



The Federal Supreme Court (F S C) has been convened on 10.30.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Qasim AL-Janabi, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff: (waw.ain.feh) – his agent the barrister (ain.mim.jim).

Defendant: Speaker of the ICR / being in this capacity – his agent the legal official as a general director post (sin.ta.yeh) & the legal assistant consultant (heh.mim.sin).

Claim

The agent of the plaintiff claimed, that the real estate No. (2/196mim26) Hyabat Khatoon belongs to his client according to the copy of real estate enrolment, but the Revolutionary Leadership Council (dissolved) and according to its decision No. (18) On 1.7.1987 decided to move ownership of the real estate from his client and register it by the name of municipality of Baghdad. His client (the plaintiff) initiated the case No. (1422/beh/2013) before AL-Adhamiya first instance court, and she requested to void registering the aforementioned real estate and re-register it in her name because illegality of expropriation of her, but the AL-Adhamiya first instance court decided on 8.26.2013 to reject the case, and the decision was approved appealingly and became final. Later on his client initiated the case No. 40/beh/2014 before AL-Adhamiya first instance court and she requested to compensate her with the value of the expropriated real estate, but AL-Adhamiya first instance court decided on 2.20.2014 to reject the case and the decision

was approved appealingly as well as in the cassation court and became final, in pretence that the decision which according to the real estate expropriated regarded a legislation and still valid, and no legislation could be voided but with a legislation. This clarifies that the Revolutionary Leadership Council (dissolved) No. (18 on 1.7.1987) regarded a violation to the law, specifically article (1050/civil) which stipulated on (it is forbidden to deprive someone from his property, but in cases which determined by the law, and according to the way it draws. This procedure must be for a just compensation paid to him in advance). As well as, what article (16) of the constitution of Iraq (canceled) dated on 7.16.1970 stipulated on, and article (23) of the Republic of Iraqi constitution for 2005 in its two clauses first and second what texts, first (private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law). Second (Expropriation is not permissible except for the purposes of public benefit in return for just compensation, and this shall be regulated by law). Whereas the decision of the Revolution Leadership Council abovementioned had violated the judgment of the civil law, as well as the previous and current constitution of the Republic of Iraq, and breached the protected property without compensation which requires to cancel it, and requested to cancel the decision of the Revolution Leadership Council (dissolved) No. (18) On 1.7.1987 because of its unconstitutionality and to burden the defendant the fees and expenses with advocacy fees. After registering this case at this court according to clause third of article (1) of the FSC bylaw. The answer of the defendant/ being in this capacity was received, and he requested to reject the case, because demanding to judge with unconstitutionality of the Revolution Leadership Council abovementioned in the petition of the case is out of the FSC specialties, and the decision which requested to be rejected issued in a specific case at that time and had been executed. Therefore, this decision is not valid anymore and not valuable, and article (93/1st) of the constitution stipulates on the specialties of the FSC (overseeing the constitutionality of laws and regulations in effect). After completing the required procedures in the case according to clause (2nd) of article (2) of the bylaw, the day 10.30.2017 was set as a date for pleading. On that day the court was convened, and the agent of the plaintiff attended as well as the agents of the defendant. The public in presence pleading

proceeded, the agents of the two parties repeated their sayings, and the court completed its investigations. Whereas nothing left to be said, the end of the pleading made clear and the decision were recited publicly on 10.30.2017.

The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff had challenged the Revolution Leadership Council (dissolved) No. (18) Issued on (1.7.1987) which judged with transferring the ownership of the real estate No. (2/196mim26) Hyabat Khatoon and register it by the name of municipality of Baghdad, his client (the owner of the real estate) initiated two cases in AL-Adhamiya first instance court in this concern, but both cases were rejected and became final. Whereas the aforementioned decision violates the principle of private property protecting which stipulated on in the two constitutions the previous and the current, and in article (1050) of the civil law, so, she requested to judge with cancelling the decision of Revolution Leadership Council No. (18) Issued on (1.7.1987) because it is unconstitutional. The FSC finds that the decision which requested to be rejected had been executed in that time and its provisions are not valid anymore in the present time or at the time of (constitution of the Republic of Iraq for 2005) provisions were in effect, and the specialties of the FSC in article (93) of the constitution and in clause (1st) of it had been determined with (overseeing the constitutionality of laws and regulations in effect). Therefore, reviewing the request of the case's subject is out of the FSC specialties, because the challenged decision unconstitutionality validity is over. Based on that, the court decided to reject the case of the plaintiff and to burden her expenses and fees of the defendant/ being in this capacity agent's amount of one hundred thousand Iraqi dinars divided between them equally. The decision issued decisively and unanimously according to provisions of article (94) of the Republic of Iraq constitution for 2005 and article (5/2nd) of FSC law No. (30) For 2005 and made clear on 10.30.2017.