



---

The Federal Supreme Court (F S C) has been convened on 3.28.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiffs /1- (aleef.aleef.saad) } their agent the barrister (jeem.haa'.faa')  
2- (baa'.raa'.aeen.gheen) }

Defendants / 1- The President of Republic of Iraq/ being in this capacity/ his agent the assistant legal consultant (aleef.seen).

2- The Prime Minister/ being in this capacity/ his agent the assistant legal consultant (haa',saad).

3- The Speaker of the ICR/ being in this capacity/ his two agents the legal officials (seen.taa'.yaa') and (haa'.meem.seen).

4- The Minister of finance/ being in this capacity.

### Claim

The agent of the plaintiffs claimed that his clients did possess the estate No. (154, 158) Utayfiyah, with an area of (5) olk and (24) donum, which is it an orchard with a cereal silo built on it, and a warehouse branching into two houses, and they possessed it by public auction, were the auction adjudicated on (AL-Utayfiyah general company for silage) which possesses by his clients. Later on the aforementioned estate was confiscated for political reasons; according to the decision issued by the general security court No. (654meem.khaa'/1994) on 1.8.1995, after a sentence to death against his client the first plaintiff issued for political reasons, and confiscating his moveable and immovable properties, and based on

decisions of the revolution leadership council (dissolved), the aforementioned estate was confiscated and registered as property to the ministry of finance. Whereas the decisions of the revolutionary leadership council (dissolved) in numbers (1124) and (89) and (120) was issued contrariwise of the temporal constitution of the Republic of Iraq for 1970 in article (16/jeem) of it, which stipulated on ((the property shall not be expropriated , but in case of public benefit purposes and according to a fair compensation...)) and according to the aforementioned decisions the private property was confiscated illegally and out of the used legal orders behaviors and under duress, and the second plaintiff (baa'.raa') has no relation to her spouse, the first plaintiff (aleef.aleef), because the financial assets for each of them is independent, and no one of them burden the other's guilt, therefore the matter of confiscation for (baa'.raa') properties goes into the policy of the ex-regime and its unjustified deals. And she was not compensated, thus, the aforementioned decisions had violated the text of article (16/jeem) of the temporal constitution of the Republic of Iraq for 1970, also it is violates the provisions of the article (14) of the Republic of Iraq valid constitution for 2005, which stipulated on ((Iraqis are equal before the law without discrimination based on gender, race, ethnicity...)) also it violates the provisions of article (23/1<sup>st</sup> and 2<sup>nd</sup>) of the constitution for 2005 which stipulated on first ((private property is protected)) second ((expropriation is not permissible except for the purposes of public benefit in return for just compensation)) and at the end he requested 1- to judge with the unconstitutionality ,illegality and illegitimacy of the revolution leadership council (dissolved) decisions, which numbered (89) for 1995 and (120) for 1996 and (1124) for 1983 and to void it, as well as cancelling all the traces based on these decisions. 2- Obliging the fourth defendant (minister of finance/ being in this capacity) to restore the status as it was before the issuance of the aforementioned decisions, and re-registering the estate (the subject of the case) in the name of his clients (the plaintiffs). After registering this case at this court according to the clause (3<sup>rd</sup>) of article (1) of the bylaw of it No. (1) For 2005, and after completing the required procedures according to clause (2<sup>nd</sup>) of article (2) of the aforementioned bylaw, the day 3.28.2017 was set as a date to review the case. On that date

the court was convened, the agent of the plaintiffs attended, as well as the agents of the four defendants, according to the power of attorney attached to the file of the case. The public in presence pleading proceeded, the agents of the plaintiffs repeated what listed in the petition of the case and they requested to judge according to it. The agents of the defendants answered, and repeated what listed in their answering drafts, requesting to judge by rejecting the plaintiffs' claim, and the agent of the plaintiffs presented an explanatory draft, attaching with it the challenged decisions because of its unconstitutionality. Both parties repeated their sayings, and after the court completed its investigations, and where nothing left to be said, the pleading was ended. The following decision recited publicly on 3.28.2017.

### Decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiffs claims that the revolution leadership council (dissolved), which decided to confiscate the moveable and immovable properties of his client, one of it the estate No. (154/158) Utafiyah with an area of (5) olk and (24) donum, which is it an orchard with a cereal silo built on it, and a warehouse branching into two houses, they were possessing that estate and the buildings sitting there by the public auction, after it was registered by the name of the (ministry of finance) were the auction adjudicated on (AL-Utayfiyah general company for silage) which is it a property for his clients, and the confiscation was for a political reasons, after his client (aleef.seen.saad) was sentenced to death as well as the properties of his spouse (baa'.raa'.aen.gheen). Whereas these decisions (1124 & 89 & 120) was issued contrariwise of the republic of Iraq temporal constitution for 1970 and in article (16/jeem) of it, and the property was expropriated from his clients by force and illegitimately and out of used legal behaviors, therefore he requested to judge with unconstitutionality of the aforementioned decisions and to void it and to cancelling all the traces based on it and to obliging the fourth defendant (minister of finance/ being in this capacity) to restore the status as it was and registering the estate (the subject of the case) by the names (his two

clients/plaintiffs). The court finds that the subject of this case is out of its specialty, which stipulated on in article (93) of the republic of Iraq's constitution for 2005, whereas its power specialized to monitoring the constitutionality of the codes and the valid orders, not the one that already there is a decision about it, whereas the decisions it requested to judge with unconstitutionality of it had been executed in its time, and produced its traces, and it has no power of validity in the present time, therefore the claim of the two plaintiffs is not basing on support of the law, based on that, the FSC decided to reject the case for non-jurisdiction, and to burden the two plaintiffs the expenses and the advocacy fees for the agents of the defendants amount of (one hundred thousand Iraqi dinars) divided between them equally. The decision issued decisively according to the provisions of article (94) of the constitution and unanimously on 3.28.2017 and made clear.