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The Federal Supreme Court (F S C) has been convened on 11.6.2018 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: (nun.ha.ain) – barrister.

The Defendants: 1. The Speaker of the ICR / being in this capacity – his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

2. The President of the Republic/ being in this capacity – his agent the Head of Jurists in the Presidency divan (ghain.alif.jim).
3. The Head of tourism Commission/ being in this capacity – his agent the official (sad.ain.ain).

### The Claim

The plaintiff (nun.ha.ain) initiated her case before the FSC in No. (70/federal/2018), and summarize her claim that she was one of the shareholders in the tourist City Company in Al-Habbaniyah (mixed-ownership), that was before issuance of revolutionary leadership Council (dissolved) decision No. (83) For 1998. This decision stipulated in the first article that property of stocks which belongs to the private sector in tourist City Company in Al-Habbaniyah (mixed-ownership) shall revert to the tourism Commission, and the Ministry of finance carry out refunding of stocks amounts to the

owners with the nominal value. The Court previously rejected the challenge on the revolutionary leadership Council (dissolved) decision No. (83) For 1998 by its decision No. (56/federal/2012), as well as real estate disputes Commission had rejected the claim of demanding by compensation because they are not included with reasons listed in the article (4) of the Commission's law. Also, branch committee for aggrieved compensation rejected compensation request, because expropriation procedures weren't relies on ethnic or sectarian reasons. The plaintiff requested from the FSC to judge by unconstitutionality of the article (3/alif) of property claims Commission law No. (13) For 2010 and the law No. (16) For 2010 to compensate aggrieved of ex-regime for restrained and confiscated real estates, which expropriated for political, ethnic, religion or sectarian reasons. This matter regarded a violation for the Constitution in the article (2/jim) which inhibits enacting any law may contradicts with rights and basic freedoms which listed in it, also it regarded deactivating to the articles (14) of it which stipulated (Iraqis are equal before the law without any discrimination) – and the article (19/6<sup>th</sup>) which stipulated (every person shall have the right to be treated with justice in judicial and administrative proceedings. She also requested to judge by unconstitutionality of the revolutionary leadership Council (dissolved) decision No. (83) For 1998 because it violates the Constitution in the article (23) clause (2) and it also violates appropriation law. The agent of the first defendant (Speaker of the ICR/ being in this capacity) answered the petition of the case by the answering draft dated on 20.5.2018, and he requested to reject the case with burdening the plaintiff the judicial expenses. Whereas the plaintiff didn't clarify her interest of this challenge according to what article (6/1<sup>st</sup>) of the FSC's bylaw No. (1) For 2005 requires, as well as challenged legal texts came as a legislative choice according to provisions of the article (61/1<sup>st</sup>) of the Constitution. Besides, challenge listed on the decision of the revolutionary leadership Council (dissolved) No. (83) For 1998, the Court took a decision about it in its decision No. (56/federal/2012) which issued for a specific case, and it is invalid anymore. The agent of the second defendant (the President of the Republic/ being in this capacity) answered by answering draft dated on 7.5.2018, and he requested to

reject the case formally. He claimed that the case is a request from individual for his right from another individual before the judiciary according to provisions of the article (2) of civil procedure law, while the petition of the case didn't include a clear request, but it was narrating for the procedure of the case which initiated in the past. Also the plaintiff didn't go to the Ministry of finance to request the value of stocks belong to her, whereas the plaintiff didn't clarify the reasons of unconstitutionality of the article (3/alif) of property claims Commission law No. (13) For 2010. Her father previously initiated the case No. (491495) before the property claims Commission (Al-Kharkh branch). The judicial committee decided to reject the case because he and the third parties are not included by provisions of the article (4) of the Commission's law. He objected before branch committee for compensating aggrieved according to the law No. (16) For 2010, and his request of compensation for stocks belong to him in the tourism city of Al-Habbaniyah was rejected. Changing the company from stock to public according to the decision of the revolutionary leadership Council (dissolved) No. (83) For 1998 is not included by the law of compensating aggrieved. Besides, the law of claims property commission which related to (real estate) exclusively, and the law of compensating aggrieved No. (16) For 2010 are not implemented on the case of the defendant. The challenged legal texts were corresponding to the provisions of the Iraqi Constitution. Therefore, the agent of the second defendant (President of the Republic/ being in this capacity) requested to reject the case, and to burden the plaintiff the expenses and advocacy fees. The agent of the third defendant (the Head of tourism commission – the General Director of tourism city in Al-Habbaniyah/ being in this capacity) answered that his client is not the general director of aforementioned company, as well as, trying the subject of the case is a competence of administration judiciary Court. Therefore, he requested to reject the case formally – for litigation – and objectively. After completing required procedures according to the FSC's bylaw No. (1) For 2005, and receiving answers from the defendants. The Court set the day 11.6.2018 a date for argument, on that day the Court has been convened and the plaintiff attended. She repeated what listed in the petition of the case, and requested to judge according to it. Then, she presented a draft attached to the

petition of the case, and she said there nothing new added to this draft. The agent of the defendants attended according to the power of attorney attached to the file of the case, and they repeated what listed in the answering draft and they requested to reject the case from their clients. Whereas the Court completed its investigations, and nothing left to be said. The end of the argument was made clear, and the decision issued publicly during the session.

### The Decision

During scrutiny and deliberation by the FSC, the Court found after reading the petition of the case and rudiments which related to it that a decision issued by revolutionary leadership Council had been issued by the No. (83) On 15.6.1998. This decision adjudged by returns the ownership of stocks that belongs to the private sector in the tourism city of Al-Habbaniyah mixed-ownership to the commission of tourism, it also adjudged that the Ministry of finance shall carry out the process of refunding stocks amounts to their owners with its nominal values. Aforementioned decision also adjudged by dissolving the board of directors of aforementioned company, and to form a new board of directors instead of it. The provisions of aforementioned were executed in that time, and it is not valid in the present time. Therefore, trying unconstitutionality of it is out of the FSC jurisdiction which is specialized according to the article (93/1<sup>st</sup>) of the Constitution in overseeing constitutionality of laws and regulations in effect, and the Court previously adjudged in a previous judgments in numbers (103/federal/2011) on 4.6.2012 and (70/federal/2012) on 15.1.2013 and (110/federal/2014) on 21.4.2015 by rejecting the cases for incompetence, which they have the same subject of this case. The FSC also finds from reading the plaintiff's requests, and before that the requested of rejected cases aforementioned that its subject is about objection on devolving the stockholders stocks from private sector in the tourism city of Al-Habbaniyah to the commission of tourism with its nominal values, as the stockholders from privates sectors including the plaintiff sees that the nominal value for the stock which determined by the revolutionary leadership Council (dissolved) doesn't equal its real value when they bought it, in comparison with its value in dinars in that time or its real value in par market. They see that the justice is

to fair compensation according to its real value. The FSC finds that trying this request, and the other requests for unconstitutionality of revolutionary leadership Council (dissolved) above-mentioned, as well as the request of unconstitutionality of article (3/alif) of property claims commission law No. (13) For 2010 and the law of compensating aggrieved from ex-regime No. (16) For 2010 which concern confiscated and attached real estates, and these real estates were expropriated for political, ethnic, religious or sectarian reasons. The Court finds that her request to judge by unconstitutionality of these two texts and annulling them to let her getting appropriate compensation for stocks that belongs to her which devolved to the commission of tourism without need to consider this expropriation was for political reasons or others. The FSC finds that the reasons mentioned by the plaintiff about unconstitutionality has no substantiation from the Constitution and doesn't intersect with its provisions. Accordingly, and for the aforementioned reasons, while the case must be rejected for incompetence in what related to the decision of revolutionary leadership Council (dissolved) for the aforementioned reasons. Besides, it doesn't rely to a productive constitutional text as for the article (3/alif) of property claims commission No. (13) For 2010, as well as for the texts of compensating aggrieved from (ex-regime) No. (16) For 2010 which concerns confiscated real estates. These texts were a legislative choices and it doesn't violates the Constitution. Therefore, the Court decided to reject the case, and to burden the plaintiff the expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued decisive, unanimously and obliged according to provisions of article (94) of the Constitution and article (5) of the FSC law number (30) for 2005. The decision has been made clear on 11.6.2018.