



The Federal Supreme Court (F S C) has been convened on 23.1.2019 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 Qas Georges, Hussein Abbas Abu Al-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff : President of the General Authority for antiquities and heritage /being in this capacity his agent Human Rights Officer (dad. ha. ain.).

Defendants : 1-President of the Republic of Iraq /being in this capacity his agent the Adviser (alif. sin. mim.)

2-Speaker of the House of Representatives /being in this capacity the two agents of human rights officers director (sin. ta. yeh.) and assistant legal advisor (heh. mim. sin.)

Claim

The plaintiff claimed that the House of Representatives had issued the decision No. (5) of 2018 ((Law of Samarra, the capital of Iraq for Islamic civilization)) the decision is contrary to the law of Antiquities and heritage effective No. (55) of 2002 because the promise of legality is unconstitutional, he has initiated an objection to it for the following reasons:

1- The law provides for the formation of a commission that is the body of work and functions of the Judiciary (Ministry of Culture, Tourism and antiquities). 2- The law has involved itself in inviting companies to carry out works of art whose tasks are to maintain and repair the antiquities, knowing that the restoration and maintenance of antiquities and supervision are the jurisdiction of the archaeological authority based on articles (10 & 11 paragraph 1st & 4th) of the Antiquities Law effective. 3- The recovery of stolen antiquities and the development of tourism and archaeological relations is at the heart of the work of the Ministry of Culture, Tourism and antiquities in coordination with other organs and services. 4- His client department has extensive efforts, coordination and in-depth studies with UNESCO for scientific heritage and is in the process of publishing some archaeological sites, including the archaeological city of Babylon on the World Heritage List, and that any act or action of change or actions belonging to archaeological sites outside the scope of archaeological authority impedes their efforts With these organizations and the loss of efforts aimed at preserving the cultural heritage of Iraq from harm, damage and decay. 5- The archaeological authority represented by the General Authority for antiquities and heritage, article (4/3rd) of the Law on Antiquities effective, is the authority vested with strict jurisdiction and competence in all material conduct related to and affects the archaeological and historical sites throughout Iraq from the maintenance, restoration and investment of article (2/3rd), which is the entity entrusted with maintaining these antiquities as one of the most important national treasures to inform citizens, the international community and succeeding generations to highlight the distinctive role of Iraq's civilization in building human civilization since its inception article (1/1st & 2nd). He requested

that the law be repealed to contradict the Law on Antiquities and heritage in force No. (55 of 2002) and to hold them all expenses after registering the case with the Court in accordance with paragraph (3rd) of article (1) of the bylaw of the FSC No. (1) of 2005, the receipt of the answering draft from the first defendant's agent, asking for the reject of the case, because the plaintiff did not assign any act that his client was required to do, and this was contrary to the provisions of article (4) of the Civil law. The plaintiff did not refer to the constitutional authority that his client had breached by promulgating the law and found no contradiction between the two laws and the law No. (5) of 2018 is a special law specific to a particular geographical area with dimensions (historical, religious, cultural and economic). The importance of geographic and religious location which is enjoyed by Samarra or the Law of Antiquities and heritage (55) of 2002 it is a general law which extends to all parts of the Republic of Iraq and since the private law restricts the common law and is subsequently the law of antiquities and heritage, so the law (Samarra, the capital of Islamic civilization) restricts the competence of the Ministry of Culture, Tourism and antiquities to the site stipulated by law No. (5) of 2018 according to a required by item (3rd) of article (2) of mentioned law which state on (3rd) the Preparatory Committee may form subcommittees of representatives of relevant ministries and services of the governorate or the judiciary for the purpose of carrying out its duties) also, (Recovery and protection of effects) shall be in coordination with the relevant organs of the State and thus the right of the plaintiff /being in this capacity has not been affected by the promulgation of the aforementioned Law in accordance with item (4) of article (1). An answering draft was also received from the two agents of the second defendant, who requested that the case be dismissed on the grounds that the Prosecutor had not

clarified the constitutional offence or the constitutional provision on which his claim was based, and that the law in question was contrary to the law on Antiquities and the heritage in force and that the incompatibility of laws did not fall within Terms of reference of the FSC contained in article (93/1st) of the Constitution. Upon completion of the procedures required under paragraph (3), article (2) of the same system. Appointed on 23/1/2019 as a date for the trial and in which the court was formed, the agent of the plaintiff and the legal expert Mr. (alif.) as represented by the President of the Republic and the two attended Mr. (sin. ta. yeh.) and assistant legal counsel (heh. mim. sin.) for the second defendant, President of the House of Representations, and began to argument in the presence of parties public. The agent of the plaintiff repeated the petition and requested the judgment under it , the agent of the first defendant answered that the answering draft reply and we ask for the reject the case, the two agents of the second defendant also reported had reject the case, the plaintiff's agent had set out a draft that named the answering draft to the two drafts of the two defendants and explained the summary what was stated in it. Attached to the case, the agents of the defendants answered that we have nothing to answer what the agent of the plaintiff stated and the Court checked the proceedings and completed its investigations and found that it became update for the reasons of judgment, decided to the end of argument has been made clearly reciting the judgment public in the session.

The Decision:

When scrutiny and deliberation by FSC found that the plaintiff/ being in this capacity explained in his petition that the law (5) of 2018 (Samarra, the capital of Islamic civilization) violate to the law of Antiquities and Heritage No. (55) of 2002 and the unconstitutionality of the initiative to object to it and has indicated in the petition the reasons why the law in question is contrary to the law of Antiquities and heritage and request to cancellation the law because of the conflict. The President of the Republic / being in this capacity and the Speaker of the House of Representatives / being in this capacity have been litigate in the case. The FSC found that the litigation of the plaintiff / being in this capacity The President of the Republic / being in this capacity has no substantial the law because it is not the one who initiated the law the subject of the allegation of incompatibility with a previous law and you find that the plaintiff / being in this capacity did not clarify the deed of violation of the law subject to the constitutional challenge except some statutes with previous law. Accordingly, his claim is without constitutional authority and the allegation that there is a contradiction between the laws and the spouses of the Constitution departs from the jurisdiction of the FSC provided for in article (93) of the Constitution. So decided to reject the case from the sides of the litigation and the jurisdiction and to costs the plaintiff / being in this capacity and fees and the attorney's fee and the defendants' agents the amount of 100,000 dinars distributed among them according to law. The decision to sentence the agreement was made on the basis of the provisions of article (94) of the Constitution and article (5) of the FSC law No. (30) of 2005 and was made clear public on 23/1/2019 .