

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9/8/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Jabbar Aziz Daneef, Muaataz Kadhim Aziz, and 22 other plaintiffs – their barristers Kamil Rashad Flayeh and Qahtan Hasan Saadoun.

The Defendant: Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiffs, through the mediation of their agents, pleaded before the Court of First Instance of Al-Shatra affiliated with the Presidency of the Dhi Qar Court of Appeal during its consideration of the unified lawsuit No. (42/Beh/Unified/2023), the unconstitutionality of Article (3/2<sup>nd</sup>) of the Property Claims Authority Law No. (13) of 2010 and based on the provisions of Article (18) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, the court assigned him to file a lawsuit on the subject of the appeal and pay the legal fee for it, accepted it, and sent it with a true copy of the lawsuit file to this court is attached to the letter of the presidency of the Dhi Qar Court of Appeal No. (3617) on 7/5/2023, according to which the plaintiffs claimed that Article (3/2<sup>nd</sup>) of the Property Claims Authority Law No. (13) of 2010, which stipulates that ((The provision of paragraph (Beh) of the item (first) of this article excludes real estate seized following the Agrarian Reform Law)), this clause is unconstitutional and harmful to their right to the lawsuits considered by the Court of First Instance of Al-Shatra

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

Nos. 42/Beh/2023, 43/B/2023 and 44/Beh/2023, so they took the initiative to challenge its constitutionality, as the failure to address the conditions of real estate that were seized without allowance for agrarian reform is contrary to the provisions of ownership stipulated in Article (23) of the Constitution, which states (First: Private property is inviolable, and the owner has the right to use, exploit and dispose of it, within the limits of the law. Second: Expropriation may only be made for purposes of public benefit in return for fair compensation, and this shall be regulated by law). Whereas the failure to return the properties seized under the Agrarian Reform Law following the exceptions contained in the Property Claims Commission Law and the return of the rest of the other real estate seized by laws other than the Agrarian Reform Law contradicts the provisions of Article (14) of the Constitution, which affirms the principle of equality among Iraqis before the law, as well as the fact that the Property Claims Commission Law is one of the transitional justice laws that must be applied to everyone without exception, whether those whose properties were taken by the State under the Agrarian Reform Law. Without the rest of the Iraqis whose real estate and properties were confiscated under other laws and decisions during the rule of the former regime and without any allowance or compensation, therefore, the plaintiffs asked this court to rule on the unconstitutionality of Article (3/2<sup>nd</sup>) of the Property Claims Authority Law No. (13) of 2010 and to charge the defendant fees, expenses, and advocacy fees. The case was registered with this court in the number (117/Federal/2023) and the defendant shall be informed of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Rules of Procedure, his agent replied in the answering draft dated 11/6/2023 that the paragraph - the subject of the challenge - was issued in accordance with the competencies of the Council of Representatives based on Article (61/1<sup>st</sup>) of the Constitution of Iraq in force for the year 2005 and that the Property Claims Authority Law No. (13) of 2010 was a legislative option and did not violate any of the constitutional provisions referred to in the lawsuit petition, therefore, he requested the dismissal of the lawsuit and

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

charging the plaintiffs fees, expenses and attorney's fees. After completing the procedures required by the rules of procedure of the court, a date was set for the consideration of the case without pleading, and on the specified day, the court was formed and the case began to be heard, the court reviewed the plaintiffs' request, their evidence, and the defendant's defenses under the draft of his agent attached to the case papers, and after the court completed its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs (Jabbar Aziz Denief, Moataz Kazem Aziz, Amal Mutashar Diab, Iltifat Aziz Deaneef, Karim Aziz Deanif, Royce Aziz Deaneef, Mahdi Aziz Deaneef, Abdul Hadi Aziz Deaneef, Omnia Aziz Denif, Voucher Aziz Deaneef, Salam Kazem Aziz, Ali Kazem Aziz, Jawdat Kazem Aziz, Mustafa Kazem Aziz, Mohammed Kazem Aziz, Suad Hamid Khafif, Saif Kazem Aziz, Esraa Kazem Aziz, Doaa Kazem Aziz, Ahmed Kazem Aziz, Hussein Kazem Aziz and Rawa. Kazem Aziz, Hawra Kazem Aziz and Zain El Abidine Kazem Aziz), had filed this lawsuit requesting a ruling on the constitutionality of Article (3/2<sup>nd</sup>) of the amended Property Claims Authority Law No. (13) of 2010, which stipulates that: ((Real estate seized in accordance with the Agrarian Reform Law shall be excluded from the provision of paragraph (Beh) of item (1<sup>st</sup>) of this article)), due to its violation of the provisions of Article (23) of the Constitution of the Republic of Iraq for the year 2005, which includes that private property is protected and may not be expropriated except for the purposes of public benefit in return for fair compensation, it also contradicts the provisions of Article (14) of the Constitution, which includes that Iraqis are equal before the law without discrimination because of sex, race, nationality, origin, color, religion, sect, belief,

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

opinion, or economic or social status, the court reviewed the defenses of the defendant (the Speaker of the Council of Representatives/ being in this capacity) under the regulation of his agent dated 11/6/2023, which includes that what is stated in the law is a legislative option and does not contradict or contradict any text of the Constitution and a request to dismiss the plaintiffs' lawsuit. Upon closer consideration by this court, it was found that the plaintiff Jabbar Aziz Danif and his group had previously filed the lawsuit numbered (42/Beh/Unified/2023) before the Shatra Court of First Instance affiliated to the presidency of the Dhi Qar Court of Appeal, quarreling with the defendant, the Minister of Finance, in addition to his job, claiming that their heir, Aziz Danif Awfi, owned the property in the sequence of 108 districts/2 in the Shatrah district, with an area of (240) dunums, and the defendant acquired it in addition to his job and registered the property in his name as the pure property of the Ministry of Finance In 1969 without right or legal basis and for political reasons after the former regime displaced them and imprisoned their heir, and then the ownership of that space to the Directorate of the municipality of Shatra and became sequentially 8/1 hospital and was allocated for the public benefit where the Shatra General Hospital and residential homes for citizens, and because the seizure of that land was contrary to the law they asked to invite the defendant in addition to his job to plead and oblige him to compensate them for the value of that land based on the provisions of item (second) of Article (7) of the Law of the Property Claims Authority No. (13) of 2010 amended and estimated the amount of compensation at the amount of (50,000,000,000) fifty billion dinars while retaining the right Claim for an increase estimated by experts, in the pleading session on 26/2/2023, the plaintiffs' agent pleaded the unconstitutionality of Article (3/second) of the Real Estate Claims Authority Law No. (13) of 2010 and submitted a request to that court to accept the plea of unconstitutionality, and to consider that lawsuit delayed until the constitutionality of the aforementioned legal text is decided, and

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

the court decided in the same session to postpone the pleading to 8/3/2023 for the purpose of auditing, and on the mentioned date, the court decided to assign the plaintiffs' agent to file the lawsuit by defending by the unconstitutionality of the challenged legal text and its submission to that court within 10 days and on 15/3/2023, the plaintiffs' agent filed the lawsuit to challenge the constitutionality of the aforementioned text and pay the legal fee for it on the same day, and the Court of First Instance decided to accept it and send it to this court by a letter signed by the President of the Court of Appeal and to consider the lawsuit filed before it as delayed due to the result of deciding on the constitutionality of the contested text based on the provisions of Article (18) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the Federal Supreme Court finds that the ten-day period in which the internal regulations oblige the litigants to submit their claim challenging the constitutionality of any legal text or regulation related to a lawsuit before the Court of First Instance starts from the date of the plea of unconstitutionality and not from the date the court assigns the opponent to do so following the provisions of Article (18/2<sup>nd</sup>) of the Court's Rules of Procedure, which stipulates that: (Any of the litigants may plead the unconstitutionality of a legal provision or regulation relating to a lawsuit pending before the Court of First Instance, in which case he shall be charged with filing a lawsuit and pay the legal fee therefor, and submitted to the Court of First Instance within ten days from the date of the defense of unconstitutionality), and since the plaintiffs' agent had pleaded the unconstitutionality of the contested text before the Court of First Instance on 26/2/2023, and submitted this lawsuit to that court and paid the fee for it on 15/3/2023, so he has exceeded the period stipulated in Article (18) of the Rules of Procedure of the Federal Supreme Court, and because exceeding that period was for a reason beyond the control of the plaintiffs, so the court decided to accept the lawsuit from this side, on the other hand, the Federal Supreme Court found that the case falls within its

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

jurisdiction stipulated in item (1<sup>st</sup>) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and item (1<sup>st</sup>) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and the court also finds that the plaintiffs' claim is admissible in terms of litigation; because both the plaintiffs and the defendant, in addition to his job, are legal opponents who meet the conditions of litigation and possess the legal capacity to litigate, and you also find that the interest of the plaintiffs is achieved in this lawsuit following the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, and the provisions of Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and upon examining the case from an objective point of view, the court finds the following: First: The constitutional judicial system in Iraq is among the constitutional judicial systems that have granted every interested party to take two paths to challenge the constitutionality of any provision in a law or system in force, namely: The way of plea of unconstitutionality during the hearing of the case before the ordinary courts, whether before the courts affiliated to the Supreme Judicial Council, the administrative courts or the military courts, and the way of direct action before the Federal Supreme Court, And that the way of pleading unconstitutionality by one of the parties to the lawsuit is accompanied by a condition, that the contested legal text is directly related to the subject matter of the lawsuit and affects its outcome, otherwise the Court of First Instance may not accept the lawsuit filed to challenge the unconstitutionality based on that plea based on the provisions of Article (18/3<sup>rd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022. Second: The purpose for which the constitutional judiciary was established is to maintain a legislative environment in which the rule of the Constitution prevails and prevents the violation of its provisions and infringement on its objectives as it represents the will of the nation, and it must rule the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

unconstitutionality of any legislative text that disturbs that legislative environment, One of the most important goals that laws must achieve It is to protect the public interest of the state and society and to protect the private interest of individuals in preserving their property by devoting legal protection to the rights and freedoms guaranteed by the Constitution, including the property right, even though the Constitution of the Republic of Iraq of 2005 provides for the guarantee of many rights and freedoms, including the property right, and that article 46 thereof permits the restriction of those rights and freedoms by legislative provisions, provided that such limitation or restriction does not affect the essence of the right, if individuals have the right to defend their personal interests by resorting to the judiciary to protect their private property, the judiciary, especially the constitutional judiciary in this case, must look at the content of the interest, which contains essential elements, the most important of which is justice, which requires achieving a balance between conflicting interests and not prejudice the legal texts that achieve a balance between the general interest of the state and society and the private interest of individuals, if there is a restriction or limitation of some private rights if they aim to achieve the public interest and achieve the concept of societal stability, provided that these texts do not depart from what the Constitution stipulates that the origin of those rights is not violated, so the public interest in societies grows and develops along the legal space of various legislations, which may justify stripping the individual of some of his personal property, such as imposing taxes and fees on individuals, the role of the law here was to protect the public interest by imposing and collecting it in order to be a source of national income for the state, and this is not considered an infringement on the right to private property, which Article (23) of the Constitution of the Republic of Iraq provides for its protection and non-infringement, and since the plaintiffs' agent has stated in the reasons for his appeal that the contested text violates the provisions of the Constitution and calls it a

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

violation of the provisions of Articles (14 and 23) thereof, the court finds that the contested text when it excluded real estate seized under the Agrarian Reform Law from its provisions did not conflict with the provisions of Article 23 of the Constitution, which provided for the maintenance of private property, since the seizure provided for in the Agrarian Reform Law No. 117 of 1970, as amended, was contained in Articles 6 and 9 thereof, and that the seizure contained in Article 6 of the Law was not negative for the right to private property, but rather came to determine the area of agricultural land owned by persons or delegated. by the title deed or granted to them by necessity, and this came to achieve the general interest of the state and society, this is evidenced by the plaintiffs' claim that these lands were allocated for the public benefit, as the Shatra General Hospital and residential homes for citizens were built on them. As for the appropriation of part of agricultural land under Article 9 of the Agrarian Reform Law, it shall be in return for compensation in kind for an area equivalent to the value of the seized land or for monetary compensation following the rules stipulated in the said law, as for the fact that the plaintiffs' agent described the contested text as violating the principle of equality before the law guaranteed by the Constitution in Article 14 thereof, it cannot be taken into account because the equality guaranteed by the Constitution must be between holders of similar legal positions and not different, a person whose ownership has been limited following the law and in the public interest cannot be in a similar position with a person whose property has been fully confiscated in contravention of the provisions of the law. Moreover, what the plaintiffs are asking intersects with the general interest of the state and society, because the land seized under the Agrarian Reform Law, which has been seized for more than fifty years, constitutes the strength of all cities in Iraq that have been allocated for the public benefit, the approval of its inclusion in the provisions of the Royal Claims Commission Law costs the public treasury sums that it cannot afford in exchange for achieving the special interests

*saady*



Republic of Iraq  
Federal Supreme Court  
Ref. 117 / federal /2023



Kurdish text

of some individuals at the expense of society and the state, which intersects with the main objectives of all legislation, including the Constitution. From the foregoing, the Federal Supreme Court finds that the text of Article (3/2<sup>nd</sup>) of the Law of the Property Claims Authority No. (13) of 2010, as amended, does not conflict with the provisions of Articles (14 and 23) of the Constitution of the Republic of Iraq for the year 2005 and does not contain any constitutional violation. For all of the above, and by request, the Federal Supreme Court decided to dismiss the plaintiffs' lawsuit and to charge them the fees, expenses, and attorney fees of the defendant's agents, the Speaker of the Council of Representatives, being in this capacity, an amount of (one hundred) thousand dinars distributed among them in accordance with the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 21/Muharram Al-Haram/1445 Hijri coinciding 9/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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