



---

The Federal Supreme Court (F S C) has been convened on 23.9.2019 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-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ismaeel Abd Sarhan – his agent the barrister Ma'amoun Yousef Yakoob.

The Defendant: the Director of Al-Ramadi municipality/ being in this capacity – his agent the official jurist Ragheb Abdullah Khalaf.

### The Claim

The agent of the plaintiff claimed that the defendant initiated the appropriation case number (2682/beh/2019) before Al-Ramadi first instance Court, he requested in this case to appropriate the area of (40/42) square meter of his client's real estate No. (149/1838) of county (28) Al-Azeeziyah and Al-Hooz to be joined to the highway because the highway is trading location within the constructional planning of the city. The Court of Al-Ramadi first instance Court issued its decision above-mentioned of appropriating the above-mentioned part, area of (40/42) square meter. This appropriation shall be in a lieu of fifty-three millions of Iraqi dinars, and the agent of the owner challenged this decision and Al-Anbar appeal Court with its cassation title had issued the decision No. (64/juristic/2019) on (9.5.2019). The aforementioned decision had vetoed the decision of the first instance Court, the reason is the part which demanded to be appropriated and locating at the highway is included by the

provisions of the article (97) of municipalities' administration law No. (165) for 1946. Whereas this article considered a part of a law, and according to the interpretation of your honorable Court it's contradicts with the provisions of the Constitution and violates the laws in effect, as following: 1. Article (13) of the Constitution stipulated (any text that contradicts this Constitution shall be considered void). 2. Article (23/1<sup>st</sup> & 2<sup>nd</sup>) of the Constitution stipulated (private property is protected. The owner shall have the right to benefit, exploit and dispose of private property, and expropriation is not permissible except for the purposes of public benefit in return for just compensation). 3. Article (1050) of the civil law stipulated (no one shall be deprived of his property in the cases approved by the law and the method which determined by It. this shall be achieved by a just compensation paid to the owner in advance). 4. Article (1/2<sup>nd</sup>) of appropriation law No. (12) Stipulated on the law targets, as well as setting a unified rules and basis for the just compensation of appropriated properties to guarantees its owners' rights. 5. The FSC gave its opinion according to the letter No. (59/federal/2019) by initiating a case from the aggrieved of implementing the provisions of article (97) of municipalities administration law No. (165) for 1964. Whereas the Court took a decision about the plot (case's subject) previously by pays the similar property value in the case No. (252/beh/2010) and the Court of Al-Anbar appeal Court ratified it with its original capacity by the number (31/sin/2009), this case had been ratified by the Federal cassation Court in its decisions herewith. Then, these decision were executed by the executive dossier No. (289/2011) Al-Ramadi execution directorate, and the similar property value has been received. This matter confirms that the judgment which has been issued became final according to the cassation decisions and corresponds to the law. Therefore, the agent of the plaintiff requested from the FSC to judge by unconstitutionality of the article (97) of municipality administration law No. (165) because it violates the Constitution, also it contradicts the laws in effect and not conforms on the real estate (case's subject) and to burden him the expenses and the advocacy fees. The defendant/ being in this capacity answered the petition of the case with an answering draft as following: 1. The municipality of Al-Ramadi initiated the appropriation case by the

number (2862/beh/2019) before the first instance Court of Al-Ramadi to appropriate a part of the real estate No. (149/1838) of county 28 Al-Azeeziah and Al-Hooz with an area of (40/42) square meter because this area locates at the highway. Then, the Court of first instance issued its decision on (8.4.2019) which adjudged by appropriate the parts that locates at the highway, later on, the decision had been challenged before Al-Anbar appeal Court with its cassation capacity, and it issued the decision by the number (64/juristic/2019 on 9.5.2019) of vetoing the first instance Court decision because the part which requested to be appropriated is included by the provisions of article (97) of municipality administration valid law No. (165) for 1964. The dossier of the case was sent back to the first instance Court to proceed the arguments, and to execute the content of the appeal Court decision above-mentioned. The first instance Court issued a decision of appropriating the parts which locates at the highway without compensation according to the article (97) of municipality administration law No. (165 for 1964) and following the appeal decision with its cassation capacity. The municipality administration law had been issued before the issuance of the Iraqi Constitution in decades, and still valid. Therefore, the text of article (97) of the law doesn't contradicts the texts of the Constitution articles, and the judgment issued by the judiciary have the determination and the custody on all. The plaintiff should challenge the Court's decision which adjudged with appropriating the parts that locates at the highway without compensation, if it's necessary. Our directorate is the body which should be litigated in this case, and for the other reasons including the answering draft, the article (97) of the law (challenge subject) which has been challenged for unconstitutionality is completely conforms with many legal texts (such as the appropriation law No. (12) For 1981 and the article (37 & 38 & 41) which conforms it about the subject of appropriation without compensation. As well as, it conforms to the law of unifying the State's lands categories law No. (53) For 1976, and the municipality administration law No. (165) for 1964. Moreover, this article still valid, and haven't been annulled yet). After completing the required procedures, the Court scheduled a date for the argument and on the scheduled date, the Court has been convened. The barrister

Ma'amoun Yosef attended on behalf of the plaintiff, and the official jurist Ragheb Abdullah Khalaf attended on behalf of the defendant. The public in presence of both parties argument proceeded, the agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it, with burdening the plaintiff all the expenses and the advocacy fees. As well as, the agent of the defendant repeated what listed in the answering draft and he requested to judge by rejecting the case, with burdening the plaintiff all the expenses and the advocacy fees. Whereas nothing left to be said, the Court had ended the argument and the judgment has been made clear publicly.

### The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff had initiated his case on the Director of municipality of Al-Ramadi/ being in this capacity to judge by unconstitutionality of the article (97) of the municipality administration law No. (165) for 1964. Whereas the defendant in the case must be a litigant, his admission will produce a judgment, he must be judged or obliged by something if the case had been approved (article (4) of the civil procedure law No. 83 for 1969 (amended)). Whereas the article (97) of the municipality administration law No. (165) for 1964 which challenged for unconstitutionality had been issued by a legislative office, not by the Director of Al-Ramadi municipality. Therefore, the litigation isn't directed to the defendant, and if the litigation wasn't directed, the Court should take a decision of rejecting the case by itself without discussing all its postulates according to the text of article (80/1) of the law above-mentioned. Accordingly, the FSC decided to reject the case for litigation issues, and to burden the plaintiff all its expenses and the advocacy fees for the agent of the defendant amount of one-hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to the provisions of article (94) of the Constitution and article (5/2<sup>nd</sup>) of the FSC's law No. (30) For 2005. The decision has been made clear on 23.9.2019.