therefore the legislator specify it with a provisions that differ from the provisions of other estates, this in regard to article (14) which the plaintiff based his case on, as it is unproductive in the implementation on the subject of this lawsuit, as for the plaintiff's reliance on the provisions of article (16) of the constitution which stipulate the principle of equal opportunities for

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Iraqis, it also does not serve as substantiation for the plaintiff's claim, therefore the plaintiff's request the judge that paragraph (2) of article (12) of the endowment management law to be unconstitutional, has lost its constitution substantiation, as for the plaintiff's request to make the provision of article (12/2) of the endowment management law the same as the provision of article (197) of the civil law, this is out of the jurisdiction of the F.S.C. stipulated in article (93) of the constitution and article (4) of the F.S.C. Law No. (30) for 2005. Accordingly the court decided to reject the lawsuit and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The 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 and issued publicly on 16/12/2019.