

Republic of Iraq  
Federal Supreme Court  
Ref. 61 / federal /2019



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 23/2/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hyder Jabir Abid, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mohammed Anad Aidan – his agent the Barrister Iqbal Ali Faqi Mohammed

The Defendants: 1. The Prime Minister of Kurdistan region/ being in this capacity – his agent the Barrister Rushdi Khalis Mohammed.

2. The Speaker of Kurdistan Parliament/ being in this capacity.

### **The Claim**

The plaintiff claimed through his agent that he was the owner of the property numbered (25/52) province of Zarkat2, but the municipality of Sulaimaniyah, after the central government withdrew its offices out of the region after the March 1991 uprising, invalidated the property's registration and registered in the name of the municipality by administrative order and then in the name of another person, all without returning to the judiciary, he filed the case before the first instance Court of Sulaimaniyah with invalidating of these registrations, and the agent of the defendant (Municipality of Sulaimaniyah) defended that the (Kurdistan Parliament decision – Iraq No. (16) on 17/July/2014, which supported by the Presidency of the

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Region decision No. (7) for 2014, regarding the real estate covered by decision No. (7) for 1992 (annulled) which was granted by the administrative bodies or domestic in the Region for someone else as a confiscated property, and the old owner has no right to request from the government bodies in the Region to restore it, or restoring its value, or the value of its similar, or compensating him financially or by a property like the confiscated one, and not to request from who has the ownership of the real estate now to restore it, or its value, or the wage of the similar property, or any compensation produced of that). Since this is contrary to the Constitution of the Republic of Iraq 2005 in article (23) which states (expropriation may only be granted for public benefit purposes, in exchange for fair compensation, regulated by law) and article (2/Jim) of it which states (no law may be enacted contrary to the fundamental rights and freedoms contained in this Constitution). Therefore, the plaintiff requested from the FSC call upon the defendants/ being in their capacity for argument and to judge by annulling the decisions above-mentioned because it contradicts the basic freedoms and rights listed in the permanent Constitution. The case was registered with this court in the number (61/federal /2019), and the legal fee for it was met in accordance with the provisions of article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005, and the defendants were notified with its petitions and documents According to article 2/1 of the same Bylaw aforementioned, the first defendant's agent (President of Kurdistan Region/being in this capacity) replied to the draft dated 16 September 2019, which include: first: his client is defending that this case is not jurisdiction of this Court, because the Constitution had determined the jurisdiction of the FSC by trying the challenges of implementing the Federal Laws according to the provision of the article (93/3<sup>rd</sup>) of the

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Constitution, and the challenged order is not a federal law, but it's an administrative decision issued by an administrative body. Accordingly, the Court is incompetent of trying the challenge according to article (93/3<sup>rd</sup>) of the Constitution and article (4) of the FSC's Law No. (30) for 2005 and he requested to reject the case for incompetence. Second: the litigation is not directed against his client because he is not a source of issuing the laws and enactments according to the principle of separation between powers, but he only ratified and ratifying what was issued from the Parliament of Kurdistan Region according to the provisions of Kurdistan Region Presidency Law No. (1) for 2005, therefore, he does not fit an opponent of the plaintiff, and he has requested that the case be dismissed by this part as well. Third: the plaintiff admits in the draft of the case that the case subject is still under scrutiny before Al-Sulaimaniya's first instance Court in the Number (358/Beh/2018) and no decision has been issued, and he didn't execute the legal challenge methods, appealingly and correcting. Therefore, legally it is not permissible to initiate a case before the FSC while there is a body that is competent to try it and a competent body to be challenged before it. Therefore, the case of the plaintiff shall be rejected from this aspect as well, especially, the general committee of cassation in the Kurdistan Region had executed and implemented the provision of article (13) and article (100) of the Iraqi Constitution in effect and all courts have received a circulation by that. Fourth: the authorities of the Region have the right to exercise the legislative, executive, and judicial powers according to the provisions of the Constitution, moreover, the authority of the Region has the right to amend the implementation of the Federal laws in the Region if there is any contradiction or conflict between the Federal and the regional Law according to the provisions of the article (121) of

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the Constitution. Fifth: the Iraqi Constitution stipulated in the article (141) on keeping the laws that have been enacted in Kurdistan Region since 1992 in effect, and the decision token by the Kurdistan Region Government including the decisions of the courts and the contracts remains in effect unless amended or annulled according to the laws of Kurdistan Region from the competent body there. Therefore, the requests of the plaintiff are illegal, and for this reason, the agent of the first defendant/ being in this capacity requested to reject the case of the plaintiff and to burden him with the expenses. As for the second defendant, his answer on the petition of the case was not received despite his notification according to the law. The public in the presence argument proceeded, the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. Whereas the Court had finished its scrutinies, the end of the argument has been made clear and the Court issued the following decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that Prosecutor Mohamed Anad Aidan was requesting to judge that resolution No. 16 of the Kurdistan Regional Parliament dated 17 July 2014, ratified by the regional presidency, was unconstitutional. No. (7) for 2014, which includes considering real estate belonging to former Iraqi regime officials who joined the regime after the March 1991 uprising as confiscated property and are not entitled to require the government in the region to recover them or their value or Pay or compensate for them, and they are not entitled to claim the property's

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ownership of such property for its return, value, remuneration or compensation. This court finds that the plaintiff's case is admissible in terms of jurisdiction and liability, and the interest is a prerequisite for accepting the constitutional action, which is the subject of every case brought before the judiciary in which the conditions set out in section (6) of the Amended Civil Procedures Law (83) must be met, as well as the conditions set out in the article (6) of the Bylaw of the Federal Supreme Court No. (1) of 2005, in addition, the interest in the constitutional case must be a legal and legitimate interest in the constitutional case. It deserves constitutional protection, i.e. that interest is based on a right guaranteed by the Constitution and approved by law, and in the sense of violation, it falls outside the scope of the protection of the legislator all illegal interests because they are considered illegal interests and therefore the constitutional judiciary does not accept proceedings whose plaintiff does not have a legitimate interest aimed at protecting the right guaranteed by the Constitution and is up to him in particular. Through the statement of the plaintiff at the hearing on 29 December 2021 that the property confiscated from his client, under the challenged decisions, had been granted to his client as a member of the intelligence service of the former regime, i.e. that the property in question had been granted to the plaintiff because of his affiliation with one of the repressive organs of the former regime and had been granted an exception to the controls for the allocation of residential plots and therefore was allocated to him in Sulaimaniyah governorate, although he did not live there. Therefore, the plaintiff's interest in initiating this case, which is intended to recover that property, was neither legal nor legitimate and worthy of the protection sought by the Constitution and the law of private property, since the availability of legal and

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legitimate interest is a prerequisite for accepting and failing to investigate the plaintiff's case, his claim is, therefore, to be dismissed. Accordingly, the FSC decided to judge by rejecting the case of Plaintiff Mohammed Anad Aidan and to burden him with the fees and expenses. The decision has been issued decisive and binding for all powers according to the provisions of articles (94) of the Constitution of the Republic of Iraq for 2005 and article (5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 21/Rajab/1443 Hijri coinciding 23/February/2022 AD.

**Signature of  
The president**

**Jasem Mohammad  
Abbood**

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