

# IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 47/federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 29/7/2019 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 Plaintiff: Allawi Hussein Ali – his agent the attorney Mohammed Hmoude Naser Al-Salami.

The Defendants:

1. The speaker of the parliament/ being in this post - his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.
2. President of the Republic/ being in this post – his agent the legal advisor Ahmad Surayeh Muhsin.

The Claim

The agent of the Plaintiff claimed that the first defendant (the speaker of the parliament/ being in this post) has issued the law of ((the seizure and confiscation of movable and immovable assets that belong to the former Iraqi regime military officers, no.(72) for

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2017)), article (4) of it stated that ((not to make a decision basing on the provision of the dissolved Revolutionary Command Council decision No.(1198) of 1977)) which was amended by the decision No.(1426) of 1983, he has made judgment based on that in the submitted cases of who are covered by the provision of articles (1,3) of the aforementioned law No.(72) for 2017, and that consider as clear violation to the constitution in article (14) of it which stated (Iraqis are equal before the law without discrimination...), and also violate the provision of article (17) of the constitution that stated (every individual shall have the right to personal privacy so long as it does not contradict the rights of others and public morals), the agent of the plaintiff claimed that the granted privacy of who are covered by article (4) of the law has violated the rights and interest of his client, were he initiate the case No.(2066/beh/2019) before Al-Karkh first-instant court against one of who are covered by the provision of the law No.(72) for 2017, and still proceeding, he request in it ((conveyance his client the mentioned property as he purchased it under external sale contract)), for all that the agent of the plaintiff requested the F.S.C. to judge by unconstitutionality of article (4) for violating articles (14,17) of the constitution. The agents of the first defendant have responded to the case petition with the following: the challenged text doesn't violate the provision of article (14) of the constitution because the meant equality in that article is between one case, and also doesn't violate the text of article (17) of the constitution, that challenged text was enacted as legislative choice and proper implementation to the provision of the law and to prevent evasion in implementing its provision, specially that the law has shown the procedure to challenge the decisions that

that are issued under its provisions, accordingly the agent of the first defendant requested to reject the case. The agent of the second defendant (President of the Republic/ being in this post) responds to the case petition with the following: article (4) of the civil procedure law No.(83) for 1969 has conditioned that the defendant must be a litigant, his admission lead to a judgment by assessing issuing an admission from him, and he also must be convicted or obliged by something if the case was approved, and that doesn't apply on his client because he is not the party that enacted the law of ((the seizure and confiscation of movable and immovable assets that belong to the former Iraqi regime military officers no.(72) for 2017)) therefore his client is not litigant in this case, and if the litigant is not available, then the court have to judge by itself to reject the case without getting throw it bases according to article (80/1<sup>st</sup>) of the civil procedure law, for all that the agent of the second defendant requested to reject the case for his client from the point of litigation. After the case was registered according to paragraph (3<sup>rd</sup>) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2<sup>nd</sup>) of article (2) of the mentioned bylaw, the date 29/7/2017 was set to proceed with the argument, the court convened and the agent of the plaintiff and the agents of first defendant the speaker of the I.C.R./being in this post and the agent of the second defendant president of the republic/ being in this post, all has attended and continue with the argument in presence and publicly. The agent of the plaintiff repeated the case petition and requested to judge according to it, the agents of the first defendant repeated what listed in the answering draft and requested to reject the case for the

reasons listed in it, the agent of the second defendant ((repeated what listed in the answering draft and requested to reject the case for the reasons listed in it, the court inquired the agent of the plaintiff if the initial case is decided or not in the present time, he answered that the case is delayed until taking decision in the constitutional case before your court)), the agent of the plaintiff commented that the meant equality in the constitution is among the Iraqi people and not among the symmetrical group, also regarding the rest of the arguments it lake its constitutional substantiation. The court scrutinized the case petition and found that its judgment is completed so the argument has closed and issued the following decision.

### The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff has challenged the constitutionality of article (4) of the law of seizure and confiscation of movable and immovable assets that belong to the former Iraqi regime military officers no.(72) for 2017 under the claim of violating articles (14,17) of the constitution, it was clear that his client has bought a property outside the real estate registration department and could not register it because the contractor is covered by the provisions of the article (4) of the mentioned law, and it's not allowed to work by the provision of the dissolved revolutionary command council decision No.(1198) of 1977 and amend it by the decision (1426) for 1983. The agents of the defendants has answered requesting to reject the case as the mentioned challenged text was enacted as legislative choice and to prevent evasion in implementing the provision of the law, also the

meant equality in article (14) of the constitution is between one case, and the text does not violate article (17) of the constitution. The F.S.C. found by reviewing the case proceedings and the defendant arguments that the case lacks constitutional and legal substantiation, as the challenged text was enacted as legislative choice aimed to prevent who are covered by the provisions of the law No.(72) for 2017 from manipulating their money under contracts outside official departments, and the equality that the plaintiff considers as a basis for his claim in article (14) of the constitution is only in between the same category and case and not between everyone at all, also article (17) of the constitution does not serve the plaintiff as a basis to judge for him in his case. According to that the court decided to reject the plaintiff case and to burden him the expenses and advocacy fees for the agents of the defendant's amount of one hundred thousand Iraqi dinars divided on them by the law. The decision has been issued decisively and unanimously according to the provisions of article (94) of the constitution, and article (5) of the F.S.C. law No.(30) for 2005, and issued publicly on 29/7/2019.