

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 64/federal/media/ 2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 23/8/2016 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, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: (mim. Sad. Ain. Ain. mim.) and (sin. Mim. Sad. Ain. Ain.)
their agent the attorney (mim.Teh. alif. alif.).

The Defendant: the Speaker of the parliament/ being in this post- his
agents the legal officials (Sin.Ta.Yeh.) and
(Heh.Mim.Sin.).

The Claim

The plaintiffs has submitted the case before the F.S.C. by their agents to challenge that article (592) of the civil law No.(40) for 1951 is unconstitutional, which related to agents, corporate managers, employees, bankruptcy agents, trustee in bankruptcy, others, or similar. On the subject of buying the money entrusted to the sale, or bankruptcy funds and the debtor's insolvent money. The plaintiffs based their claims to set of views and legal texts, including

Federal Supreme Court - Iraq - Baghdad
Tel – 009647706770419
E-mail: federalcourt_iraq@yahoo.com
Mailbox- 55566

Atchraa

the fact that the Constitution did not define or limit the term of public order, which is a fundamental flaw in the legislation, they reinforce their statement with some provisions of the Civil Law and the Real Estate Registration Law. Finally, they assert that the article under challenge to be unconstitutional is ambiguous and its legal nature is not clear, dose it based on formality or explicit prohibition, as it prohibit the agents and similar to conduct these legal action explicitly on one hand, and in a non-explicit and unclear and very ambiguous on the other hand. The plaintiffs has limited their requests to the following:

- 1- To judge that article (592) of the civil law No.(40) for 1951 is unconstitutional.
- 2- To obliged the defendant to issue new legislation to amend and direct the mentioned article.
- 3- To obliged the defendant to issue new legislation that include the concepts and specified rules of public order.
- 4- To prevent the matter Court (Al-Karkh first instant court) from ruling by the mentioned article and the case must be rejected.

after registering the case and set a date to proceed with the case, the two parties has attended, the agent of the plaintiffs repeated their request, the agents of the defendant/ being in this post repeated his request to reject the case for the reasons listed in the draft submitted by him on 4/7/2016. After the court has complete its investigation the argument has been closed and the decision was issued publicly.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the agent of the plaintiffs challenged in his case petition that article (592) of the civil law No.(40) for 1951 is unconstitutional, which related to the subject that the agents, corporate managers, employees, bankruptcy agents, trustee in bankruptcy, or similar, buying the money entrusted to the sale, or bankruptcy funds, or the debtor's insolvent money. He based his request to set of views and legal texts, including the fact that the Constitution did not define or limit the term of public order, which is a fundamental flaw in the legislation, he reinforce his requests with some provisions of the Civil Law and the Real Estate Registration Law. Finally, he end his presentations to that the Civil Law in its article under challenge is ambiguous and its legal nature is not clear. The agent of the plaintiffs has limited his requests to the following:

- 1-To judge that article (592) of the civil law No.(40) for 1951 is unconstitutional.
- 2-To obliged the defendant to issue new legislation to amend and direct the mentioned article.
- 3-To obliged the defendant to issue new legislation that include the concepts and specified rules of public order.
- 5- To prevent (Al-Karkh first instant court) from ruling by the mentioned article and the case must be rejected.

After scrutinize the case the F.S.C. found that what the agent of the plaintiffs has listed of constitutional text is not related to the subject of the article under challenge to be unconstitutional, because it characterized to be general, the court did not find any conflict between these texts and the text of article (592) of the civil law

which require to reject the case for lacking the constitutional base, As for the rest of the requests listed in paragraphs (2, 3, 4) which related to issuing new legislation to clear the specified concepts of public order, or to clarify the mentioned article, or to prevent the competent first instant court from ruling in the case tried by it of the mentioned article the subject of challenge, these requests are out of the jurisdictions of the F.S.C. that stipulated in article (93) of the constitution and article (4) of its law No.(30) for 2005. Accordingly the court decided to reject the plaintiffs case and to burden them the expenses and the advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars divided by them equally. The decision has been issued unanimously and decisively according to article (94) of the constitution and issued publicly on 23/8/2016.