

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 59/federal/2019



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13.6.2019 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:

The Request:

The Presidency of the Appellate Federal Court of Al-anbar /Appellate Committee was requested by its letter No. (24) dated (14/5/2019) of the FSC, which read

Subj./ Constitutionality of legal article

Your Best regards...

The Federal Cassation Court has issued its tow decisions No. (1020 & 1024 / Appellate Committee Real Estate/2019) containing the annulment of the decisions of the Appeal Federal Court of Al-anbar/Appellate Committee in its original capacity in the two cases No. (151/sin/2018 & 154/sin/2018) which decided to obligate the appellant/ Director of Al-ramadi municipality/ being in this capacity by performing to the plaintiff /appellee/ Aqil Mahmoud Mohammed and his group the compensation estimated in the decisions about bypassing the

municipality of Al-ramadi on the property belonging to him and annexing it to the public streets it was reported in cassation decisions ((The Court of Appeal held that the provision of article 97 above did not apply because the opening of the street was made before the entry into force of the law and the advanced point of view cannot be adopted and introduced because it is a misplaced interpretation and violates the frankness of the legal text contained in article (97), which states that (it is registered in the name of the municipality without compensating all the streets inside its left borders to be used for the public benefit that exist when this law valid ... etc.) from this initiation contained in this text, the legislator has done well by listing the word of existing, which is the existing streets for the purpose of the legislator in this text, passing the past to the present...)). This court finds that article (97/1st) of the Municipal Administration Law is violet to the Iraqi Constitution for the following reasons. First: Any text is void if it violets with the Constitution valid on the basis of the text of article (13/2nd) of the Constitution. Second: The right of ownership is inviolable, can't be assaulted and to deprive the owner only of the conditions permitted by law, the Iraqi legislator has fully protected this right in various legislations as following: 1. Article (1050) of the Civil Law stipulates that "No one shall be deprived of his own property except in the circumstances determined by law and in the manner in which he paints it, in exchange for just compensation paid to him in advance. 2. The Appropriation Law No. (12) of 1981 in the article (1/2nd) stated that one of the aims of this law is to establish uniform rules and bases for the fair compensation of property owned which guarantees the rights of its owners without prejudice to the public interest. 3. The Iraqi legislator crowned the legislative system in article (23) of the Constitution valid, which stats: ((**First**: Private property is inviolable and the owner is entitled to use, use and dispose of it within the limits of the law. **Second**: Expropriation shall be allowed only for the purposes of public benefit in exchange for fair compensation and regulated by law)), the law may

place restrictions on the right of the owner to exercise his powers over the property he owns and the restriction may amount to expropriation for public benefit by expropriation and the seriousness of this restriction, the Constitution stipulated that expropriation should be for public interest and for fair compensation. Under this circumstance the state of phrase (1) of article (97) of the Municipal Administration Law became violate the text of article (23) of the Constitution valid, since it includes the property of citizens within the municipal boundaries to the municipality without any compensation, which causes serious harm to them in their high-value properties, simply because they are located within the municipal boundaries and are annexed to the public streets. **Third:** The Iraqi courts of various degrees, including the Cassation Court, were aware of this incompatibility with the constitutional provision and did not take the text of article (97/1st) of the Municipal Administration Law in their judgments before the new direction of the Federal Cassation Court we enclose a copy of the decision of the Federal Cassation Court No. (560/Appellate Committee Real Estate/2018) on 5/2/2018 in another case in the same subject The Municipal Administration Law has not been applied. **Forth:** The constitutional provisions represent the pinnacle of the legal hierarchy in the legislation promulgated by the State and prevail over other lesser legal texts and the principle of the supremacy of the Constitution required that the legal system of the State should be governed by constitutional rules)). On the basis of the foregoing and in accordance with the provisions of article (3) of the bylaw of the Federal Court No. (1) of 2005, this Court requests from your esteemed tribunal the judge on the constitutionality of paragraph (1) of article (97), of the Municipal Administration Law No. (165) of 1964 or not, and please accept the thanks with great appreciation.

The Decision:

When scrutiny and deliberation by FSC its session on the date 13/6/2019 found that the article (97/1) of the Municipal Administration Law No. (165) of 1964 challenge of unconstitutionality has repercussions on many laws including the Unification of State Lands Law No. (53) of 1976, the Appropriation Law No. (12) of 1981 and the Municipal Administration Law No. (165) of 1964 there are multiple bodies that apply these laws and their projects and listen to their opinions in this therefore it is necessary to sue the aggrieved from the application of the provisions of the article subject of the appeal. Accordingly the FSC decided no opinion except through a case be held in this regard, the decision issued with unanimously on 13/6/2019.