

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 26/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 5.3.2018 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: (mim. mim. sad.) his agent (alif.ain. zin.) .

Defendant: President of the House of Representation / being in this capacity his agents is the director in the legal department (sin. ta. yeh.) and assistant legal counsel in the legal department (heh. mim. sin.).

Claim

The plaintiff's agent claimed that the defendant President of the House of Representation/ being in this capacity issued law No. (72) of 2017 , under it confiscation of movable and immovable property belonging to his agent , this is violation for the provision of article (13/2nd) of Iraqi constitution state that (No law may be enacted that contradicts the provisions of this constitution it is void each text is contained in the constitution of the regions or any legal provision that violate with it) legislation the law (72) of 2017 violate the following constitutional article: 1- The article (19/2nd) which included the base law (No crime or punishment through by text and no punishment unless is considered by law of the time its commission as a crime the most severe punishment may not be applied at the time of the crime) . The confiscation is complementary penal sanctions and not original penalties based on article (101) of the Iraqi Penal Code and is imposed only when there is

a criminal act committed by a person specified by a space decision with an original penalty. Thus, Law No. (72) of 2017 violated article (19/2nd) of the constitution in force, in a clear and explicit violation, as the imposition of supplementary penal sanctions on his client in his personal capacity and before knowing what his criminal acts are to be convicted of original penalties , which means that the law that is the -subject of this case- has violated the principles of penal legislation where criminal laws are legislated , on the criminalization of acts and the determination of penalties and according to the rules cannot legislate the laws, that the criminalization of persons in their qualities without knowledge of their actions. 2- The article (17/2nd) of the Iraqi constitution in force states that the houses are protected and may not be entered, inspected or exposed except by a judicial decision and according to the law. Here the word "exposure" in its legal concept includes the subject of the title of exposure from refoulement, seizure, prevention and deprivation of use, by law . Accordingly, the law that is the -subject of this case- has contravened the above-mentioned Iraqi constitution by exposing the movable and immovable property to the plaintiff's client without judicial rulings. 3- The law -subject of this case- has violated the provision of article (23/1st) of constitution which states (Private property is protected and the owner has the right to use it or to exploit it and to dispose of it within the limits of the law) as stated in paragraph (2nd) of the same article, which states (It is not permissible to dispose of property for public benefit purposes in exchange for fair compensation and this is regulated by law) . 4- The law contradicts paragraph (5th) of article (19) of the constitution, which states that the accused is innocent until proved guilty, and since the Iraqi judiciary represented by the Supreme Iraqi Criminal Court has acquitted his client of the charges against him, including the charge of financial waste and waste of national wealth all courts of Iraq and as annexed to the petition - A photocopy of the decisions of the Iraqi Supreme Criminal Court, Supreme Judicial Council and Ministry of Justice) The court issued decisions confiscating movable and immovable property to others. Therefore, the issuance of a supplementary penalty to confiscate the plaintiff's funds after five years of his release without a judicial decision after violating the provisions of article (19/5th) of the constitution, which indicated that the defendant cannot be tried for the

same charge again after his release. 5- The law -subject of this case- has violated the paragraph (8th) of article (19) of Iraqi constitution Where it provided for the validity of its provisions of the sons and wife and grandchildren and relatives of the client and included in the list of (55) issued by the US authorities before the start of the war in 2003 and as paragraph (8th) that mentioned before Including the legal principle (personal punishment) which limits the punishment to those who have already committed the offense, so expanding the rule of inclusiveness is violation to the provisions of the paragraph (8th) of article (19) of constitution note that decision (76) of 2003 included the confiscation of funds covered by the list of (55) without their families and relatives. The decision (88) of 2003 included the rest of the former regime's employees, including their children, wives and relatives, were arrested. however, the law - subject of the case- canceled the detention of families and relatives covered by decision No. (88) and added the confiscation of those covered by decision (76) of 2003. 6- The provisions of confiscation and seizure mentioned in the law are the -subject of the case- affects acquired rights of the plaintiff and that the acquired rights are protected and guaranteed by the constitution and the laws. Where the explanations of the laws defined the acquired right as a (personal legal situation in which the benefit obtained by the person by law or administrative decision) the plaintiff obtained these rights under provisions, legislation and administrative decisions were effective on time , and according to the provisions of article (130) of the effective Constitution, which stipulates that the legislation shall remain in effect unless it is repealed or amended in accordance with the provisions of the constitution, the law in question is in violation of the provisions of article (130) of the constitution. 7- The Council of Ministers, by its resolution No. (22) of 2013, granted the right to lift the confiscation and seizure of a single residential property based on the decision of the Revolution Command Council dissolved No. (22) of 1991 those covered have enjoyed this right However, the law in force restricts the area of residence to his (plaintiff) to (400) square meters and more than that up to (600) square meters paid at the prevailing price and the law was silent for more than (600) square meters, and this restriction was limited to a number of members of the previous system and included in the list of (55) exclusively and contrary to the decision of the Council of

Ministers mentioned above in addition to the violation of the text of paragraph ten of article (19) of the constitution which states (that the penal law shall not apply retroactively unless it is amending the accused) therefore, the restriction of space came retroactively and not from the benefit of the plaintiff, who enjoyed the right to lift the confiscation (four years) ago by a decision of the Council of Ministers in 2013 . 8- The Law - subject of the case - contrast between the pillars of the previous system based on a list prepared by the US before the war and the name of his client is among the list, which a few ministers suspected of being linked to weapons of mass destruction and was really with him from the competent US authorities and did not devour any weapons of mass destruction and then referred to the Iraqi judiciary and was acquitted of the charges against him, including the charge (wasting public money) he was released, so the imposition of supplementary penal sanctions against him on the basis of a list of foreign countries and not to take the decision of the Iraqi judiciary acquitted of financial waste and release is contrary to the provisions of article (14) of the constitution which states that Iraqis are equal before the law and contrary to the law that is -the subject of the case- which contrary between the ministers included in the list of (55), which issued a side and the other ministers. As it is presented above, and as the plaintiff - according to claim - as an interested party in the appeal of paragraph (2nd) of law No. (72) of 2017 and the fact that the FSC has the inherent jurisdiction to determine the constitutionality of legislation issued by the legislative authority. His agent's request to rule unconstitutional confiscation of movable and immovable property. Reply of the agents of defendant/ being in his capacity to a petition that the House of Representatives has the right to enact federal laws in accordance with the provisions of article (6/1st) of the constitution the law that is the -subject of the challenge- is a legislative choice and the appeal against it is not supported by the constitution , the law that is the -subject of the challenge- Including within its provisions the means of appeal and the measures that may be taken by the interested parties and those affected by it and the application for rejection of the case. After the registration of the case pursuant to the provisions of paragraph (3rd) of article (1) of the Bylaw of the FSC and after completing the required procedures in accordance with the provisions of article (2), paragraph

(2nd), appointed on 5/3/2018 as the date for hearing the case in which the court was formed. The plaintiff's agent and the defendant's agent attended and pleaded the case. The agents of the plaintiff repeated the contents of the petition, attended the prosecutor's agent and the defendant's agent and began to plead with the presence and public the plaintiff's agent repeated what was stated in the petition and request for judgment, The defendant's agent replied what was stated in the plea and asked to reject the case for the reasons stated therein. The prosecutor's agent added that his client was the only minister who was harmed by the law. Both sides repeated their statements. There was nothing left, the conclusion of the pleading was understood and the decision was understood publicly.

The Decision :

After examination and deliberation by the FSC, it was found that the plaintiff's agent challenged paragraph (2nd) of Law No. (72) of 2017 (The law of seizure and confiscation of movable and immovable property belonging to the pillars of the previous system) requesting for judgment (The unconstitutionality of the confiscation of movable and immovable property belonging to his client and lifting the confiscation of such funds for unconstitutionality of the text subject matter of appeal as far as the matter of his client, the FSC found that the plaintiff's claim includes a personal claim to lift the confiscation of his movable and immovable property only. The FSC found that article (1/2nd) and (3/1st) of Law No. (72) for the year 2017 referred to above shall include the plaintiff's right of objection before the Ministerial Committee provided for in article (1/3rd) of the above-mentioned law and in the manner stated therein. And the victim of the decision of the committee mentioned in accordance with the provisions of paragraph (5th) of article (3) of Law No. (72) for the year 2017 the right to challenge the decision issued against him within 30 days from the date of notification of the decision. As a result, consideration of the plaintiff's case shall be outside the jurisdiction of the FSC provided for in article (93) of the constitution and article (4) of its law No. (30) of 2005 So it was decided

to reject it from the jurisdiction. The plaintiff charged the expenses and fees of the lawyer to the defendant's proxy director in the legal department of the Iraqi Council of Representatives (sin. ta. yah) and the legal assistant in the said department (ha. mim. sin.) amount of (one hundred thousand) dinars. The judgment was issued on the basis of the provisions of article (94) of the constitution and article (5/2nd) of the FSC law No. (30) of 2005 and in the agreement and was understood publicly on 5/3/2018.