

Republic of Iraq
Federal Supreme Court
Ref. 154 /federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Aaeda Hanon Abd Ali –her agent the attorney Nawras Hamza Abood.

The defendants: 1. The minister of trade/ company registrar/ being in this post – his agent the legal official Emad Husain Muhamad.
2. general manager of the stock company Tourist City in Habbaniyah/ being in this post –his agent the legal official Anmar Kareem Torky.

The claim :

The agent of the plaintiff claimed in the case petition that the deputy general manager of the Tourist City company in Habbaniyah Ismaeel Khalel Alradhi on the lawsuit No.(56/federal/2012) has stated before the F.S.C. that the company was mixed-ownership, then on 1.4.2001 in the time if fallen regime, transformed into public company, which contradicts with article (35) of the public

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companies Law No.(22) for 1997 which states that the stock company not allowed to transformed into public, he also stated that the company has been liquidation and doesn't presence anymore, and that contradicts with article (158) (companies liquidation), as there wasn't any decision of liquidation from the public committee. The agent of the plaintiff attached the letter of the Trade Ministry/ companies registration office No.(6245) on 6.3.2019 which stipulates (whereas no decision of it liquidation was issued), she stated that the removal decision was issued without an order of the public committee for the company that was dissolved, the board cycle has been ended on it stipulated term from 15.6.1998 to 15.6.2000. the dissolved revolutionary command council decision No.(83) of 1998 submitted the company to the provision of the companies law in all mater with no specific provision. Alkarkh first instant court, the court of appeal, and the cassation court of Iraq all has issued decisions that the mentioned decision of the dissolved revolutionary command council is valid law, will not be annulled or amended unless by legislation, and it is binding to be implemented. The company registrar didn't implement the decision paragraphs, as he transformed the company to public, remove it name without liquidation decision, so she is challenging the registrar decision, for that reasons the agent of the plaintiff requested the F.S.C. to decide the illegality of the removal decision, with the decision of transforming it from stock company into public company, she

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requested to return it into mixed stock company as it was before the issuance of the decision, and to burden the defendants the expenses with the advocacy fees. After informing the defendants with the case petition, the agent of the second defendant (general manager of the stock company Tourist City in Habbaniyah/ being in this post) responded with the answering draft requesting to reject the lawsuit because it already has been adjudicated on the judgments No.(103/federal/2011) and (56/federal/2012), as well as from the aspect of litigation, because his client company is not legislative party, and it is not involve in issue a decision to transform it from mixed stock company into public company. He also requested to reject it for lacking the jurisdiction, as the F.S.C. competences are stipulated in article (93/1st) of the Iraqi constitution of 2005 to overseeing the constitutionality of laws and regulations in force, and requested to burden the plaintiff the expenses and fees. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 27.1.2020 was scheduled for the argument, the court convened, the agents of defendants attended, the agent of the plaintiff didn't attend despite the informing according to law, the court decided to continue with her absence and continue with the argument according to law and the F.S.C. bylaw No.(1) for 2005. During scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff was a participant in the mixed stock company of Tourist City in Habbaniyah, that its ownership transformed to the Tourism committee, and became general company under the decision of the dissolved revolutionary command council No.(83) for 1998 which was issued for specific case, the plaintiff challenged in this lawsuit the decision of the companies registrar who decided to remove the former company name and transformed it into public company, the plaintiff requested to return the company to its original status as mixed stock company. The F.S.C. found that the decision of transforming the company from mixed stock company into public company was under the mentioned decision of the dissolved revolutionary command council which was implemented on 1998, and it is no longer in force in the present time, therefore considering this lawsuit is out of the F.S.C. jurisdictions, as it is competent to consider the constitutionality of the laws and regulations in force according to article (93/1st) of the constitution. in regard of the challenge against the decision of removing the company name, it is an administrative decision that the F.S.C. is not competent to consider the challenges against it. Therefore the lawsuit became devoid of the legal and constitutional substantiations. The court decided to reject the lawsuit from the aspect of jurisdiction, and to burden the plaintiff the expenses and the advocacy fees for the

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defendants agents amount of IQ.D (one hundred thousand). This 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 No.(30) of 2005 and issued publicly on 27/1/2020.