

Republic of Iraq
Federal Supreme Court
Ref. 38/ federal / ٢٠١٣



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 4.5.201٤ 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, and it issued the following decision:

The Plaintiff:

Hind Hamza Abboud / her agent the lawyer, Abdul Rahman Fadhel Al-Tai.

The Defendants:

1. The I.C.R. Speaker /being in this post.
2. Minister of Finance /being in this post.
3. President of the Tourism Authority /being in this post.
4. Registrar of public companies /being in this post.

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The Claim:

The agent of the plaintiff claimed before the F.S.C. in the case No. (38/federal/2013) that the dissolved Revolution Command Council, pursuant to its Resolution No. 83 of 6/15/1986, decided to take possession of the private sector amounting to 51% of the capital of the Tourist City Company in Habbaniyah, which is a mixed joint-stock company, and decided to devolve the ownership of his client's shares in the company to The Tourism Authority, and the Ministry of Finance undertakes the payment of share sums by its nominal payment without any right or the existence of a public interest in this, provided that the decision contravenes constitutional principles, including temporary and permanent constitutions, especially Article (16 / H) of the interim constitution of the Republic of Iraq for the year 1970, which states that ownership Private property is protected, provided that it is not expropriated except for the requirements of the public interest and in return for fair compensation according to the rules specified by the law and according to the provisions of Article (4/13) of the Acquisition Law, which is contrary to the legal methods used and fundamentalism in expropriation, as it contravenes the provisions of Article (23/2) From the Constitution of the Republic of Iraq for the year 2005, which stipulates that private property may not be expropriated except for purposes of public benefit in exchange for fair compensation, and it shall be regulated by law. And that fair compensation does not mean

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compensation with the value of nominal shares because that loses the value of the commercial bond, and it is a profit-based business because the condition of justice is not fulfilled in it and to secure an interest in it unless it compensates for its benefits from it and for the damages caused by the expropriation of the share either if those benefits or damages were original, necessitated by depriving her of their ownership or subsidiary, which resulted directly from the expropriation work, bearing in mind that the title deeds for those shares are still in the names of his client and that she has not received the sums of those according to the book of the Ministry of Finance, Industrial Bank, Public Center (Financial Investment) No. 2/4/1322 on 06/03/2004 directed to the Ministry of Finance / Accounting / Cash Department and its subject (The Contribution Of The Tourist City In Habbaniyah), with reference to the Ministry of Finance letter No. (14/51/646) on ٢٠٠٤/5/26.

Note that the contested decision has kept the company as a mixed company and that the process of canceling the company and making it a public company by the companies' registrar according to Article (177) of the Companies Law No. 21 of 1997 that this procedure violates the law and the provisions of Article (147, 158) of Companies Law No. (21 for the year 1997) that the company is supposed to liquidate and that a decision is issued by the company's body to end the liquidation and this has not been done knowing that the date of termination of the company and its delisting will not be on that date a general assembly of the



company's board. That is because the dissolved Revolutionary Command Council's decision was set the term of managing the company in temporary administration is for a period of one year and extends for another one year only. This board ends on 6/15/2000.

While the lawsuit is focused on restoring the company to its previous state, and likewise, it will not request the return of the plaintiff as a shareholding of the company as well, but the matter in this lawsuit focuses on the issue of the constitutionality of the dissolved Revolutionary Command Council's decision or not.

Therefore, the plaintiff's attorney requested, after the necessary procedures, to rule the unconstitutionality of the dissolved Revolutionary Command Council's Resolution No. 83 of 1986, with the defendants being charged with all expenses and attorney fees.

And after registering the case with this court in accordance with paragraph (third) of Article (1) of the rules of procedure of the Federal Supreme Court and completing the required procedures according to Paragraph Second of Article (2) of the internal system of the Federal Supreme Court, a date was set for the pleading, and the plaintiff's attorney did not attend. Despite the notification, the attorney of the first defendant attended, and the second defendant did not attend, and the third defendant's attorney and the fourth defendant's attorney attended according to the agencies linked to the case file, and the civil and public



pleading was initiated. The court examined the lawsuit petition, and the attorney of the first defendant repeated what was stated in his list of response submitted to the court dated 5/15/2013 and requested the judgment accordingly, and requested the dismissal of the case with the plaintiff being charged the expenses.

And the court reviewed the response list submitted by the Undersecretary of the Ministry of Finance dated 28/8/2013 in which he requested the dismissal of the lawsuit because his client's department is an executive department that implemented the decisions and laws issued by the higher authorities and has no authority to suspend those decisions or laws, and that the lawsuit It falls outside the jurisdiction of the Federal Supreme Court stipulated in Article 93 of the Constitution and Article 4 of the Federal Supreme Court Law No. 30 of 2005

The court also reviewed the response list submitted by the Director General of the Companies Registration Department / Agency dated 05/14/2013 and requested that the lawsuit be dismissed from the litigating party and that the plaintiff be charged all the expenses.

The court reviewed the dissolved Revolution Command Council's decision No. (83) On 6/15/1986 and also reviewed the other documents presented. The attorneys of the parties to the case repeated their statements and requests and requested the verdict accordingly.



Whereas nothing left to be said, the argument is closed, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the agent of the plaintiffs in the case petition, that the dissolved Revolutionary Command Council issued Decree No. (83) on 6/15/1986 according to which it decided to expropriate the private sector ownership of the capital of the Tourist City Company in Habbaniyah, which amounts to (51%). Thus, the ownership of the shares of his client in the aforementioned company devolved to the Tourism Authority. The Ministry of Finance shall pay the sums of shares to their holders by their nominal amounts, and this decision violates Article (16 / C) of the Constitution of the Republic of Iraq for the year 1970 and Article (23) of the Constitution of the Republic of Iraq for the year 2005 and the request for the ruling unconstitutional of the provisions of the aforementioned decision with the defendants being charged Case expenses and attorney fees.

Upon examination of the case by the Federal Supreme Court, it was found that the contested decision that it was unconstitutional and issued by the dissolved Revolutionary Command Council No. (83) for the year 1998 and not under No. (83) for the year 1986 as reported by mistake in the case petition had been enforced and did not have a list after implementation. Whereas the jurisdiction of

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the Federal Supreme Court is defined in Article 93 / First of the Constitution of the Republic of Iraq for the year 2005 to oversee the constitutionality of laws and regulations in force and not in the laws, decisions and regulations whose enforcement has expired. The Federal Supreme Court stipulated in the above article and because of the above and because of the Federal Supreme Court's lack of jurisdiction to hear the case, the ruling decided to return the plaintiff's case and charge it with the case's fees and attorney fees for the attorneys of the first defendant, the third defendant and the fourth defendant an amount of one hundred thousand dinars distributed among them equally.

This decision has been issued by agreement on ٤/٥/2014.