

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 58/federal/2019



Kurdish text

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: Bassam Mohammed Taqi – his agent the attorney Mohammed Ibrahim Alamied.

The Defendant: 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.

The Claim

The agent of the Plaintiff claimed that his client argues in the case No.(432/shin/2019) which its subject is (the denial of marriage and affiliations) before the Personal Status court in Al-Kadhimiya that the amended Personal Status Law No.(188) for 1959 is unconstitutional, for violating the provision of the Iraqi constitution for 2005, and it contradict with the principal of Islam, which make

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the law loses its constitutional legitimacy and becomes unfit to rule for the following reasons:

First: The nulled constitution of (1958) is unconstitutional for the following reasons:

1. The nulled interim Constitution in the reference paragraph text (on the name of the people, we declare the fall of the Iraqi Basic Law and all its amendments (from 14 July 1958), in a desire to establish the rules of government and regulate the rights and duties of all citizens we declare this interim Constitution to act by its provisions in the period of transition until the constitution is legislated). And that is a proof of the unconstitutionality of (the constitution itself), were it revoke the act by (the Iraqi basic law) which is the constitution that was valid in the time of the Royal system (by the declare of it fall) and not by decision or ratified issued law by the council of Sovereignty and the council of ministers, the text of the nulled constitution of 1958 and the second legal rule stipulated that (any constitution, law, regulation or instruction can only be altered, amended or repealed in the same manner as it was established, and as the Iraqi basic law was legislated under election and approval of the Upper House, accordingly the constitution of 1958 is unconstitutional.
2. The nulled constitution of 1958 did not stipulate in any article the revoking of the act by the royal constitution (named as the Iraqi basic law), therefore the royal constitution is still valid.

Second: assuming that the nulled constitution of 1858 was constitutional and which is incorrect assumption, the text of article (4) of it (the Islam is the religion of the state), therefore,

the council of ministers under the ratification of the Sovereignty council may not legislate laws that is contradict the principal of Islam, what is approved that the personal status law that its constitutionality is under challenge, many of its articles has violated the principal of Islam for example:

1. Limiting the custody to the mother without the father until the age of eighteen.
2. Compensation in divorce (arbitrary), paragraph (3) of article (39).
3. Legislating conditions on polygamy that reaches penal sanctions.
4. Equality of men's inheritance with the women inheritance, which was later, amended.
5. Keep custody to the mother despite her marriage to a man other than the father.

Third: He challenged the constitutionality of the valid amended personal status law No.(188) for 1959, under the interim Iraqi Constitution of 1958 article (21) of it (The Council of Ministers shall assume legislative power under ratification by the Sovereign Council), which means that the legislated laws by the council of ministers does not considered as valid unless it was approved by the Council of Sovereign (unanimously), whereas the Council of Sovereign composed of three parties according to article (20) of it which stipulate that (The Presidency of the Republic shall be assumed by the Council of Sovereignty and shall consist of a President and two members), what is fact that in the event of ratifying the amended personal status law No.188 for 1959 that it included constitutional violation, were two members

of the Council of Sovereignty has signed the law while the third member, Mohamed Mahdi Kubba, refused to sign. Therefore the mentioned law was not approved according to valid interim Constitution, which the challenged law constitutionality was based on it when legislated. According to that the amended personal status law No.188 for 1959 is unconstitutional, he request to bring the origin dossier of the law that is sealed by the signatures of the Sovereign Council to verify their signatures.

Fourth: The F.S.C. opinion in the case No.(134 unified with 135/federal/2018) was wrong to appraise for the following constitutional reason:

1. The F.S.C. has inclusively approved that the law that is under constitutional challenge, is unconstitutional because it violate the interim Constitution of 1958, and by that it's not characterize as true and valid, the F.S.C didn't scrutinize the signature paragraph on the law, which is one of the Sovereignty paragraphs in the constitution, and no law that lake the condition of the Sovereignty council signature consider as true.
2. The challenged law for being unconstitutional, was unconstitutional and un-true and invalid, therefore the constitutional sequence does not make him true or valid according to the constitutional and global rule which state that (what arose from falsehood remains false), The coerced domination remains coerced no matter how many hands have changed, and time has passed.
3. As the law was lake the constitutionality so it was binding to the Iraqi legislator when wrote the constitution of 2005,

to state explicitly that the law challenged in its constitutionality may be enforced for necessity, until the Iraqi legislator enact new law for the personal status characterized by the constitutionality and the validity, which didn't happen, accordingly the character of unconstitutional is remain binding to the challenged law.

4. The decisive proof of its unconstitutionality is the personal status law bill submitted by president of the Governing Council (Mr. Mohammed Bahr Al-Uloum) to be approved by the Governing Council, which is decisive proof on the unconstitutionality and it contradict to the principal of Islam.
5. Another decisive proof, is the categorical rejection by the Religious Reference in Najaf and the presidency of the Sunni Fatwa Council, to the provision of the law challenged in its constitutionality, and request to inquire the Religious Reference and the Fatwa Council to determine the Constitutional nature of the law challenged in its constitutionality, from the point of its approval to the Islamic principal.
6. According to the constitution of 2005, the F.S.C. was not stipulated as a constitutional party that determines the principal of Islam.

He request to rule that the personal status law is unconstitutional, because it was not approved according to the interim Constitution of 1958, and contradict the principal of Islam, and to judge that the defendant must issue (new personal status legislation). After the case was registered according to paragraph (3rd) of article (1) of the

F.S.C. Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2nd) of article (2) of the mentioned bylaw, the date 29/7/2017 was set to proceed with the argument, the court convened and the agents of the defendant the speaker of the I.C.R./being in this post attend, the agent of the plaintiff didn't attend despite the informed, the court decided to continue with the argument with his absence. The court reviewed what listed in the case petition and the answering draft 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 the personal status law No.(188) for 1959 that was issued in the time of the interim Iraqi Constitution of 1958, under the consideration that one member of the Sovereignty council didn't signed it, therefore according to the plaintiff its unconstitutional law. That agent of the defendant requested to reject the case as the challenged personal status law for being unconstitutional is of the valid applicable legislation according to article (130) of the constitution. The F.S.C. found that the challenged law was legislated in the time of the interim Iraqi Constitution of 1958 and one member of the Sovereignty council didn't signed it in that time objecting on one article of it that related to the equality of men's inheritance with the women inheritance, this point was later amended by legislation interfering by the law No.(11) for 1963 (the first amended law of the personal status law), the provisions of women's inheritance have

returned to what they were before the issuance of the mentioned personal status law, by that the law has acquired the character of constitutionality, as that and the following amendment was issued in time of valid constitution and under the set procedures in those constitutions, what is known that the amendment to a law from a constitutional competent authority of issuing the amendment, which means the approval of the law constitutionality that was amended, and that what was happened for the challenged personal status law for its unconstitutionality. As for the claim that some of its text violated (the stipulated provisions of Islam), that must be decided by a party that is authorized to prove the violation for constants they adopt. According to that the plaintiff case lacks its constitutional and legal substantiation, and decided to reject it and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. 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.