

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.9 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 4/5/2015, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: (Ha.Kaf.Ha)- his agent the barrister (Heh.Dal.Sin.Mim).

The Defendant: ICR speaker/ being in this capacity- his two agents the legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin).

The Claim:

The plaintiff's agent claimed in the case no.(9/federal/2015) that (Nun.Kha.Ha) initiated the case No.(5/Shin/2015) before the court of personal status in AL-Manhaweya against the defendant (Ha.Kaf.Ha) (the plaintiff in this case) requested to adjudge to oblige him to pay the compensation of the arbitrary divorce to her. On the session dated on 25/1/2015, the plaintiff's agent challenged the article (39/3rd) from the law of personal status No.(188) for 1959 by its unconstitutionality, so the court accepted the challenge and delay the case. The plaintiff's agent made clear that the legislative origin for divorcing is availability, not strictness and the granted ensures for the woman has no substantiation from the law and it may lead to commercial business. The wrong using of AL-sharia may impose the husband to divorce, and the graph for divorcing is continuously increasing, and it

must be treated by religious directives such as lectures, programs, and media. So divorcing is availability and doesn't lead to any responsibilities according to Islamic sharia but the rights (dowry, alimony of period of time) which the legislator allowed to the divorced woman even if the divorce has no reasons according to the legal rule (the legitimate permissibility doesn't require compensation). He requested to call upon the defendant to the argument and to adjudge the annulling of the provisions of the clause 3rd from the article 39 from the law of the personal status No.188 for 1959 because of its unconstitutionality under the provisions of the article 2/ the clause 2 from the Constitution of the Republic of Iraq. After the case had been registered at the FSC according to the bylaw of the court, the defendant was notified by the case petition so a mutual answering of his two agents the legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin) was listed according to their draft dated on 18/2/2015 requesting to reject the case for the reasons that listed in it, so a day for the argument been selected and the two agents of the defendant attended but neither the plaintiff nor his agent attended, and the argument had been started according to the law. The two agents of the defendant repeated what listed in their draft and the court checked the case petition and its documents and completed the investigations. The end of the argument had been understood on 4/5/2015.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff made clear in the case petition No.(9/federal/2015) that (Nun.Kha.Ha) initiated the case no.(5/Shin/2015) before the court of the personal status requested to adjudge to oblige the defendant (the plaintiff of this case) to pay the compensation of the arbitrary divorcing and requested to revoke the provisions of the clause 3rd from the article 39 from the law of the personal status because of its unconstitutionality according to the article 2 the clause 2nd from the Constitution (This Constitution guarantees the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights to freedom of religious belief and practice of all individuals such as Christians, Yazidis, and Mandeans.). the FSC finds that the

principle of Islamic sharia seek to achieve the higher justice between the couples which cant be achieved only by pay the compensation to for the damages she had because of the arbitrary divorcing where there is no abuse if the reasons of divorce are legal. Because of the marriage is a contract that obliges both sides and only the husband end it allowably and as exception from the general rule so this permission shall not be used only in legitimacy limits if he exceeds it he is abuse in his divorce and the women must be paid a compensation for what she had of damage and it is not contrary to the provisions of Islam or the provisions of the clause 2nd from the article 2 from the Constitution that the plaintiff relied on in his case petition where the compensation of the arbitrary divorce is a compensation to the wife for what she had of damage and it has a treatment for that damage. For the above the case is lacking for its legal substantiation so the court decided to reject it and to burden the plaintiff all the expenses and fees of the advocacy and the decision was issued decisive according to the article (94) from the Constitution and the article (5) the clause 2nd from the law of FSC and unan- imously on 4/5/2015 and was understood publicly.