

Republic of Iraq  
Federal Supreme Court  
Ref. 196 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 1/10/2023 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, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Appellant: Judge of First Instance Court of Al-Abbasiya (Judge Mohamed Salim Abdul Kadhim).

### **The Claim**

The judge of the Abbasiya Court of First Instance asked this court to rule on the constitutionality of Article (33) of the Agrarian Reform Law No. (117) of 1970, on the occasion of his consideration of the lawsuit numbered (490/Beh/2023) filed before the Abbasiya Court of First Instance by the plaintiff (Abdul Kazem Latif Nehme) against the defendant (Abbas Kazem Khalaf) ((in which the plaintiff requested the lifting of the encroachment made by the defendant on his property, as the defendant's agent pleaded in the pleading session dated 31/5/2023 that there is an agricultural relationship for his client on agricultural land, on the subject of the lawsuit and that there is a lawsuit filed before the director of the Abbasiya district regarding it, because there is a link between the resolution of the lawsuit pending before this court and the adjudication of the agricultural relationship that is adjudicated under the text of Article (33) of the Agrarian Reform Law, where the court finds that this text is inconsistent with the provisions of the Constitution)), the judge of the Abbasiya Court of First Instance requested a decision on the constitutionality of the text of the said article based on the Federal Supreme Court's authority to monitor the constitutionality of legal texts, for violating it. The Constitution of the Republic of Iraq of 2005 in the following articles: 1. Article 47 of the Constitution violates the principle of independence of the judiciary and the separation of powers, as it has entrusted the competence to adjudicate the subject of the agricultural relationship and related disputes to the

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executive authority represented by a committee in each administrative unit, headed by the head of the administrative unit, a representative of agrarian reform and a representative of the Union of Agricultural Associations, this committee invites the parties to the dispute to appear before it in their capacity (plaintiff and defendant) and follows in its procedures the articles of the Civil Procedure Law, starting from notifying the litigants, passing through the pleading procedures and ending with the issuance of the decisive decision in the dispute, and that this decision is subject to appeal before a non-judicial body, which is (a committee specialized in objections in the governorate). 2. Article 95 of the Constitution, as the subject of the agricultural relationship is a civil dispute related to rights and obligations that is no different from other disputes related to agricultural land that are considered by the courts of first instance of the Supreme Judicial Council, and therefore the text of the article - the subject of the appeal - made these committees special courts, even if they do not bear this name, contrary to the text of Article 95 of the Constitution, as the nature of the work of this committee is purely judicial. 3- Article (19/3<sup>rd</sup>) of the Constitution, as the nature of the work of the judiciary is based on achieving justice and respect for the law, which requires non-interference in the work of the judiciary, Justice between litigants can only be achieved through litigation before the courts of the Supreme Judicial Council, otherwise the right to litigation is violated as a right protected and guaranteed to all under the text of Article (19/3<sup>rd</sup>) of the Constitution, and the separation between the litigants must be by the judiciary being independent and has no authority over it other than the law, while the members of the committee are employees of different departments and are not specialists in the field of law. The appeal was registered with this court in the number (196/Federal/2023) and the Speaker of the Council of Representatives was informed of the list of appeal and its documents in accordance with Article (42) of the Court's Bylaw No. (1) of 2022, and his agent replied by the answering draft dated 24/8/2023 and requested the dismissal of the appeal, as the legislator sometimes entrusts executive committees with the competence to settle disputes that arise between people with intersecting interests, and the wisdom of forming these committees is to ensure the speed of dispute resolution by virtue of the nature of the subject of the dispute and its specificity on the one hand, in order to alleviate the burden of the judiciary, which is overwhelmed by countless

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lawsuits, on the other hand, article (33<sup>rd</sup>/1) of the Agrarian Reform Law No. 117 of 1970 has limited the Committee's consideration to investigating and settling disputes related to agricultural relations contained in Chapter III of the Agrarian Reform Law only and not other disputes, and the text has allowed the Committee (temporarily seizing the disputed crops and maintaining them until the dispute is resolved and its decision acquires the final degree) and this shows the special nature of the subject of the dispute, which may be a dispute over agricultural crops, which requires speedy Resolving it before crops are damaged, and making the ordinary judiciary the competent to consider these disputes with all the measures that characterize its procedures that require a relatively long time may have an impact on the subject of the dispute, and therefore the assignment of the settlement of these disputes to administrative committees with legal competence in settling disputes to protect the subject of the dispute and ensure the speed of its resolution. After completing the procedures required by the Court's Bylaw, a date was set for the consideration of the appeal without pleading following Article (21/3<sup>rd</sup>) thereof, in which the court was formed and checked the requests and evidence contained therein, and the defenses of the Deputy Speaker of the Council of Representatives bin in this capacity, 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 judge of the Abbasiya Court of First Instance, on the occasion of his consideration of the initial lawsuit numbered (490/Beh/2023 - the subject of which is the lifting of an override on a property) and the argument raised in it that there is an agricultural relationship on agricultural land - the subject of the lawsuit - and that there is a lawsuit filed before the director of the Abbasiya district in accordance with Article (33) of the Agrarian Reform Law, and because there is a link between the initial lawsuit and the adjudication of the agricultural relationship, therefore, the judge of the Abbasiya Court of First Instance asked this court to rule on the constitutionality of Article (33) of the Agrarian Reform Law No. (117) of 1970, which stipulates that (1- A committee shall be formed by a decision of the Minister of Agrarian Reform in each administrative unit headed by the head of the

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administrative unit in the judiciary or district and the membership of a representative of the Agrarian Reform and a representative of the Union of Agricultural Associations, which is competent to investigate and settle disputes related to agricultural relations mentioned in Chapter Three of this law and may temporarily place the attachment on The disputed proceeds and their governorate until the dispute is resolved and their decision acquires the final degree, and their decision is subject to objection to the competent committee for objections in the governorate. 2. A committee shall be formed by a decision of the Minister of Agrarian Reform in each governorate under the chairmanship of an official nominated by the Governor and the membership of a representative of the Agrarian Reform and a representative of the Union of Agricultural Associations to consider objections to the decisions of the committees for the settlement of disputes related to agricultural relations. Its decision shall be final, except the decision to terminate the agrarian relationship, which shall not be considered final unless it is accompanied by the approval of the Minister of Agrarian Reform. 3. Decisions shall be implemented immediately by administrative means, except for the decision to terminate agricultural relations. 4- The courts are prohibited from considering disputes related to agricultural relations and they must refer to these committees the cases before them. 5. The Council shall issue special instructions regarding the periods and procedures required for this) as it considers that they are contrary to the Constitution of the Republic of Iraq for the year 2005 in articles (47), which stipulate: (The federal authorities shall consist of the legislative, executive and judicial authorities, exercising their powers and functions on the basis of the principle of separation of powers), (19/3<sup>rd</sup>), which stipulates: (Litigation is a protected right guaranteed to all), and (95), which stipulates that: (It is prohibited to establish special or exceptional courts), and after the court reviewed the defenses of the Deputy Speaker of the Council of Representatives being in this capacity, who requested the dismissal of the appeal for the reasons stated in the response regulation dated 24/8/2023, including that assigning dispute resolution to administrative committees with legal competence came to protect the subject of the dispute and ensure its speedy resolution, and the Federal Supreme Court finds the following:

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First: The principle of separation of powers is a pillar of the modern state, as it constitutes the true image of democracy and the main entrance to its practice and consecration, as it represents a great and fundamental guarantee to achieve equality between individuals and respect for their rights and freedoms, and with this principle, the state of law, which is characterized by the allocation of an independent body for each of the authority to legislate the law, the authority to implement it and the authority to apply it, and this has a significant impact on the proper functioning of the interests of the state, the protection of human rights and the prevention of the abuse of any of the federal authorities in the use of its constitutional powers or Overwritten. The principle of the independence of the judiciary represents the broadest door to the embodiment of the principle of separation of powers, through that independence, the judiciary has an active role in building the foundations of social justice, establishing trust between citizens and the State and preserving public and private rights and freedoms that ensure the peaceful coexistence of society, as the judiciary, by virtue of being the competent authority to apply the rule of law to all (authorities and individuals), has at the same time a major role in applying the principle of separation of powers and restoring each authority to the limits of its constitutional competences when exceeded, and since the Constitution of the Republic of Iraq of 2005 was determined under Article (47) Federal authorities, which consist of the legislative, executive and judicial authorities, which exercise their powers and functions on the basis of the principle of separation of powers, this chapter requires that each authority abide by the limits of its constitutional competences, and is the product of an important and effective principle in building a democratic state, represented by the independence of the judiciary, as the judiciary is the focus of justice and the guarantee of freedoms, as the existence of a fair judiciary makes it the natural and only refuge for citizens in order to protect them from any infringement on their individual freedoms. At the same time, it is the effective means of protecting civil and political rights and preserving human freedom and dignity in accordance with Article (37/1<sup>st</sup>/Alif) of the Constitution, and the independence of the judiciary does not produce its effects in protecting those rights and freedoms except under democratic systems that adopt the principle of the rule of law, and the adoption of the principle that the people are the source of authorities and their legitimacy in a

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real way and not in theory and the necessity of peaceful rotation of power through democratic means, otherwise the independence of the judiciary remains recognized constitutional texts far from actual application and practice, the formulation of the principle of the independence of the judiciary within the constitutional rules granted this principle constitutional protection, especially since the constitutional rule is superior to the legal rules legislated by the legislative authority for any country, but remain empty of its true content if the judiciary is linked to the executive power, article 71 of the Iraqi Basic Law of 1925 stipulates that: "The courts are protected from interference in their affairs", and Article 23 of the Constitution of 27 July 1958 stipulates that: "Judges are independent and have no authority over them in their judiciary other than the law, and no authority or individual may interfere with the independence of the judiciary or in the affairs of justice. Article 85 stipulates that: ((Rulers and judges are independent and have no authority over them in their judiciary other than the law, and no authority may interfere with the independence of the judiciary or in the affairs of justice)), article 63/a of the Interim Constitution of 1970 stipulates that: "The judiciary is independent and has no authority over it other than the law", while the Constitution of the Republic of Iraq of 2005 has defined a special chapter for the judiciary It is Chapter Third of Section Third and affirms the independence of the judiciary as one of the federal authorities under Article (87) of the Constitution, which stipulates that: (The judicial authority is independent and is handled by courts of all types and degrees and issues their rulings in accordance with the law) and affirmed the independence of judges under Article (88) thereof, as it stipulates that: (Judges are independent and have no authority over them in their judiciary other than the law, and no authority may interfere in the judiciary or the affairs of justice), the Constitution also affirmed the independence of the constitutional judiciary, represented by the Federal Supreme Court, as Article (92/1<sup>st</sup>) of the Constitution stipulates that: (The Federal Supreme Court is a financially and administratively independent judicial body) and exercises its powers in accordance with Article (93) of the Constitution. View of the importance of the independence of the judiciary in protecting human beings and their rights, preserving their freedoms, and its importance in building democratic States, has been affirmed by many international conventions and declarations, as Article (10<sup>th</sup>) of the Universal

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Declaration of Human Rights of 1948 stipulates that: "Everyone has the right, on an equal footing with others, to have his case heard by an independent and impartial tribunal, in a fair and public manner.", article 14/1 of the International Covenant on Civil and Political Rights of 1966 stipulates that: "All persons are equal before the courts, and every individual has the right, in the determination of any criminal charge against him or his rights and obligations in any civil action, to have his case the subject of a fair and public hearing by a competent, independent and impartial tribunal, established by law. The press and the public may be prevented from attending all or part of the trial for reasons of public morals, public order, or national security in a democratic society, or the requirements of the privacy of the parties to the proceedings, or to the lowest extent that the court deems necessary when publicity in certain exceptional circumstances would prejudice the interest of justice. The action deals with disputes between spouses or concerns guardianship of children), based on all of this and in accordance with Article 87 of the Constitution, everything related to the functions of the judicial authority is assumed by the courts of all types and degrees, and everyone has the right to life, security and liberty and may not be deprived of or restricted except in accordance with the law and upon a decision issued by a competent judicial authority following the provisions of article 15 of the Constitution, the Constitution of the Republic of Iraq of 2005 did not contain any provision limiting the independence of the judiciary and did not contain any text that would detract from the general jurisdiction of the judiciary, as stipulated in Article 93 (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>) of the Constitution the Federal Supreme Court shall have the following competencies: First: Oversight of the constitutionality of laws and regulations in force. Second: Interpreting the provisions of the Constitution. Third: Adjudicating cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, and the law guarantees the right of both the Council of Ministers and concerned individuals and others the right of direct appeal to the court), article 100 of the Constitution stipulates that: "It is prohibited to stipulate in laws that any act or administrative decision shall be immune from appeal", so article 33 of the Agrarian Reform Act No. 117 of 1970 is contrary to the provisions of the Constitution regard to the functions and independence of the judiciary, which requires a ruling on its unconstitutionality.

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Second: Agrarian reform is a set of legislative and applied measures carried out by the authorities with a view to changes in the disposition rights of agricultural land and the improvement of methods of its use, which means that agrarian reform aims to solve two problems: distribution and production, as it considers it a social and economic issue, as for the agricultural reality, there was an urgent need for radical agricultural reform in the conditions of the Iraqi countryside in general in terms of agricultural ownership, the living and economic situation of the peasants and the services provided to them from education, health, and others, all of which needed immediate reform and change to serve the peasant class, in addition to the deep hatred that was generated in the hearts of the peasants for feudalism. In any case, all reform attempts, whether initiated during the monarchy or planned, were not enough to reform the agricultural reality in Iraq, and after the 1958 revolution that overthrew the monarchy and replaced the monarchy with the republican system, the termination of feudalism is one of the goals of that revolution, and in light of this, the reforms of the agricultural system in Iraq came between theory and practice during the republican era, these reforms began when the Interim Constitution was promulgated on July 27, 1958, where Article (14<sup>th</sup>) of it stipulates: (Aif) Agricultural property shall be determined and regulated by law. (Beh) Agricultural property rights shall remain protected under the laws in force until legislation is issued and the necessary measures are taken to implement it.", on the second of August 1958, a committee was formed to develop the Agrarian Reform Law, and the work of this committee resulted in the announcement of the Agrarian Reform Law No. (30), which became effective starting from the thirtieth of September 1958, and instructions No. (1) of 1958 was issued to facilitate the implementation of this law, and the Agrarian Reform Law No. (30) of 1958 continued to work until the Agrarian Reform Law No. (117) of 1970 was enacted, where under Article (50) of the last law the law was repealed Previous Agrarian Reform No. (30) of 1958. The reasons for the Agrarian Reform Law No. 117 of 1970 stated that the law adopted new rules in the procedures which tended to simplify on the one hand and provide the possibility of proper and rapid completion on the other hand, as it is obvious that any law, no matter how sound, can be reflected against it, it does not achieve its objectives in application, as it has made the adjudication of agricultural relations the competence of special

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committees instead of the Magistrate's Court or the administrative employee authorized to have the authority of a magistrate governor and made the reference for consideration of them to another committee in the governorates for ratification and implementation locally, except for decisions to terminate the agricultural relationship, which are not implemented except with the approval of the Minister of Agrarian Reform. Due to its importance, and made the adjudication of land ownership and the determination of ownership the competence of special committees for agrarian reform instead of the settlement committees that were decided to be abolished, and abolished the stage of appealing decisions before the courts of appeal of settlement and appeal of agrarian reform, thus shortening the periods for deciding on decisions which may last for several years, and based on all this, Article (33) of the Agrarian Reform Law No. (117) of 1970 was enacted within the aforementioned law, which necessitated the formation of a committee by a decision of the Minister of Agrarian Reform in each administrative unit headed by the head of the administrative unit in the judiciary or district and the membership of a representative of the Agrarian Reform and a representative of the Union of Agricultural Associations competent to investigate and settle disputes related to agricultural relations contained in Chapter Three of the Agrarian Reform Law No. (117) of 1970 and the Committee to temporarily place the seizure of the disputed crops and maintain them until the dispute is resolved its decision acquires the final degree and its decision is subject to objection to the Committee Competent for objections in the governorate, a committee shall be formed by a decision of the Minister of Agrarian Reform in each governorate headed by an employee nominated by the Governor and the membership of a representative of Agrarian Reform and a representative of the Union of Agricultural Associations to consider objections to the decisions of the committees for the settlement of disputes related to agricultural relations and their decision shall be final with the exception of the decision to terminate the agricultural relationship, where it is not considered final except with the approval of the Minister of Agrarian Reform and the decisions shall be implemented immediately by administrative means except for the decision to terminate the agricultural relationship, where it is not considered final except with the approval of the Minister of Agrarian Reform and the decisions are implemented immediately by administrative means except for the

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decision to terminate the agricultural relationship, and the courts refrain from considering disputes related to agricultural relations and they must refer to these committees the cases before them, the Federal Supreme Court finds that what was stated in Article (33) of the Agrarian Reform Law No. (117) of 1970 was commensurate with the philosophy of the system of government prevailing in Iraq at that time as a totalitarian individual system based on the collection of the powers of all authorities at the head of the executive authority, as there is no principle of separation of powers, and the judiciary was at the time linked to the executive authority represented by the Ministry of Justice, therefore, the provisions of the aforementioned article of the Agrarian Reform Law are no longer consistent with the constitutional principles established by the Constitution of the Republic of Iraq of 2005, in particular the principle of separation of powers. The independence of each authority in the exercise of its constitutional powers is also inconsistent with the constitutional principles of judicial independence and the obligation to adjudicate quarrels and disputes by judicial bodies and through courts of all degrees and types, therefore, the provisions of Article 33 of the Agrarian Reform Act contradict the provisions of articles 47, 87, 88, 89 and 100 of the Constitution of the Republic of Iraq of 2005, which requires a ruling on their unconstitutionality. For all of the above, the Federal Supreme Court ruled that Article 33 of the Agrarian Reform Law No. 117 of 1970 was unconstitutional for violating Articles 47, 87, 88, 89, and 100 of the Constitution of the Republic of Iraq of 2005. The decision has been issued with the majority, 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 made clear on 15/Raea Al-Awal/1445 Hijri coinciding with 1/October/2023 AD.

**Judge**

**Jassim Mohammed Abboud**

**President of the Federal Supreme Court**

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