

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 228/federal/media/2018



Kurdish text

The Federal Supreme Court (FSC) has been convened on 20.12.2018, 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 REQUEST:

The Court of Administrative Justice requested from the FSC by its letter no.(1365/Qaf/2018) on 11/12/2018 to try the constitutionality of item (eighth) of article (9) of the Martyrs Foundation Code no.(2) for year 2016, by reviewing the case presented to this Court by the plaintiff (Alif. Mim. Jim.) against the defendant (Head of the Martyrs Foundation/ being in this post) as the mentioned text conflicts with the legal order system in hearing the case. With the aforementioned letter the Court of Administrative Justice provided with its letter the record of the proceeding dated on 9/12/2018 which mentioned the following: (the FSC found that the item (eighth) of article (9) of the Martyrs Foundation Law no.(2) for year 2016 stipulate on providing the right to appeal the decision issued by the commission gathered according to item (seventh) _ the right to Appeal its decision before the Administrative Court after (60) day from the informing with the appeal result date; the Administrative Court decision shall be decisive, the Court found that text considered unconstitutional as it conflicts with the legal order system in hearing the case. The decision issued by the regular Judiciary could be challenged before the Supreme Court which belongs to that system and couldn't be challenged before the Administrative Supreme Court as it applies another judiciary order which is the Administrative Judiciary Order that is organized according to the State Council Law, therefore the court decided to consider this case presented lately and to refer the dossier to the Federal Supreme Court to look into the constitutionality of the aforementioned text. That decision was issued unanimously and made clear on 9/12/2018.

The FSC put the aforementioned request on the schedule of its session held on 20/12/2018 for discussion and deliberation, and the FSC reached to the following decision :

THE DECISION:

According to item (eighth) of article (9) of the Martyrs Foundation Law no.(2) for year 2016 the ICR added another competence to the competences of the Administrative Supreme Court which are stipulated in article (2/fourth/Alif/Bah/Jim) of Law no.(17) for year 2013 the Fifth Amended Law of the State Shura Council Law no.(65) for year 1979. That consider a legislatively option done by the ICR according to its competence stipulated on article (61/first) of the Constitution, which is a right that the ICR enjoyed while issuing many legislation such as what is mentioned in article (31/eleventh/3) of the Governorates Not Incorporated Into A Region Law no.(21) year 2008 that provided the authority to the Governors to impeach the decision that the governorates Council insist on before the FSC without going to lower degree Courts.

Therefore the text of item (eighth) of article (9) of the Martyrs Foundation Law no.(2) for year 2016 shall be correspond with the Constitution provisions and not conflict with it. The decision has been issued unanimously on 20.12.2018.