

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.71 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 17/9/2015, 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, Michael Shamshon Qas Georges, Aad Hatif JabbarMohammed Rajab AL-Kubaisi, and Sulaiman Abdullah Abd AL-Samad, who authorized in the name of the people to judge and they made the following decision :

The appellant: (Ain.Ain.Ha)- his two agents the barristers (Beh.Kaf.Sin) and (Heh.Mim.Sin)

The appellee: the decision of the court of personal status in AL-Sadir City dated on 21/5/2015 in the case No.(13656/Shin/2014)

The claim:

During the hearing the case No. (13656/Shin/2014) by the court of personal status in AL-Sadir city that initiated by the plaintiff (Shin.Ra.Ta) against the defendant/ the appellant / (Ain.Ain.Ha) and her claim that the defendant her husband who got legally sexual intercourse with her according to the marriage's contract No.(4721) on (31/5/2009) issued by the court of personal status in AL-Sadir City, it has from the marriage bed a child (Mim) born in 2010, currently he is in custody of the defendant and it requested from the court the judgment to deliver the child to her and to burden him all the expenses and fees of the advocacy. The defendant agent challenged in the session that dated on 21/5/2015, the article (57) from the law of the personal status No.(188) for 1959 because of its unconstitutionality and made

clear to the FSC that he presented his challenge by a case has the same purpose, it was recorded at the FSC No.(80/federal/2015) but the court of the personal status in AL-Sadir City decided according to its decision No.(21/5/2015) rejected his decision of the case of the unconstitutionality of the article (57) from the aforementioned law because his challenge was to delay the case settlement. For not being convinced by the decision of the court, the defendant made a cassation challenge according to his cassation draft dated on 21/5/2015 by the court of the personal status in AL-Sadir City requested to revoke it for the reasons listed in it and listed to this court with the origin of the case No.(13656/Shin/2014) for the court of the personal status in AL-Sadir City according to the letter of the federal court of cassation No.(commission of personal status and personal materials/2015) signed by the senior judge on 13/7/2015.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the cassation challenge presented during the legal period so it decided to accept it formally. While considering its subject the court found that the defendant agent in the sharia case No.(13656/Shin/2014) challenges the article (57) from the law of the personal status No.(188) for 1959 and its amendments by its unconstitutionality for being violated the principles of Islamic sharia which no law that contradicts with the principles of Islamic sharia shall be legislated because his client is one of the Jafari rite followers which made the period of custody limited by two years for the male and seven years for the female to the mother and after that to the father. This has a clear violation of the provisions of the article (2/1st/Beh) from the Constitution for being violated to Democracy principles and violated the article (41) from the Constitution for 2005 which stipulated that (Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.) the FSC finds that the article (41) from the Constitution of the Republic of Iraq for 2005 pended the work of the article (41) on the legislation of a law that is organized to all Iraqis despite their different Islamic belonging so the text which its annulment is

required will not exceed or contradicts with what the Islamic schools settled of opinions and taking these opinions or corresponding between them. Whereas the mentioned law is not issued yet so the decision under cassation is right and confirmed with the law from the result point. The court decided to ratify it from the resulting point and reject the cassation challenge and to burden the appellant the fees of the cassation. The decision was issued unanimously and decisive on 17/9/2015.