

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.54 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 23/8/2016, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The plaintiff: (Waw.Sin.Feh) his barrister (Ha.Sad.Kaf)

The defendant: ICR speaker/ being in this capacity- his two agents the legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin)

The third party: (Lam.Sad.mim).

The claim:

The plaintiff claimed that the third party (Lam.Sad.Mim), his wife, and she has already initiated a case demanding separation before the court of personal status in AL-Bayaa No.(3839/Shin/2016) according to the article (40/5) from the law of the personal status No/(188) for 1959, whereas the aforementioned article contrary to the Islam constants and because the plaintiff and the third party are Muslims, he requested from the court to decide the unconstitutionality of the article (40/5) from the law of the personal status No.(188) for 1959 (amended) because it contrary to the Islam constants according to the provisions of the article (2/1st/Alif) from the constitution of the Republic of Iraq for 2005 and he requested from the court to reject the case of the third party that was tried before the court of the personal status

in AL-Bayaa. After the case had been registered and a day for the argument was selected, the plaintiff agent attended and repeated his requests and requested from the court to decide according to the case petition, and the agents of the defendants attended and repeated what was listed in the answering draft that was presented by them on 15/6/2016, and they requested from the court to reject the case according to the reasons that were listed in it, such as he didn't clarify what is the moral constants that contrary to the provisions of the article which is challenged by its unconstitutionality, and the purpose from legislating it to protect and organize the married life, and to grant the right to the wife to request separation if the marriage contrary to what stipulated by the law of personal status which requires to have the permission of the court to marry a second wife and to clarify the legitimate reason and the financial sufficiency, and the court completed its investigations and the end of the argument was understood and the decision was understood publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff challenges the article (40/5) from the law of the personal status no.(188) for 1959 (amended) by its unconstitutionality for its violation to Islam constants according to the provision of the article (2/1st/Alif) from the Constitution of the Republic of Iraq for 2005 and to reject the case of the third person no.(3839/shin/2016) that was tried before the court of the personal status in AL-Bayaa, the FSc found that the third person (Lam.Sad.Mim) the wife of the plaintiff and she cant be a litigant in the case because the litigant shall his admission leads to a judgment by assessing issuing an admission from him, according to the provision of the article (4) from the law of civil argument No.(83) for 1969 (amended), and if the litigation is not directed, the court decides by itself the rejection of the case according to the provision of the article (80) from the same law, as for the request of the plaintiff from the court to reject the case No.(3839/Shin/2016) that was tried before the court of the personal status in AL-Bayaa, the trying of this request is out of the competences of the FSC that were stipulated in the article (93) from the Constitution and the article

(4) from the law of the FSC no.(30) for 2005 and the case must be rejected from the competence point, and for what related to the request of the plaintiff from the court to decide the unconstitutionality of the article (40/5) from the law of the personal status No.(188) for 1969 (amended) which allowed to the wife to request separation if he married a second wife without the permission of the court, the FSC finds that the purpose of the legislator from making this text is to organize the marriage by more than one wife and the legislator have the right to restrict the permitted if he finds that is in the interest of the society and considering for its consistency, also the legislator make a restriction on the polygamy it shall be with the permission of the court and gave the right to the first wife to request separation if it happen contrary to that, so the FSC finds no violation with the challenged text by its constitutionality to the Islam constants nor the constitutional texts. Based on this the court decides to reject the case of the plaintiff and to burden him all the expenses and fees of the advocacy of the defendant agent the ICR speaker/being in this capacity- the amount of hundred thousand Iraqi dinars divided equally and the decision was issued unanimously and decisively according to the article (940 from the constitution and was understood publicly on 23/8/2016.