

Republic of Iraq
Federal Supreme Court
Ref. 261 / federal /2022



Kurdish text

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

The Plaintiffs: 1. Ammar Adil Mohammed.
2. Mohammed Abdul Ameer Mahmood.

} Their agent the barrister
Mohammed Ali Abid
Salim

The Defendant: The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The two plaintiffs pleaded, before the Abu Ghraib Court of First Instance of the Presidency of the Baghdad Court of Appeal Al-Karkh, during its consideration of the lawsuit numbered (120/Beh/2022) the unconstitutionality of Law No. (37) of 1968 (Law on Estimating the Rent Allowance for Agricultural Land Occupied for Military Purposes) published in the Iraqi Gazette No. (1552) on 4/4/1968 and its amendments, so the said court assigned him to file the constitutional lawsuit, and pay the legal fee for it based on Article (18/2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and after it was accepted, I sent it to this court, attached to the letter of the Presidency of the Baghdad Court of Appeal Al-Karkh / Abu Ghraib Court of First Instance No. (120/Beh/2022) dated 17/11/2022, in which

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the plaintiffs claimed that a law had already been enacted by the Presidency of the Republic entitled the Law on Estimating the Rent Allowance for Agricultural Lands Occupied for Military Purposes No. (37) of 1968 on 3/4/1968 and published in the Iraqi Gazette No. (1552) on 4/4/1968 and then amended by the decision of the Revolutionary Command Council dissolved by legislation No. (21) on 8/6/2002, and since the aforementioned law is urgent of their rights, they took the initiative to challenge it before this court because it violates the constitution, as it contradicts its preamble, which emphasized the achievement of justice and equality, and also contradicts articles (13/2nd and 19/3rd) thereof, which affirmed the inadmissibility of enacting a law that contradicts the constitution, and that litigation is a protected right, that it gave authority to the Minister of Defense to go into estimating the rent of the land and the formation of an objection committee outside the scope of the Law on the Organization of the Judicial Authority violates the Constitution in articles 87 - The judicial authority is independent and is exercised by courts of all types and degrees and issues their rulings following the law) and (88- 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). Therefore, the plaintiffs requested the Federal Supreme Court to rule Law No. 37 of 1968 and its amendments unconstitutional with direct effect and to remove decisions that violate justice and violate the Constitution. The lawsuit was registered with this court with the number (261/federal/2022) and informs the defendant of its petition and documents based on Article (21/2nd) of the Court's Rules of Procedure No. (1) of 2022, and his agent replied with the reply list dated 11/12/2022, which concluded that the plaintiffs did not indicate their interest that the text requested to be ruled unconstitutional whether it

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was applied to them and that the law in question is a law in force following the provisions of Article (130) of the Constitution, which stipulated (the legislation in force shall remain in force, unless repealed or amended, in accordance with the provisions of this Constitution), it did not violate any of the constitutional provisions mentioned in the petition, in addition to the fact that the decisions issued by the committee formed under the law under the challenge are administrative decisions that do not affect in any way the independence of the judiciary and are not immune from appeal before the competent courts, so they requested the dismissal of the lawsuit with the plaintiffs charging fees and expenses. After completing the procedures required by the Court's rules of procedure, a date was set for the consideration of the case without pleading based on Article (21/3rd) thereof, and on the appointed day, the Court was formed and began its consideration, the Court examined what was stated in the petition, its supports, the requests mentioned therein, and what was stated in the reply list submitted by the defendant's attorneys, in which they requested the dismissal of the case for the reasons stated therein, and after the Court completed its audits, the end of the minutes has been made clear and the Court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs Ammar Adel Mohamed and Mohamed Abdel Amir Mahmoud filed this lawsuit through their attorney, lawyer Mohamed Ali Abd Salem, against the defendant, the Speaker of the Council of Representatives, in addition to his position, challenging the unconstitutionality of the Law No. 37 of 1968 on the Assessment of the Rent Allowance for Agricultural Lands Occupied for Military Purposes,

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as amended by Law No. 21 of 2002, for the reasons stated in the petition mentioned in the preamble to the judgment and after the court completed its procedures and audits. In the lawsuit, it was found that this court had previously considered the lawsuit numbered (22/Federal/2012) filed by the plaintiff Iqbal Ahmed Daoud against the defendant Minister of Defense in addition to his position, which challenges the unconstitutionality of Law No. (37) of 1968 (it is the same challenged law as the subject of this lawsuit) and settled under the judgment decision dated 4/6/2012 containing the dismissal of the lawsuit, because Law No. (37) of 1968 does not conflict with the provision of paragraph (second) of Article (23) of the Constitution, nor does it conflict with the text of any constitutional article mentioned by the plaintiff in the lawsuit petition for not being based on a basis from the law, which is the same subject matter of this lawsuit filed by the plaintiffs above and that the challenge focused on the same law, which is Law No. (37) of 1968, whereas the judgments issued by this court are final and binding on all authorities, based on Article (94) of the Constitution of the Republic of Iraq of 2005, and the definitive judgments are evidence against the people with what they have decided, and that their authority applies to everyone, individuals and public authorities, as there is no way to challenge the law of the foregoing of this court, even if it ruled that it does not conflict with the constitution, even if the parties to the case change, therefore, and since this court has already decided on the subject matter of this lawsuit under its aforementioned decision, so the plaintiffs' lawsuit is due to be dismissed because it has already been adjudicated, so the Federal Supreme Court decided to dismiss the plaintiff's lawsuit because it was previously adjudicated under the decision of this court No. (22/Federal/2012) dated 4/6/2012 and charging them the fees and expenses and an amount of one

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hundred thousand dinars attorney's fees and the defendant's agents in addition to his job distributed in accordance with the law. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/1st and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) 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 dated 17/Jamada Al-Akhir/1444 Hijri coinciding 10/January/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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