

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

Republic of Iraq  
Federal Supreme Court  
Ref. 89/federal/media/2018



Kurdish text

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The Federal Supreme Court (FSC) has been convened on 9.9.2018, 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: (Alif. Nun. Ha.) - his agent the attorney (Lam. Kaf. Mim.).

The Defendant: Head of the tourism Commission/being in this post, his agent the legal official (Sad. Ain. Ain.).

The Claim:

The agent of the plaintiff claims for the (FSC) in the case petition No(89/federal/2018) that his client is partner in the property No(2/31) from the district (36 jazra and merana) in Babylon governorate. the defendant/being in this capacity requested to expropriation part of the aforementioned property, that belong to his client with other partners, which Babylon tourist hotel had been built on it, And so on under the tourism Commission code No(14) for 1996 according to appropriation code No(12) for 1981. The Iraqi constitution for 2005, article (23/1<sup>st</sup>), stipulate (private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law.), As this article considered the private property protected and can not be taken away but only fair compensation. But the article (31/2<sup>nd</sup>) from the

tourism commission code No(14) for 1996 has stipulated that (the Babylon tourism hotel shall be registered in the name of the tourism commission without compensation and is exempt from fees and taxes), that the defendant/being in this capacity built his case on it. what to be observed is the clear interfered with what the constitution article No(23/2<sup>nd</sup>) stipulate, which is the sublime code. And it's also interfered with what was obligated by the code in appropriation right protection, and intersects with the provisions of the constitution which is the fundamental code, and shall not issue any provisions that contrariwise with its articles. As the article (31/2<sup>nd</sup>) from the tourism commission code No(14) for 1996 considered as clear violation to the private property rights , and constitute harm to his client and the other partners by expropriation their property without fair compensation, Therefore he requested the (FSC) to make a decision that the article(31/2<sup>nd</sup>) from the Tourism commission code No(14) for 1996 is unconstitutional, especially that the property is registered by his client name as one of the partners by the time case is instituted, and to burden the defendant/being in this capacity the attorney's fees. The agent of the defendant/being in this capacity has answered with her draft for the (FSC) on (19/7/2018) to the case petition that the Tourism commission code was issued on (1/1/1996) article (31) stipulated that the mentioned tourist facilities shall be registered without compensation, and the registration is exempt from fees and taxes. Also the article (34) of it has clarified the period of effectiveness for the aforementioned code is (90) day after been published in the official gazette, therefore each person feels that his right has been touched by this code should challenge during the aforementioned period of effectiveness, and those who have the disposal including the plaintiff in this case did not challenged during the period of effectiveness which disclaim their right to challenge. Al-Hella first instance court decision No(3/acquisition/2016) on (5/12/2017) stipulate that text of the article (31/2) from the tourism commission code No(14) for 1996 is (clear and obvious ,not ambiguous ,and it's an ordering texts that must be followed which has stipulated that the registration of Babylon tourist hotel/Al-Hella by the name of the Tourism commission without compensation and is exempt from fees and taxes), the aforementioned decision had been ratified appealingly by the Babylon appealing court as cassation capacity by No(34and 33and 32/Teh legal /2018) on (28/2/2018). Therefore she requested the (FSC) to reject the case and to burden the plaintiff the expenses and advocacy fees. After the registration the case for this court according to paragraph (3<sup>rd</sup>) article (1) from the rules of

procedure of the (FSC) No(1) for 2005. After completing the required procedures according to paragraph(2<sup>nd</sup>) article(2) from the aforementioned procedure, the date(9/9/2018) have been appointed to proceed with the case. The court has been convened in it, attended for the plaintiff his agent (Lam. Kaf. Mim.), and for the defendant/ being in this capacity the legal official (Sad. Ain. Ain.). The public in present trial initiated, the agent of the plaintiff repeated the case petition and requested to judge according to what listed in it and to burden the defendant the expenses and advocacy fees, the agent of the defendant repeated her statement and requested to reject the case in addition to burden the plaintiff the expenses. whereas nothing left to be said the argument has been closed and the decision is issued publicly.

### The Decision:

During scrutiny and deliberation by the FSC, the Court found that the agent of the plaintiff challenged with his case petition that the article (31/2<sup>nd</sup>) from the Tourism commission code No(14) for 1996 is unconstitutional, because it violate the article (23/2<sup>nd</sup>) from the constitution of the republic of Iraq for 2005 for the reason he listed in the case petition. During the scrutiny of the case petition, the FSC found that the paragraph that has been challenged to be unconstitutional which is the article (31/2<sup>nd</sup>) from the Tourism commission code No(14) for 1996 which is a legislative text issued by a legislative party who have the right of issuing it. and the party that have the authority to modify or cancel it is the party that take its place which is the parliament. whereas the defendant institute legal proceedings against head of the Tourism commission/being in this capacity, which cannot be litigant in this case according to article (4) provisions of the civil proceeding code no(83) 1969, therefore the case shall be rejected by litigation. According to that the FSC decided to reject the case for litigation and to burden him the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars according to the law. The decision has been issued decisively, and unanimously according to article (5/2<sup>nd</sup>) of the FSC Bylaw No(30) for 2005 and article (94) of the Iraqi Constitution year (2005) and issued publicly on 9/9/2018.