

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 84/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 22.6.2016 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, 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 (the challenge requester):

(shin.ain.jim.) her agents the attorneys (ha.mim.ta.) and (mim.mim.mim.) .

The defendants (who requested to be challenged):

1. (yeh.kaf.mim.).
2. The Speaker of the council of representative (I.C.R.)/ being in this post.

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Athraa

The clime

The agents of the plaintiff claimed that the sharia lawsuit No.(3176/shin/2015) which is before the personal status court in Al-Hella of their client which included the proving of her marriage and divorce of the defendant (yeh.kaf.mim), as her divorce was done by acting in the office of eminence Al-Sistany in al Najaf in the right method of divorce, except that is violating the text of article (34/2nd) of the personal status law No.(188 for 1959), what stated in the mentioned article is violating the constitution in article (2/1st/alif), the divorce throw acting consider authentic in all the Islamic sects under the fatwa of Al-Sistany eminence, the Suni sect carry out the sharia divorce first which is today became a condition to carry out the judicial divorce, because many of the courts refuse to carry out divorce as cautious of the Shari problem, as the Suni sect don't realize the Sharia procedures methods and the contradiction between the acting divorce and with the legal provisions therefore their client was victim of (first defendant ex-husband) as the law doesn't help her to ratify her Shari divorce because of article (34/2nd) of the personal status law, not ratifying this divorce could cause big blight by continuing the ended marriage, they requested to call upon the defendants for trial and to rule that the mentioned text is unconstitutional. After the case was registered the date 22/6/2016 was scheduled for the argument, the court convened and the second defendant has attended, the agent of the plaintiff didn't attend despite the notification according to law and we noticed that he submitted a request to postpone the case, as the case has fulfilled the judgment reasons the court decided to continue with the argument, and the first defendant didn't attend. The court scrutinizes the case

petition and the answering draft of the second defendant who requested to reject the case for the reasons listed in his draft. 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' agent requested in his case petition to rule that article (34/2nd) of the personal status law No.(188 for 1959 and its amendments) is unconstitutional, as it stated ((not to depend on the acting in the social research procedures, and the judging in carrying out the divorce)), as it violated the constitution in article (2/1st/alif) ((no law may be enacted that contradicts the established provisions of Islam)) because the divorce throw acting consider authentic in all the Islamic doctrines under the fatwa of Al-Sistany, and to say otherwise leads to big blight as it related to (Halal and Haram). The F.S.C. that the first defendant doesn't fit to be litigant in the case, as the litigant his admission must lead to a judgment by assessing issuing an admission from him, that under the provision of article (4) of the civil procedures law No.(83 for 1969 the amended), if the litigation is not directed then the court shall decide to reject the case by itself under the provision of article (80) of the same law, as for the case subject the F.S.C. founds that the plaintiff request required to refer to article (41) of the Iraqi republic constitution for 2005 which stipulate 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)), and require to proses the case subject by enacting a text that doesn't contradict with the Islamic

principles, in implementing to the text of article (2/1st/alif) of the Iraqi republic constitution for 2005, this lawsuit was filed before enacting the required law to be legislated regard this subject, as its required to be in accordance with the mentioned mechanism, for the mentioned two reasons the court decided to reject the plaintiff' case and to burden her the expenses and advocacy fees for the agent of the second defendant amount of (amount of one hundred thousand Iraqi dinars). The decision has been issued unanimously and decisively according to article (94) of the constitution on 22/6/2016.