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The Federal Supreme Court (F S C) has been convened on 2.6.2014 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 and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (beh.ha.nun)/ his general agent the barrister (sad.shin).

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the official jurists (sin.ta.yeh) and (heh.mim.sin).

#### The Claim

The agent of the plaintiff claimed that the so-called (dal.kaf.alif) in the case No. (8801/shin/2013) which initiated before the civil status Court of Baghdad Al-Jadidah had requested in clause (3) of his case's petition to judge with obliging of his client to pay for the plaintiff (dal.kaf) her postponed dowry (two-millions) dinars, and the amount should be evaluated by gold according to the decision of the revolutionary leadership Council (dissolved) No. (127) for 1999. Whereas the dowry which the plaintiff deserved is the dowry that named in the marriage contract, amount of two-millions Iraqi dinars. Therefore, the decision of the revolutionary leadership Council is violating the Constitution for the following reasons:

1. The dowry is the money which should be exist in the marriage, in exchange of interests of some by fact or contract.
2. Article nineteenth (clause 1) of civil status law No. (188) for 1959 (amended) stipulated ((the wife deserve the dowry which determined by the contract, if not or denied she will take the dowry of the similar)).
3. The dowry is two types, one which named when the contract issues with satisfaction of both couple, otherwise is not permissible according to the decision of the cassation Court No. (345) on (17.8.1960). Therefore, no

dowry should be imposed except the one named in the contract because this matter will violate the Islamic Sharia and for the other reasons listed by the agent of the plaintiff in the petition of the case. This means that the decision issued by the Revolutionary Leadership Council (dissolved) No. (127) for 1999 is violating article (2/1<sup>st</sup>-alif-beh-the) and article (2/2<sup>nd</sup>) of the Constitution and articles (14 & 15 & 19/2<sup>nd</sup> & 46) of the Constitution. Therefore, he requested to annul the decision of the Revolutionary Leadership Council (dissolved) No. (127) for 1999 for its unconstitutionality according to the provisions of article (93/3<sup>rd</sup>) and article (4/2<sup>nd</sup>) of the FSC's law No. (30) For 2005 with burdening the defendant all the fees, expenses and the advocacy fees. After receiving the petition of the case which was presented by the civil status justice in Baghdad Al-Jadidah and collecting the legal fee with its attachment the Sharia case No. (8801/shin/2013), the case has been registered in the FSC with the dossier No. (32/federal/2014) according to the bylaw of the Court No. (1) For 2005. The agent of the defendant was notified with the petition of the case and its documents, his answer had been received according to his answering draft dated on 17.3.2014 which was attached to the case's file. He requested to reject the case for the contradiction between the constants of Islam and the challenged decisions, whereas the Islamic Sharia tries to compensate the woman when she is divorced because of the aggrieve she affected with because of the divorce. This matter can't be accomplished but with evaluates their dowries in what equals it in gold. After completing the required procedures, the date of the argument had been scheduled and on this date the agent of the plaintiff the barrister (sad.shin) has attended, as well as the agents of the defendant. The public in presence argument proceeded, the agents of both parties repeated their previous sayings and requests and they requested to judge according to it. Whereas nothing left to be said, the Court decided to end the argument, and the decision has been made clear on 2.6.2014.

### The decision

During the scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff had clarified in the petition of his case which was presented to this Court by the civil status Court in Baghdad Al-Jadidah that his client's divorcee initiated the case No. (8801/shin/2013) in the civil status

Court of Baghdad Al-Jadidah, and she requested her postponed dowry evaluated with gold according to the decision No. (127) for 1999 issued by the revolutionary leadership Council (dissolved). While the decision violates the constants of the Islamic Sharia, as well as the articles (2 & 14 & 15 & 19/2<sup>nd</sup> & 46) of the Republic of Iraq Constitution for 2005. He challenged the unconstitutionality of the revolutionary leadership Council (dissolved) aforementioned decision before the civil status Court of Baghdad Al-Jadidah during the session dated on 21.1.2014, and he presented his challenge with a case. The subject Court decided to refer it to this Court to try it, and it also decided to delay the tried case till the result comes out. The FSC finds that the postponed dowry considered a debt in the protection of the husband from the day of its issuance, its real value obliged to be existed when it be deserved according to the time and the place, in addition to the value of the currency it will paid if deserve date comes. This matter requires to return to women's postponed dowries which evaluated with gold by the date of marriage contract, and it must be compared to its value when pay it. This is what the unconstitutional challenged decision stipulated on, and this matter will lead to fair the divorcees from the economical balance between the currency value when the debt started-up and the date of its deserve, it also achieves justice which the Islam constants endeavored and the Constitution provisions as well. Therefore, there isn't a contradiction between the challenged decision and the constitutional articles abovementioned. The case is not relying on any base in the Constitution, and it must be rejected. The Court decided to reject the case of the plaintiff with burdening him the case's expenses and the advocacy fees for the agents of the defendant/ being in this capacity the official jurists (sin.ta.yeh) and (heh.mim.sin) amount of one-hundred thousand Iraqi dinars divided between them equally. The decision has been issued decisively and has been made clear on 2.6.2014.