



The Federal Supreme Court (F.S.C.) has been convened on 4.5.2014 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 Plaintiffs:

1. Managing Director of Al Diyar Travel and Tourism Company/ in addition to his post.
2. Managing Director of Al Jenob Travel and Tourism Company/ in addition to his post.

} Their agent the attorney Hasan Radam.

The defendants:

1. The Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).
2. The Minister of Tourism in addition to his post/ his agent the legal official Kareem Hamza Dawod.

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The claim:

The agent of the plaintiffs claimed that the second defendant/ in addition to his post issued decision to confiscate moveable and immovable funds under the letter no.(942 on 22.1.2013) according to the Law of Collecting the Governorates Debts Dues no. (56) for 1977, as there is no contract relation between his clients and the second defendant in addition to his post, no (binding) judicial decision was issued from a competent court to obligate his clients to implement, therefore accordingly under the constitution of 2005 articles (27/1st/b), (19/5th) and (87) of it. The freedom and funds of Iraqis are protected and granted by law, when seizing or confiscating the money of the debtor there must be (judicial decision) issued from competent court, within the judicial power, the Law of Collecting the Governorates Debts Dues no. (56) for 1977 assigned it implementation to ministers, acting ministers, Secretary of the capital, municipalities managers, governors, institution presidents, general-directors, district managers, and any employee with rank not less than fourth level of the Law of Service, to seizure moveable and immovable funds also detain the debtor under article 13 of it. According to the principle of power separation and other than judges are not allowed to practice judicial tasks, because these

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tasks are competent judges of judicial power exclusively under article (87) of the constitution, and what the judgment of your court has stated in the decisions (5, 66/federal/2012), (15/federal/2011) and (32/federal/2013), the plaintiffs agent requested to rule repealing any text violates the constitution listed in the Law of Collecting the Governorates Debts Dues no. (56) for 1977 (amended) related to grant employees who are not associated with the judicial authority, grant them power to seizer moveable and immoveable funds without judicial order specially what stated in articles (2, 8, 9, 13) of the mentioned law, and any text authorize the employees power to seizer moveable and immoveable funds and detention without judicial order for violating articles (13), (37/1st/b) and (87) of the constitution of 2005. First defendant agent responded to the case petition with the answering draft dated on (4.11.2013) stating that the F.S.C. is not competent to consider the decision authenticity of confiscating moveable and immoveable funds of the plaintiffs. The plaintiffs agent is mixing between seizer of funds and the seizer of people prohibited by the constitution, and the both subjects are distinguished, his cite with article (37/1st/b) of the constitution is not permissible, because the mentioned article stated that no person may be kept in custody except according to a

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judicial decision, and no one kept the plaintiffs in custody or investigate with them in contrary to the constitution. first defendant agent cleared that the plaintiffs agent cite with the judiciary decisions mentioned in the case petition issued by the F.S.C. is not correct because the mentioned decisions issued in subjects differ from this lawsuit, he also stated that the detention took place under the Execution Law no.(45) for 1980 and not according to the law of Collecting the Governorates Debts Dues, article (13) of the of Collecting the Governorates Debts Dues law stated ((the procrastinating debtor may be imprisoned in accordance with the provisions of the Execution Law)) article (40) of the Execution law no.(45) for 1980 stated that ((the procrastinating debtor may not be imprisoned in all cases except on the request of the creditor and a decision of the judicial executer if he was a judge then the rights of the debtor are guaranteed, therefore no need for challenging the constitutionality of the text. For all that, first defendant agent requested to dismiss the lawsuit. Second defendant agent responded to the case petition with the answering draft submitted to his court on 12.11.2013 stating that what his client made of procedures was under the law of Collecting the Governorates Debts Dues no.(56) for 1977 that is in force, also this procedure is stipulated in the decision of

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the Council of Ministers no.(50) for 2009 and in the law of Tourism Committee. After completing the required procedures the date (27.4.2014) was scheduled for the argument, that day and the day after were announced to be holiday for electing the I.C.R. members until the date (3.5.2014) so the date for considering the lawsuit is 4.5.2014 according to the provision of article (24) of the Civil Procedures Law, the court call upon the parties, the agent of the plaintiffs, first defendant agents, and second defendant agent all attended and started the in presence public session, the plaintiff' agent repeated the case petition limiting his request to rule the unconstitutionality of articles related to confiscating funds and detaining the debtor listed in the Law of Collecting the Governorates Debts Dues no.(56) for 1977 because it authorizes second defendant to confiscate funds without legal decision which violates articles (37/1st, 13, 87) of the constitution. the agents of first defendant repeated their answering draft, the agent of second defendant repeated the answering draft. whereas nothing left to be seed, the argument is closed, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that second defendant in addition to his post addressed the

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letter no. (942) on 22.1.2013 to all ministries, other bodies,
and banks to

plaintiff agent requested in the case petition the F.S.C. to revoke paragraph (d) of the Board of Commissioners decision no.(1) regular minutes (115) on 1.9.2013 of third step (women's quota calculation), regard distributing the seats on the candidate of the governorate council. The F.S.C. jurisdictions are stipulated in article (93) of the constitution of 2005 and article (4) of the F.S.C. law no. (30) for 2005, it don't includes what the plaintiff requested of considering the challenges against distributing the seats on the winners as that

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is competent of the Independent High Electoral Committee, its decision submits to challenge before the cassation body formed in the Federal Cassation Court, therefore the plaintiff lawsuit is out of the F.S.C. jurisdiction, then it is binding to be dismissed from the aspect of jurisdiction. The court decided to dismiss the plaintiff lawsuit from the point of jurisdiction and to burden him the expenses and advocacy fees for the defendant agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final according to article (94) of the constitution, issued publicly on 27.11.2013.

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