

Republic of Iraq  
Federal Supreme Court  
Ref. 98/ federal /media/ 2014



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 14.9.2014 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 whom are authorized in the name of the people to judge, they made the following decision:

**The request:**

The presidency of the personal status court in Baquba requested the F.S.C. in its letter no.(497) on 24.8.2014 the following: (In the field of work within the Personal Status Court in Baquba, requests and lawsuits are presented by the spouses about their agreement to increase the dowry fixed in their marriage contract, under the claim that the contract has passed for a long period and that the dowry is little or because there are problems between the two parties and in order to resume the marital life a condition was set to raise the dowry, the court deals with such lawsuits or requests in light of the amended Personal Status Law no.(188) of 1959 and the decisions of the dissolved revolutionary command council that ratify the mentioned law that are still valid, among the decisions that apply on the lawsuits and requests to raise the dowry the decision no.(352) of 1987 issued on (20.5.1987) which state that (1. If the spouses agree to increase the dowry fixed

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in the registered marriage contracts, then a tax is imposed on the spouses equivalent to half of the amount of the increase in the dowry. 2. the Personal Status Court with where the agreement is registered is responsible for collecting the tax amount and registering it as income to the treasury..), throw the decision text the personal status court finds that the presenter of the requests and lawsuits to increase the dowry withdraw these lawsuits and requests for lack the ability to submit the tax amount stipulated in the decision, therefore the spouses are not apple to increase the dowry which could leads to continue the conflict between them, this decision constitutes a stumbling block and an obstacle to the fulfillment of the spouses' requests, therefore the court finds that the mentioned decision violated the Sharia and the constitution as the following:

First: The decision violated the sharia provisions: the basic principle is that the adult, sensible, rational, and chosen husband may, after the conclusion of the marriage, increase the agreed-upon dowry whatever he wants, and he is obligated to this increase, also the chosen adult sensible wife may also remove it off her husband with her consent, and the husband should clear from her dowry or from all of it or from the postponed of it , and that is by release if the dowry was a debt related to his liability. The source of the permissibility of increasing the dowry and discrediting it in the Holy Quran, as in the words of the Almighty in Surat Al-Nisa 'verse (24) {{and (forbidden to you) are married women, except those whom

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your right hand owns. Such Allah has written for you. Lawful to you beyond all that, is that you can seek using your wealth in marriage and not fornication. So whatever you have enjoyed from them give them their obligated wage. And there is no fault in you in whatever you mutually agree after the obligation. Allah is the Knower, the Wise}}, therefore every legislative or legal action is permissible, provided that the one who waives his right is eligible with complete consent free from defects of the will such as coercion, deceit, error and exploitation, the legislator did not hold the spouses any related to the agreement to increase the dowry, as the legislator did.

Second: The decision violated the constitution; the decision of the dissolved revolutionary command council no.(352) of 1987 made the amount collected from the spouses in the case of an agreement to increase the dowry a tax equivalent to half the amount of the increase in the dowry, as taxes and fees may not be imposed, not modified, levied, and exempted from it only by a law within the reasons for imposing taxes, the mechanism for collecting it and the conditions for exemption of it and the specified period for fulfillment, the mentioned decision is not a law of tax so it could be depend on, by that the decision violated the text of article (28) of the constitution, in addition the marital contract is of the authentic contracts that are binding for both parties, according to the rules and provisions of the civil law it is permissible after the contract become valid that one party amend the listed conditions by the law text or by

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coming to an agreement according to article (146) civil. For the aforementioned reasons and other reasons seen by your court, I see that the remaining of the decision of the dissolved revolutionary command council no.(352) of 1987 is not justified legally or constitutionally, and it represent barrier before the spouses to amend their dowry in the marriage contract, I find that repealing it is achieving to the divine and set justice.. The request has been set under scrutiny and deliberation by the F.S.C. and it reaches the following decision.

**The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the request presented by the judge of the personal status court in Baquba to decide that the decision of the dissolved revolutionary command council no.(352) of 1987 is illegal and unconstitutional, the request wasn't according to a lawsuit present before the personal status court in Baquba, and wasn't according to an argument of litigant during lawsuit before the mentioned court by one of the suppose or any one with benefit, as such challenge is lawsuit subject to be presented before the F.S.C. by relative parties, therefore the court decided to reject it from this aspect, and to notify the judge of the personal status court in Baquba to consider that. the decision has been issued unanimously on 14.9.2014