

Republic of Iraq
Federal Supreme Court
Ref. 138 / Federal / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 27.12.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Taha Saleh Jassim - his attorney, Husam Al-Din Taha Saleh.

The defendant:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.

The claim:

The plaintiff claimed, through his attorney, that the Iraqi constitution of 2005 stipulated in Article (2/first) of it that (First: Islam is the official religion of the State and is a foundation source of legislation: A. No law may be enacted that contradicts the established provisions of Islam), and since Article (13/Second) of the constitution stipulates: (Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.), and that Allah Almighty is the Supreme Lawgiver, and that many civil rights were not dealt with in detail in the Holy Qur'an, leaving their explanation to the honorable Sunnah of the

Athraa



Prophet. However, the rights of the inheritance, due to their importance, have been mentioned by God Almighty in detail in the following Qur'anic verses: The Almighty said:

{(11) Allāh instructs you concerning your children [i.e., their portions of inheritance]: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two-thirds of one's estate.[164] And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [and/or sisters], for his mother is a sixth,[165] after any bequest he [may have] made or debt.[166] Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allāh. Indeed, Allāh is ever Knowing and Wise, (12) And for you is half of what your wives leave if they have no child. But if they have a child, for you is one-fourth of what they leave, after any bequest they [may have] made or debt. And for them [i.e., the wives] is one-fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third,[167] after any bequest which was made or debt, as long as there is no detriment [caused].[168] [This is] an ordinance from Allāh, and Allāh is Knowing and Forbearing(13) These are the limits [set by] Allāh, and whoever obeys Allāh and His Messenger will be admitted by Him to gardens [in Paradise] under which rivers flow, abiding eternally therein; and

Athraa



that is the great attainment. (14) And whoever disobeys Allāh and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment.}.

as the texts of articles (1187, 1188, 1189, 119, 1192, 1192, 1192, 1193, and 1194) of the Civil Code No. (40) of 1951, violates the Holy Qur'an then it is contrary to the constitution, as Article (1188/1) stipulates (the first degree of those holders of the right to move are the descendants of the deceased from the children and grandchildren, the male like the portion of the female) and Article (1194/1) stipulates (always taken into account in the right to move, that the male have a similar the female's share, regardless of the degree to which this right has been transferred.), And since he is of the religion of Islam, the official state religion, and is affected by the division of the inheritance in accordance with these legal articles, as the Court of First Instance in Balad decided by virtue of the ruling number (652 / b / 2011 on / 26 / 2011/12) Issuance of the regular Qassam in accordance with the legal articles above, and since the term (state religion) contained in Article (2) of the Constitution applies its scope to persons and authorities, regardless of whether the owner is natural or legal and regardless of the type of ownership, and since the legislative and executive authority as a ministry Finance, falls within the authorities and persons, and according to the texts the aforementioned constitutionality is not constitutionally permissible for the legislative authority to enact laws that contradict the Iraqi constitution in force, and since the constants of the provisions of Islam require other than the texts that are the subject of the case as established in the provisions of the aforementioned noble Qur'anic

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 138 / Federal / 2021



Kurdish text

verses, and according to Article (13) of the Constitution, the texts that are the subject of the lawsuit are considered null and void. for all of the foregoing, the plaintiff request from the Federal Supreme Court to call upon the defendant to plead and rule the unconstitutionality of Articles (1187, 1188, 1189, 1190, 1161, 1192, 1193, and 1194) of Civil Law No. (40) of 1951 And charge him all fees, expenses, and attorney's fees. The case was registered with this court in No. (138/Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005 and informs the defendant of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw, and his two attorneys replied with the answer list dated 10/19/2021, that Article (130) of the constitution stipulated (Existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution.), and since the provisions of the civil law are enforceable Since 1951, it came to regulate the shares of owners of the right to move in agricultural lands in accordance with the regular division issued by the competent court, and the reasons for this legislation also came to organize a situation that Iraqi society was suffering from, which is the feudal class, and for the purpose of breaking up the feudal ownership represented by thousands of acres of agricultural land, these texts came in place subject of the appeal is for the purposes of these treatments and it is still valid and represents a legislative option unless it is repealed or amended. For these reasons, the defendant's attorney requested that the plaintiff's lawsuit be dismissed and that he be charged with all court fees, expenses, and attorney's fees. After completing the procedures in accordance with

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 138 / Federal / 2021



Kurdish text

the provisions of the aforementioned bylaw, a date was set for the pleading, in accordance with the provisions of Article (2/Second) of the aforementioned bylaw, and the two parties were informed of it. On the appointed day, the court was formed, so the attorney general of the plaintiff, Hussam El Din Taha Saleh, attended and attended on behalf of the defendant in addition to his post the legal advisor Haitham Majed Salem and the pleading started in the presence and public, the plaintiff's attorney repeated what was stated in the lawsuit petition and requested the ruling according to what was stated in it and submitted a reply statement in response to what was stated in the reply list submitted by the defendant's attorney dated 10/19/2021 and added that his client had been harmed due to application of the contested articles, the defendant's attorney responded requesting dismissal of the case for the reasons mentioned in the aforementioned answer list. where there was nothing left to say, the Court decided the conclusion of the pleading and the court issued the following ruling:

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff, Taha Saleh Jassim, requested to call upon the defendant, the Speaker of Parliament, in addition to his post to plead and judge the unconstitutionality of Articles (1194, 1193, 1192, 1191, 1190, 1189, 1188, 1187) of Civil Law No. 40 of the year 1951 amended for violating the Constitution of the Republic of Iraq for the year 2005 in Article (2/First/A) which stipulates that (First: Islam is the official religion of the State and is a foundation source of legislation: A. No law may be enacted that contradicts the established provisions of Islam), and since Article (13/Second) of the

Athraa



constitution stipulates: (Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.), After conducting the public pleading, what was stated in the plaintiff's lawsuit and requests, and what was stated in the defenses of the defendant's attorney in addition to his post, the court reached the following conclusions:

First: The articles whose constitutionality is challenged by the aforementioned civil law regulates the right to dispose of due to death (movement) where The Civil Code regulated the provisions of the right to dispose of in Chapter One of Chapter Two devoted to rights subordinated to the right of ownership and singled out for it eighty articles from (1169) to (1249) and that the right to dispose of as an original right in rem, it is special, returns to the land owned by the state and authorizes its owner to perform by material and legal dispositions, as Paragraph (1) of Article (1169) of the Civil Code deals with material dispositions that the holder of the right to dispose of may carry out, allowing him the right to use the land and its appurtenances. Paragraph (2) of the same Article gives him the right to carry out legal actions, as he may empty the land However, in all cases, the land remains owned by the state in accordance with the provisions of paragraph (3) of the same article, which stipulates that (and he may generally benefit from the land and exploit it and dispose of his right to it within the limits of the law, and in all cases, the land remains owned by the state).

Second: Real estate is classified according to the provisions of the Real Estate Registration Law No. (43) of 1971, as amended to:

Athraa



1. Owned real estate, which belongs to its owner and its rights to its owner in accordance with the provisions of the laws based on the provisions of Article (5) of the aforementioned law.

2. Endowed real estate is divided into two parts: A- Valid endowments, which were wholly-owned and then were endowed to one of the authorities with legitimate justifications based on the provisions of Article (6/a) of the same law above. B - Invalid endowments, which are the real estate that had a princely neck that belonged to the state, and the rights to dispose of them or their fees or tenths are all endowed exclusively to one of the bodies according to the provisions of Article (6/b) of the same law above.

3. The princely lands that belong to the state are of three types: A- The pure princely lands that belong to the state and all of its rights belong to the state. B - State lands delegated by real state registration department, which are lands that have been delegated the right of disposal to persons in accordance with the provisions of the laws, in accordance with the provisions of Article (7/b) of the above law. C- Princely lands granted by concession are lands that have been granted the right to dispose of to persons according to the provisions of the settlement or obligation laws, in addition to the fact that the types of state lands referred to in paragraphs (a, b, and c) are considered state-owned lands according to the provisions of the Law of Unifying Types of State Lands No. (53) of 1976, Article (1) thereof.

4- Abandoned lands, which are real estate belonging to the state and allocated for public interest or the benefit of the people of a particular village or town, according to the provisions of Article (8) of the Real Estate Registration Law.

Athraa



Third: There are several restrictions on the right to dispose of, some of which are stipulated in the civil law, and some are stipulated in other laws. The most important of these restrictions is the inadmissibility of stopping the princely lands delegated to the title deed and the inadmissibility of recommending them according to the provisions of Article (1172) of the Civil Code, which stipulates On (it is not permissible for the disposer of the princely land to endow it or to recommend it) because one of the conditions of the endowment and the will is that the endower of the testator is the owner of the neck, and what comes to the right of ownership from legal restrictions or agreements are also included in the right to dispose of according to the provisions of Article (1173) of civil law.

Fourth: The Civil Code regulates gaining the right to dispose of due to death (transition) in Articles (1187-1190), where the land is transferred free of charge to the owners of the right to move if the disposer dies in the princely land, arranging their ranks according to what is stated in Articles (1188, 1189, and 1190) of the Civil Code and each degree. The lower degrees include the first degree, the descendants of the deceased from children and grandchildren to the male, such as the share of the female. The death of the administrator, the branches of this branch take his place, step by step, according to the provisions of Article (1188/1 and 2) of the Civil Code. As for the second degree of those who have the right to move, they are the parents of the deceased and their descendants. If both parents are alive, the right to move for each of them is limited to the same as the share of the other. Moving in the neighborhood from the parents according to the provisions of Article (1189/1 and 2) of the aforementioned law. As for the third degree of holders of the right of

Athraa



relocation, they are the grandfathers of the deceased and his grandmothers and their descendants in accordance with the provisions of Article (1190) of the Civil Code. It is taken into account in the right of relocation that the male has the same share as the female's share, regardless of the degree to which this right is transferred. It is also taken into account in all grades that the branch takes the place of the original if This person died before the death of the administrator in accordance with the provisions of Article (1194/1 and 2) of the aforementioned law.

Fifth: The right to dispose of, although it is an original right in rem based on the provisions of Article (68/1) of the Civil Code, is special, as it is given to lands whose neck belongs to the state. The heirs, and since the ownership of the money for the deceased is considered one of the pillars of inheritance in accordance with the provisions of Article (86) of the Personal Status Law No. (188) for the year 1959, as amended, and since the ownership of the land does not belong to the disposer and is not transferred by the death of the disposer, but remains with its owner (the state), and this means that there are two owners , The state owns the asset (the origin), and the disposer owns the right to dispose that has nothing to do with the ownership of the neck, so the intervention of the legislator to regulate the transfer of the right to dispose of due to death in accordance with what was stated in the Civil Code came in accordance with the nature of the right to dispose and therefore the distribution of the right of disposal to its beneficiaries after the death of the disposer is not It is subject to the provisions of the Personal Status Law No. (188) of 1959 as amended, but is subject to the provisions of the Civil Code. Therefore, for the foregoing and for the absence of a conflict between

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 138 / Federal / 2021



Kurdish text

the articles whose constitutionality is challenged and articles (2/first/a) and (13/second) of the constitution, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit and charge him with fees, expenses and attorney fees for the defendant's attorney, an amount of one hundred thousand dinars distributed according to the law. The judgment was issued in agreement final and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and publicly understood in 22/ Jumada al-Awwal / 1443 AH corresponding to 27/12/2021 AD.

**Signature of
The president**

***Jasem Mohammad
Abbood***

Athraa