

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 82/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 12/11/2019 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: Yasien Kdhayer Mhawish -his agents the attorneys Ahmad Kadhem Abd Allah and Muhamed Husain Ibrahim.

The defendants:

- 1- The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.
- 2- The Prime Minister/ being in this post –his agent the legal adviser Haider Alsoffi.
- 3- The president of the general committee for roads and bridges/ being in this post.

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The claim:

The agents of the plaintiff claimed that the dissolved revolutionary command council has already issued the decision No.(84) for 2000 that consider the plots mentioned in clause (1st) which was seizure before 1/1/1996 as expropriated according to law and cannot accept the compensation and the comparable wage after five years the date that the decision become in force, the dissolved revolutionary command council also issued the law No.(35) for 2002 included the penalties as listed in article (12) of it of the stated crimes in it, the listed articles in the decisions contradicts article (23) of the constitution. Their client owns the property 34 of 25 Aljoob and the stipulated procedures in the decision was not implemented, but he was under the criminal lawsuit by the third defendant, their client was referred to the misdemeanor' court of Alhusainia under the referral decision No.(559) on 10/7/2019 the agents of the plaintiff requested to judge to repeal the clause (1st, 12th, 13th) of the dissolved revolutionary command council No.(84) for 2000 and article (12/1) of the law No.(35) of 2002 and to notify Alhusainia misdemeanor court to suspend the legal procedures against their client. The defendants were informed by the case petition with it documents, the agents of the first defendant answered that the decision of the dissolved revolutionary command council was

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issued on specific status and was implemented in that time and it is no longer in force, the F.S.C. is competent under paragraph (1st) of article (39) of the constitution to censorship the laws and regulations in force and not the one that aren't in force anymore, as for the request of repealing article (1/12) of the law No.(35) for 2002, its texts provisions are regulative and punitive to protect the public road form the exceeding, and the repealing request has no substantiation from the law, the agent of the second defendant responded with the answering draft dated on (25/8/2019) stating that his client is not competent to enact the laws but to prepare the laws bill and to refer it to the I.C.R., as for the request of suspending the legal procedures in the criminal lawsuit filed against the plaintiff, his agent is not related to it because he doesn't interfere with the authority of the judicial, he requested to reject the case. the agent of the third defendant responded with the answering draft dated on 24/9/2019 which stated that what listed in the decision No.(48) for 2000 and the public roads' law No.(35) for 2002 dos not contradict with the provisions of the constitution and the decision No.(84) for 2000 has authorized the owner to demand the compensation, and requested to reject the case. the court call upon the parties of the lawsuit, the agents of the plaintiff, the agents of first defendant, the agent of the second defendant all has attended, the third defendant

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didn't attended despite the notification and the court decided to continue with the argument on the confrontation of the parties, the agents of the plaintiff repeated the case petition and requested to judge according to it and submitted an explanatory draft which they recite it summary, the agents of the defendants responded that they repeating their answering draft, the agent of second-defendant commented that I add to my draft that the decision of the dissolved command council was issued in specific status which was in force but it is no longer in force, and the court is competent with the laws in force, the argument is closed and the decision is issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff has challenged in his case petition two cases, first included his challenge against the dissolved revolutionary command council's decision No.(84) of 2000, second his challenge against article (12/1) of the law No.(35) of 2002 (the law of public road). The F.S.C. finds that the mentioned decision of the dissolved revolutionary command council was issued to treat the cases of seizure the properties for the purpose of public roads before the date (1/1/1996) and the decision has set the compensation methods, as the mentioned decision was implemented and is no longer in force

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when this lawsuit was filed therefore considering the challenge against it is out of the F.S.C. jurisdictions, as it competent according to paragraph (1st) of article (93) of the constitution to consider the constitutionality of the laws and regulations in law therefore the lawsuit in this aspect is binding to be rejected from the point of jurisdiction. As for the second challenge against article (12/1) of the law of public roads under the claim of exceeding on a property and his defense that this property is belong to him, the F.S.C. finds that this defense could be presented before the competent court of misdemeanors with the means of his verifiable. The F.S.C. also finds that the mentioned text doesn't violate the provision of the constitution because it punish the exceder on the public roads with the mentioned formed or methods in this articles, by that this lawsuit is binding to be reject as it don't based on a constitutional substantiation, the F.S.C. also found that the plaintiff has litigate in addition to the speaker of the I.C.R./ being in this post each of the prime minister/ being in this post and the president of the general committee for roads and bridges/ being in this post without legal substantiation from the law because any of them was not the one who issued the mentioned law and decision by that his case in this regard is binding to be rejected from the point of litigation, according to that the court decided to reject the plaintiff's case for

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the mentioned reasons and to burden him the expenses and the advocacy fees for the agents of the defendants amount of (one hundred thousand Iraqi dinars) divided on them by the law. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 12/11/2019.

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