

In the name of god most gracious most merciful

Republic of Iraq  
Federal supreme court  
Ref. 53/federal/media/2018



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 15/5/2018 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-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (alif. ain. kha.) / The authorized manager of the Alssayih Company to mediate the sale and purchase of foreign currencies his agent (ain. ra.) & (nun. ain.).

Defendant/ Head of the House of Representatives/ being in this capacity his agents human rights officers the director (sin. ta. yeh.) and the Assistant Legal Counsel (heh. mim. sin.).

Claim:

The agents of the plaintiff claimed that the article (69) of the law of the Central Bank of Iraq No. (56) of the year 2004 violate the provisions of article (100) of the constitution because it implies (implicit immunity) of the decisions of the mentioned bank, (right to challenge) the above article (right of challenge) by the decisions referred to above before (Financial Services Court) within (thirty) days, from (date of issuance of the decision) of the Central Bank of Iraq, or (a shorter time period) and not from (the date of notification of the decision) as stipulated in the Civil Procedure Law in article (1) thereof, which is the reference to all the laws of the proceedings and procedures,

If the text does not contradict its provisions, and that the rule of article (69) above has been applied to their client as he has the right to appeal the decision issued by the (Financial Services Court) No. (5/financial services/2017) on 8/5/2017 because he is not aware of the said decision and because knowledge of the decision of change requires ((reporting)) and some decisions issued by the Central Bank cannot be implemented without the bank reporting and verify the knowledge of the entity (which must implement them), and that the correctness of informing the litigants and communicating their knowledge to the detriment of their rights during a known, reasonable and practical period is a major guarantee on which the litigation process is based, the plaintiff's agents in the petition went on to claim that the failure to take into account the foregoing in the case of the decision of the Court (Financial Services) mentioned above against their client in application of the text of article (69) (challenge) that right is directly and independently affected by its elements can be removed through (the cancellation of the text mentioned) and the lack of benefit of their client. When the request of the plaintiff's agents ((ruling on the illegality of the text of article (69) of the Law of the Central Bank of Iraq No. (56) of 2004 and cancel it and to charge the defendant fees and expenses. The defendant's agents (Head of the House of Representatives / being in this capacity) responded to the petition of the case, that the FSC has already ruled on the same subject this lawsuit in accordance with its decision No. (147/federal/2017) as it decided (to consider the text of article (69) of the law of the Central Bank of Iraq has been initiated according to the option of the legislator based on his powers) stipulated in article (61/2<sup>nd</sup>) of the constitution and does not include immunization of decisions issued by the said bank of the appeal and thus not in violation of article (100) of the constitution. They asked to reject the case. After the registration of the case pursuant to the provisions of article 1, paragraph 3, of the bylaw of the FSC No. (1) of 2005, and after completing the procedures required under paragraph (2<sup>nd</sup>), article (2) of the mentioned bylaw. Day 15/5/2018 is set a date for consideration of the case in which the court was formed, the agent of

the plaintiff and the agent of defendant Mr. (heh. mim. sin.) attended the hearing begin the public advocacy. The plaintiff's agent repeated what was stated in the petition and asked for judgment. The defendant's agent replied (we repeat what is stated in the pleading and ask to reject the case for the reasons stated therein). The court asked the defendant's agent whether he had objected with the Central Bank on the decision to withdraw the banking license, stating that the objection had been made and that they had not been informed of the decision issued by the Central Bank as a result of the objection and all the parties repeated their statements and as the case was completed for the reasons of the ruling, at the meeting.

### The Decision :

For scrutiny and deliberated by FSC found that the plaintiff challenged partial unconstitutionality of article (69) of the law of the Central Bank No. (56) of 2004 which relates to the appeal filed against the decisions of the Central Bank to the (Financial Services Court), where the plaintiff claims in his case that this article period of challenge start the date of the decision of the bank and not from the date of the same as the case in the Civil Procedure Code. This is considered an implicit immunity to the decisions of the Central Bank of the appeal, and this is contrary to article (100) of the constitution, which prohibits the provision of the immunity of any action or administrative decision of the challenge. The FSC found that the legislator's intention to make the commencement of the appeal period under article (69) of the Central Bank Law referred to is a legislative option that is not contrary to the constitution and is based on a legal principle that is the principle of "presumed science" of the concerned it does not include immunity for the decisions of the Central Bank of the existence of an appeal to it (Financial Services Court) this is what the court went to in its ruling No. (147/federal/2017) on 12/2/2018. Which requires that the bank's decision against him to follow him from the start of the proceedings until the issuance and appeal if he finds a violation of the law and accordingly the plaintiff's claim is not

based on a reason of the constitution and the law. He decided to rule by agreement to refund and to charge him the expenses and fees of the lawyer of the defendant's agent, Mr. (heh. mim. sin.), in the amount of one hundred thousand dinars. The judgment was imposed on the basis of the provisions of article (94) of the constitution and article (5) of the FSC Law No. (30) of 2005 and the judgment was understood publicly.