

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 6/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/5/2018 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 / Interior Minister/ being in this capacity his agents legal Colonel (mim. ain. alif.) legal Colonel (mim. alif. ain.) legal Counsel (ain. theh. 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 House of Representatives issued The Foreigners Law No. (76) of 2017 which came as a violation of the draft law submitted by the Ministry of the Interior as the House of Representatives has canceled and introduced some paragraphs did not exist in the draft law submitted by it. They have challenged to those paragraphs request for judgment “To suspend, redraft or cancel several paragraphs and for the following reasons: 1- Under the pretext of revenue contrary to the government project is article (1/2nd), which included the creation of the ((Office of Security Audit)) in the Ministry of Foreign Affairs and the creation of the

((General Directorate of Residence)) and the consequential administrative, financial and legal consequences. 2- Under the pretext of adding other materials without reference to the government: the article (7/1st/jim.) Including (a quick access feature) within one day without a donor statement. The article (7/2nd) which granted travel the power to (grant entry visas) to Iraq. The article (1/3rd/jim.) which excluded officials responsible for the management of ships, aircraft and trains coming to Iraq from the validity of the provisions of the law on them. The article (18/3rd/beh.) which stipulated that a foreigner should provide a deposit or a valid card. The article (19/4th) which requires that a foreigner obtain a "departure visa" by direct port. The article (9/3rd) was deleted the justification for the granting of the annual residence permit for the foreigner divorced by her Iraqi husband. The minister's authority to exempt from the fee was also omitted. The article (52) was also deleted from the project with the approval of the Directorate of Residence upon the establishment of companies in which a foreign party enters. The article (18/1st) which obliged the foreign ((Signature of the Access News Form)) in the border port which is contrary to article (44) of the same law, which set the penalty for the minor who did not review the Directorate of Residence within fifteen days, reply agents responded to the petition and requested their rejection for the following reasons: 1. The plaintiff's agents did not show the constitutional texts that have been violated by the contested legal texts. 2. The House of Representatives shall be competent in accordance with the provisions of article (61/1st) of the constitution, legislation of federal laws and may not be required to approve the draft laws, without exercising its legislative role by approving, rejecting, amending and deleting, especially the texts that were challenged did not constitute financial burdens or interference in public policy which are drawn up by the state or interfered with in the judiciary, the law - subject to challenged - is a legislative option. 3. The decision to suspend the work of the paragraphs - The subject of the case - or reformulation It is not the competence the jurisdiction of the FSC provided for in article (93) of the constitution. As well as the request to cancel the texts - subject to

challenged - if not accompanied by a constitutional violation. After the case has been registered on the basis of the provisions of paragraph (3rd), article (3), of the bylaw of the FSC No. (1) of 2005, after completion of the procedures required in accordance with paragraph (2nd), article (2), of the system . The date of 30/4/2018 was set as the date of the hearing, in which the court was formed and the agents of both sides were present, The plaintiff's agents repeated what was stated in the petition and requested the judgment, the defendant's agents repeated what came in their pleading and they asked to reject the case and the court asked the defendant's agents if the House of Representatives had returned to the Council of Ministers in the financial burden when the change was made to the material mentioned by the plaintiff's agents, they request to take time out to return to their agents from this side. The court scrutiny the petition found that the repetition is clear and has led to prosecutor's agents precisely define their requests and the statement of violation of the articles - subject to challenged- for the constitution and in any subjects with a specific constitutional statement so the agents of both sides took time out too for what they took time about it, the hearing has been delayed to a day 28/5/2018. The agents of plaintiff/ being in this capacity provided explanatory list of what was stated in the hearing to a day 30/4/2018 claiming that the defendant violated the articles (60/1st), (61/1st) & (60) of the constitution for the following reasons: The revocation of the power of the Minister of the Interior to exempt foreigners from all or some provisions of the Law on the Establishment of Foreigners No. (76) of 2017 (challenged) is considered an interference in the general policy of the state in disregard of international and diplomatic norms between countries, assume that the reciprocity and this is done since the establishment of the Iraqi government and in all countries of the world, which negatively affects the public policy of the state. As stated in the articles of the law (challenged) contradictory texts article (3/3rd), entitled "Conditions for the entry of foreigners into Iraqi territory proven free of communicable diseases, infectious diseases and immunodeficiency acquired according to the law". Article (8/5th) from

the same law entitled (conditions for granting access features), proven free of communicable and infectious diseases and immunodeficiency acquired, in accordance with the law, in accordance with the instructions of the Ministry of Health. This affects investment, especially foreign companies, leading to a financial deficit in investment as a result. The procedure followed by the examination after entering the Iraqi territory for a period of ten days and the second requires medical examination when granting the entry attribute and this contradiction is clear and explicit, and that the basis of the Directorate of Residence depends on the principle of (reciprocity), which makes the rest of the States demanding the Iraqi to conduct similar to their subjects, which puts Iraq in embarrassment with the embassies of Arab and foreign in the territory of Iraq, the article (18/1st) from the same law showed that “the foreigner must fill out and sign an access form and submit it to the residence officer at the border post” while the draft project obliged the foreign review within a period of ten days to the Directorate of Residence and otherwise impose a specific financial penalty in the draft, and that the amendment of this article has been financially detrimental to the revenues of the general budget and became contradictory to article (44) of the same challenged law (15) days from the date of his first entry and did not indicate the excess after the end of the entry and residence visa, and this causes waste of public funds for the large entry of foreigners to Iraq, especially in the visits of millions and this negatively affects the revenues of the state, while the article mentioned in the government project requires the imposition of a fine for every day in which the alien is staying illegally in Iraq. Article (6/1st) of the law allocates the General Directorate of Residence to grant (entry visa) stipulated in the paragraphs (alif), (beh), (jim), (dal), (heh) & (zin) of item (1st) of article (7) of the challenged law. The Chamber of Deputies added a new "entry feature" in sequence (he) in article (7) itself, which is a "quick entry feature" provided within one day), without specifying the entity to which it grants, as it has determined (the validity of the Directorate of Residence) to grant the features referred to in article (6) of the law without reference to this attribute,

and that this contradicts the text of article (8), which includes the conditions of granting (entry attribute) and this negatively affects the security of the country because that attribute is granted directly without standing on the foreign security opinion. The project added to the text of article 8 of the law, item (4) of which is the word (take it out) within the conditions and grant of the entry visa, namely, that no decision has been issued (removed or removed) except after the disappearance of these reasons and two years after the decision of deportation and issuance issued against the foreigner Here the legislator mixes two different terms. The distance comes after entering the country officially, but the exit is to enter informally, it is not permissible to equal the sentence in the two cases mentioned because the entry in an informal way and not equal to the ruling in the two cases mentioned because the entry in an informal way, it may be for the realization of illegal purposes and this is not mentioned in the government project and it was decided under paragraph (ha) of item (3rd) of article (1) (The law does not apply to "Iraqis and their children who are holders of foreign passports". As stipulated in item (4) of article (9th) of the law "granting residence to Iraqi spouses and children holding foreign passports". Thus, the Directorate of Residence is a clear contradiction in the legal texts. Does it apply to Iraqis and their children who are foreign passport holders?. Under paragraph (1) of item (3) of the article (18) of law any person who uses an alien for the purpose of employment "shall deposit a security deposit or a valid return card (travel ticket) to ensure the return of that foreigner" and this text came at all and includes the foreign workers, especially has submitted several complaints from the National Investment Commission in this regard. On the basis of the above list, the plaintiff's agents requested (amend the contradictory and contradictory clauses added by the House of Representatives and reformulate them in order to preserve the public money and in accordance with the public interest in accordance with the provisions of article (93) of the constitution). In response to the request of the court, the agents of the plaintiff submitted another regulation dated 22/5/2018 and it is contained therein: First: Article (48) of the Law on the

Establishment of Foreigners No. (76) of 2017 of article (37/1st-beh) of the Constitution of the Republic of Iraq for 2005, which states (No one may be arrested or interrogated except by judicial decision). Second: Article (36/1st) of the Foreign Residence Law No. (76) of 2017 contradicts article (28/1st) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (No taxes or fees shall be levied, amended, levied or exempted except by law). In addition to what is stated in the petition and the pleading submitted on 30/4/2018, the agents of the plaintiff request for challenge of the Foreign Residence Law No. (76) of 2017 to preserve the public money and in accordance with the public interest. On the day 28/5/2018 the court has been convened the agents of the plaintiff and the agents of the Head of the House of Representatives/ being in this capacity and began of the to plead openly and publicly. The Court noted that the plaintiff had submitted an additional regulation dated 22/5/2018 stating that article (48) of the Foreigners' Residence Law was conflict to article (37/beh) of the constitution which states (No one may be arrested or interrogated except by judicial decision), article (36) of the law is also subject to the provisions of item (28), article (28) of the constitution which states (do not impose taxes and duties, and do not amend and answer and not be exempted by law) the defendant's agent replied: We have nothing to add to our previous statements. We ask that the case be rejected for the reasons stated therein, as the case was completed, the reasons for the decision were decided and the verdict was read out in public.

The Decision :

For scrutiny and deliberated by FSC found that the agents of the plaintiff were claimed in their two explanatory documents attached to the petition that the House of Representatives has already passed the Law on the Establishment of Foreigners No. (76) for the year 2017, which came in violation of the provisions contained in the draft law submitted by the Ministry of Interior by canceling and developing materials that were not included in the government project and modifying other materials in a way that contradicts the draft law. The agents of the plaintiff were claimed that there are articles provided by the law contradict or contradict with other articles within the same law and the submission of the request of the plaintiff's agents:

- 1- Commenting, redrafting or canceling the paragraphs of the material referred to in the petition.
- 2- In accordance with their regulation of 30/4/2018 the provision to amend the conflicting or contradictory paragraphs added by the House of Representatives and reformulated in order to preserve public money. In accordance with the requirements of the interest with the government project based on the provisions of article (93) of the constitution.
- 3- The agents of the plaintiff request under their pleading date 22/5/2018 to judgment unconstitutional of two articles (48 & 36) of law to violation of provisions of two articles (37/1st-beh) & (28/1st) of constitution. The FSC found for the allegation of agents of plaintiff because the articles (1/2nd), (7/1st/jim), (7/2nd) & (8/4th) and the deletion of article (52) included in the government project and replace them with another area And the revocation (validity of the Minister of the Interior) exempt from fees and its authority to exempt foreigners from all or some of the provisions of the Foreigners' Residence law No. (76) of 2017 was contrary to the government project, and the claim as well that article (3/3rd) of the mentioned law contravenes the provisions of article (8/5th) and that the text of article (6/1st) is contrary to the provisions of article (7/ha) and the text of article (8) and that the text of article (1/3rd/ha) contradicts with the text of article (9/4th) of the same law referred to above as set out in the petition

and explanatory rules. The plaintiff's agents requested suspension of the infringing clauses as it did not respond to (the draft law on the establishment of foreigners) or reformulated or canceled in accordance with the public interest and that they were contrary to the text of the paragraphs of the same law and also inconsistent with the law of the Ministry of Interior No. (20) of 2016 in which there is damage to the structure of the Ministry of the Interior and the removal of the contradiction mentioned above in order to comply with the law contested with the draft law submitted by the Ministry of Interior) this is outside the jurisdiction of the FSC provided for in article (93) of the constitution and article (4) of the it law No. (30) of 2005, which requires the rejection of the case by the jurisdiction. On the other hand, the legislation of the above-mentioned articles was within the legislative option of the House of Representatives in accordance to his powers stipulated in the article (61/1st) of constitution, consequently, there is no violation of the constitutional provisions provided by the agents of the plaintiff, which requires the rejection of the case from this body as well but the contradiction between the articles of the same law referred to by the plaintiff's agents is consistent with the legal principle "The subsequent text copies the advanced text of the law" the plaintiff may request (legislative intervention) as they take it above. As for the allegation of plaintiff agents the fact that article (48) of the law the Foreign Residence No. (76) of 2017 which states (The General Secretary or his successor shall be granted the power of an investigating judge in accordance with the Code of Criminal Procedure, which allows him to detain a foreigner for a period not exceeding (7) days, which may be extended in order to deport him or remove him from the territory of the Republic of Iraq) which violation the provisions of article (37/1st-beh) of constitution and their request to judgment of unconstitutional which states (No one may be arrested or interrogated except by judicial decision). The FSC finds that it has already decided in the case (27unified 38/federal/2018) of unconstitutional of article (48) above. For the reasons given in the judgment. Thus, the case of this party (non-subject) The chapter in the point (the subject of the appeal) has to be

rejected. The FSC finds that the article (36/1st) of Foreign Residence Law No. (76) of 2017 challenge of unconstitutional which stat “The Minister may issue instructions specifying the amount of fees and fines collected by embassies, consulates, directorates of residence, residence centers and passports at the border crossing points, taking into consideration the principle of reciprocity” and has the right to review them when there are positive reasons for this to be approved by the Council of Ministers) in violation of the provisions of article (28/1st) of the constitution, which states “No taxes or fees shall be levied, amended, levied or exempted except by law”, that the taxes and fees imposed by the Minister of the Interior must be in accordance with the law and that the text subject to appeal (a legal text authorized the Minister to impose it under the law and apply properly to the provisions of article (28/1st) of the constitution. Therefore, there is no violation of the constitution of this body, which requires the rejection of the case from this area as well. The court decided to reject the lawsuit and to charge the plaintiff expenses and legal fees for the plaintiff's agent amount of (one hundred thousand dinars) and issued a ruling based on the provisions of article (94) of the constitution and article (5/2nd) of the Federal Court Law No. (30) of 2005 the judgment was publicly understood on 28/5/2018.