

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 18/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 31/7/2019 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: Shiite Endowment office/ being in this post – his agent the senior legal advisor Saad Jassim Harf.

The Defendant:

1. The speaker of the parliament/ being in this post - his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.
2. Minister of Culture, Tourism and Antiquities/ being in this post – his general agent Qasim Muhamad Numan.

The Claim

The agent of the Plaintiff claimed before the F.S.C. in the case No.(18 federal/2019) that the dissolved revolutionary command council has already issued the tourism commission law No.(14) for 1996, article (31/2nd/waw) stipulate on the registration of the

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Babylon hotel by the name of the mentioned commission without allowance, although the construction of the hotel registered by the name of dissolved Ministry of endowments and religious affairs which our Devans consider as its general successor under the decision of the Governing Council No.(29) for 2003, the mentioned article is unconstitutional and violate the justice principals, in addition that the endowments funds is Shariah funds disbursed by Shariah outputs based on Shari'a rule (the condition of the endowments creator is as the text of the enactor), for the mentioned reasons and other reasons seen by your estimated court, the agent of the plaintiff requested the F.S.C. to judge by the unconstitutionality of paragraph (waw) of article (31/2nd) of the mentioned commission law. The agents of the first defendant the speaker of the I.C.R. has respond to the case petition by the answering draft dated on (11/3/2019) stating that the agent of the plaintiff did not clear the constitutional text that he claimed to be violated, and that the tourism commission law No.(14) for 1996 is valid law and consider as legislation option we don't found in it any constitutional violation, therefore they requested to reject the case and to burden the plaintiff the expenses and the advocacy fees. The agent of the tourism commission president/ being in this post has respond to the case petition by the answering draft submitted to this court on (23/5/2019) stating that article (31) of the (amended) tourism commission law No.(14) for 1996 is valid article and binding to be follow, as the constitutional text cannot be repealed or amended unless by another legislation text by the competent legislation authority, it also came explicit and clear as it explicitly indicate that (implementing this law after (90) days from being published in the

official Gazette), that mean it granted the right to each rightful from this law to challenge it before the competent authorities during the mentioned period of time, as they didn't challenge it during that period they has lost their right if they have any, also Al-Hella first instance court has issued it decision No.(3/appropriation/2016 ,attached, cassation), under the decision of Babylon court in it cassation capacity No.(32/33/34/legal/2018) ,attached, which stated that the text of article (31) of the tourism commission law No.(14) for 1996 is clear and explicit and it's not ambiguity and bind to be follow, that stated the registration of Babylon tourism hotel/ Al-Hella by the name of tourism commission without allowance, and the registration shall be exempt from fees, taxes and expenses, therefore he requested to reject the case which don't have legal substantiation an to burden hem the fees and expenses. After completing the required procedure a date was set to proceed with the argument, the court convened with all its members, attended for the plaintiff/ being in this post his agent the legal official (Saad Jassim Harf) according to the power of attorney linked to the case petition, attended for the defendant the speaker of the I.C.R. /being in this post his agents the legal officials Salim Taha Yasein and Haytham Majid Salim according to the power of attorney linked to the case petition, attended for the second defendant/ being in this post his agent the legal official Qasim Muhamad according to the power of attorney linked to the case petition, and continued with the argument in presence and publicly, the agent of the plaintiff repeated what listed in the case petition and requested to judge according to it and to burden the defendants the expenses and advocacy fees, the agents of the first defendant and the agent of the

second defendant repeated their defenses listed in the answering draft and requested to reject the case and to burden the plaintiff the expenses and advocacy fees. Whereas nothing left to be said the argument is closed and the decision is issued publicly on 31/7/2019.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the agent of the plaintiff has challenged paragraph (waw) of article (31/2nd) of the tourism commission law No.(14) for 1996 that ruled by the registration of Babylon tourism hotel by the name of the tourism commission without allowance, although the construction of the hotel registered by the name of dissolved Ministry of endowments and religious affairs, and that his client/ being in this post consider as general successor of the dissolved ministry, he requested the F.S.C. to rule by its unconstitutionality. the F.S.C. found that the stipulated competent of the F.S.C. in article (93) paragraph (1st) of the constitution is to overseeing the constitutionality of laws and regulations in effect, whereas paragraph (waw) of article (31/2nd) of the tourism commission law No.(14) for 1996 has been expired and its provision is over, therefore the considering of its unconstitutionality is out of the F.S.C. jurisdictions, the F.S.C. also found that the litigation against the second defendant in the case is not directed because he is the party that implement the law according to article (4) of the civil procedure law No.(83) for 1969 (amended), and if the litigation is not directed the court must reject the case by itself under article (80/1) of the mentioned law without going throw it bases. For the aforementioned the F.S.C. decided to reject the plaintiff/ being in

this post case from the point of lake the jurisdiction, and the point that the litigation is not directed to the second defendant, and to burden the plaintiff the expenses and advocacy fees for the agents of the first defendant and the agent of the second defendant amount of one hundred thousand Iraqi dinars divided on them according to law. The plaintiff could refer to the legal procedure if he wants to demand what he requested. The decision has been issued decisively and unanimously according to the provisions of article (94) of the constitution, and article (5/2nd) of the F.S.C. law No.(30) for 2005, and issued publicly on 31/7/2019.