

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 77/federal/2018



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14/5/2019 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, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff : Qutaiba Ibrahim Turki Al Jubouri - his agent the attorney Jawad Kadhim al-Eqabi.

The Defendant: the Speaker of the parliament/ being in this post – his agent the assistant legal advisor Haytham Majid Salim.

The Claim:

The Plaintiff claims that the council of representative (I.C.R.) has legislated the code of the reservation and expropriation of movable and immovable property belonging to the former regime No.(72) for 2017, and that the code contain constitutional violation including:

1. The code has violated the text of article (2/2nd) which prohibit enacting a law contrary to the fundamental rights and freedoms set in the Constitution.

2. It's violated the text of article (13/2nd) of the constitution which prohibited enacting a law that conflicting with the constitution.
3. The code violated the text of article (14) of the constitution which stipulated that (Iraqis are equal before the law without discrimination...).
4. It violated the text of article (19/6th) of the constitution which stated that (every person shall have the right to be treated with justice in judicial and administrative proceedings).
5. It violated the article (23 paragraph 1st, 2nd, 3rd) of the constitution related to the private property as its protected, and the owner shall have the right to benefit from it, and it can't be expropriation except for the purposes of public benefit in return for just compensation, and the Iraqi shall have the right to own property anywhere in Iraq.

The plaintiff claims that this code especially article (3/1st) of it was absolute and did not specified the persons whose money is under reservation, and requested to judge by repealing the mentioned code for violating the constitution. The defendant was informed by the case petition and its documents, he replies with the answering draft dated 19/5/2018 which stated that the plaintiff just mentioned the plain constitutional text, without stating the violation of each article of the code under appeal for these constitutional text so that his arguments can be discussed with the defendant's attorney. The agent of the defendant clear that the plaintiff claims that the text of article (3/1st) was absolute and did not specified the name of the persons whose money is under reservation, and that most of the persons included by the reservation their hand were not stained with the Iraqi people blood, the agent of the defendant state that the mentioned article specified the categories included in the money reservation, and that the plaintiff's claim that the text is absolute without restriction is incorrect claim, even if it did not listed the

names of the persons included by the reservation, as the law does not always stated on listing names, but only stated their characteristic which this does not disturb the validity of the legal texts and legitimacy, and he requested to reject the case. The court call upon the parties of the case and started the in presence argument, the agent of the plaintiff repeated what listed in his case petition and requested to judge according to it, the agent of the defendant repeated what listed in the answering draft and requested to reject the case. The court inquired the plaintiff's agent whether his client was included by the appealed law, he replied that he is not included, but as a member of the Council of representatives, he represents a section of society, the agents of the parties repeated their statements, the court closed the argument and issued the following decision publicly.

The Decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff in his personal capacity and by his agent the attorney Jawad Kadhim, initiated the case No.(77/federal/2018) requesting in it to judge by repealing the code of the reservation and expropriation of movable and immovable property belonging to the former regime No.(72) for 2017 for violating the provisions of the constitutional article that he listed in the case petition, and as his agent during the session admit that his client is not among the persons included by the provisions of this code, which specified in article (1) and (3) of it the identity of whom are included by it, and set the administrative and the judicial path for them to object on the reservation and expropriation of their money, which is a right of personal rights that belong to these particular persons and that, no one else has the right to exercise even if he is a member of the

council of representative, and that was approved by the F.S.C. in its decision issued on 23/12/2018 in the case No. (140 unified with 141/federal/2018) which judged by unconstitutionality of the text of paragraph (6/2nd) of the code of the council of representative and its formation No.(13) for 2018 which granted the member of I.C.R. the right to the right of litigation before all judicial bodies as he represent one hundred thousand people because this text violated the provision of article (61) of the constitution which stipulated the authorities and the jurisdiction of the I.C.R. which is code legislation and supervision on the performance of the executive authority, as for practicing the litigation before judicial bodies, it is outside the jurisdiction of the members of the I.C.R., because it is right that is reserved for the plaintiff of right, the public prosecution, and the Integrity commission according to the powers stipulated in its laws. Therefore the plaintiff's case has lost the stipulated conditions in article (6/1st, 2nd, 3rd, 4th, 6th) of the F.S.C. Bylaw No.(1) for 2005 that was published in the official Gazette issue (3997) On 2/5/2005, and also for lacking the stipulated condition in article (6) of the Civil Procedure Code No.(83) for 1969 related to the condition of interest to be available within. According to that the court decided to reject the plaintiff's case on the point of the litigation without entering into its basis according to article (80/1) of the Civil Procedure Code, and to burden him the expenses and advocacy fees for the agent of the defendant/ being in this post amount of one hundred thousand Iraqi dinars, the decision has been issued decisively and unanimously according to article (94) of the Constitution and article (5) of the F.S.C. code No (30) for 2005 and issued publicly On 14/5/2019.