

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court (Emblem)

(Kurdish Text)

Ref: 52/Federal/Media/2016

The Federal Supreme Court has convened on 8.11.2016, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Faroq Mohamed AlSame, Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Abood Salih AlTemimi, Mekaeel Shamshon Qis Qourqis and Hussain Abbass Abo Al-timen who are authorized to judge in the name of the people and it issued the follow decision:

The Plaintiff: (Meem. Aen. Ta'. Ha')/ his agent the attorney (Alef. Aen. Meem).

The Defendant: The speaker of The ICR/ being in this post his agents the legal official (Seen. Tae'. Yae') and (Ha'. Meem. Seen).

THE CLAIM:

The plaintiff claims that his wife made the separation case no.(839/Sheen/2016) before the Personal Status Court in Al-karada requesting separation according to the articles (40&43) of Personal Status Code no.(188) year 1959. As these two articles contradict with article (41) of the Constitution provisions which stipulates that (Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.), it also conflicts article (2) of the Constitution that stipulates (First: Islam is the official religion of the State and is a foundation source of legislation: A. No law may be enacted that contradicts the established provisions of Islam). Considering that the legal separation contradicts some of the holy Qur'aniq verses, and contradicts some of the religious references advisory opinion, for all what is mentioned the plaintiff requests to judge in the unconstitutionally of the articles (40&43) of Personal Status Code/amended.

After receiving the case and registering it and appoint a date for proceeding in 23.8.2016 ; the case had been delayed to this day, in the appointed day neither the plaintiff or his agent attend. The agent of the defendant repeated their requests and request to reject the case, where as the case achieved it requirements and the decision made clear.

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THE DECISION:

In the deliberation and discussion the FSC found that the plaintiff request to judge in the unconstitutionality of the articles (40&43) of Personal Status Code/amended no. (188) year 1959, that deals with legal separation, as these articles conflict with article (41) of the constitution stipulated on (Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.), that these two impeached articles conflict article (2/first/Alef) of constitution which stipulates on (No law may be enacted that contradicts the established provisions of Islam) in addition to that it also conflict with some of the holy Qur'aniq verses, and religious references advisory opinion, where as these article provision derived from the Islamic Law, and the mention of them in the Personal Status Code/amended was to organize the personal status for the family considering the legal separation by the court that look in the dispute between the spouses for many reasons determined by the law and decided by the court that look in this dispute, therefore these impeached articles were made for organizing reasons, the FSC have not found any conflict between them and the legitimacy provisions in addition that the article (41) of Constitution requires, for its application a specifically issued law, and no law issued for it till this time.

According to that the plaintiff case will be rejected as it has lost its legal and Constitution prop.

Therefore a decision was made to reject the plaintiff case and to burden him the expenses of the case and the fees of the agents of the defendant/being in this post the jurists (Seen. Tae'. Yae') and (Ha'. Meem. Seen) amount of (100000) one hundred thousand Iraqi dinar divided between them in half, the decision was made unanimous agreement and made clear in 10.10.2016.