

Republic of Iraq
Federal Supreme Court
Ref. 114 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16/12/2019 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Baqer Ayad Thamer -his agent the attorney Ali Kadhem Jasem.

The defendants:

1. The Prime Minister/ being in this post - his agent the legal adviser Haider Alsoffi.
2. Minister of Communications/ being in this post -his agent the legal official Nisren Hatam Halozy.

The claim:

The agent of the plaintiff claimed in the case petition that the federal governmental procedures taken by the defendants on the date (2/10/2019) that included cutting-off the internet network and disabling the communications and the e-mail correspondence in Iraq and seizure rights and liberties granted by the constitution, came in a violation to the established constitutional rules, as the freedom of

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communication and correspondence guaranteed by article (40) of the constitution, also article (46) of it obligated that any restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law, therefore the agent of the plaintiff requested the F.S.C. under article (93/3rd) of the constitution to (rule the unconstitutionality of the mentioned governmental procedures). The agent of first-defendant the Prime minister being in this post has responded with the answering draft dated on 4/11/2019 requesting to reject the case for not basing on a constitutional substantiation and also for the aspect of jurisdictions, because the F.S.C. jurisdictions are stipulated in article (93/3rd) of the constitution on overseeing the constitutionality of laws and regulations in effect, and that his client procedure is regular executive procedure that he take for the security necessity in accordance with his constitutional authorities listed in articles (78, 80/1st and 3rd) of the constitution in order to implement the laws, also it is not permissible to interfere with his jurisdictions according to the principle of separation of powers stipulated in article (47) of the constitution. The second defendant the minister of communications being in this post responded with the answering draft dated on 30/10/2019 stating that the ministry didn't cut-off the internet service of the plaintiff but some social networking has been blocked because of poor security conditions in order to maintain public order and social peace under the directives of the national

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security adviser and the directed by the Prime Minister, as he is the direct executive official of the state's public policy according to the provision of article (78) of the constitution, some cut-off might happened due to the digging works, sabotage, or because of the citizen's need for capacity that exceed the available which leads to extreme weakness in the service, the Ministry care for the libretti of communication, correspondence and expression in a commitment to the constitution, for the mentioned reasons he requested to reject the case for lacking the legal substantiation. The agent of the plaintiff responded with the answering drafts dated on 21/11/2019 which included repeating to what was listed in the case petition and added that the reports of the international organization (NETBLOCKS) which is specialized with monitoring the internet freedom have shown the dates and times when the Internet was cut-off, and that first-defendant's action was contrary to his constitutional powers mentioned by his agent. After completing the required procedures according to the F.S.C. Bylaw the date 16/12/2019 was scheduled for the argument, the court convened and call upon the parties, the agent of the plaintiff the attorney Ali Kadhem and the agent of defendant the minister of communication has attended, the agent of the prime minister didn't attended despite the informing by the law the court decided to continue with the argument in his absence, the agent of the plaintiff repeated the case petition and requested to judge according to it, the agent of the defendant minister of

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communication repeated the answering draft and requested to reject the case for the reasons listed in it, the agent of the plaintiff requested to introduce the President of the republic as third party in the lawsuit according to article (69) of the pleading Law as he is the protector of the constitution according to article (67) of it. During scrutiny regard the nature of the decision the subject of challenge the court decided to reject the request of introducing the President of the republic as third party in the lawsuit. The court found that the case is completed for reasons of judgment and decided to close the argument, and issued the following decision publicly in the session.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff claimed in the case petition that the defendants the Prime minister and the minister of communication has cut-off the (internet) network and result to disabling the communications and the e-mail correspondence in Iraq and seizure rights and liberties granted by the constitution in article (40) of it, and it cannot be restricted except by a law under article (46) of the constitution. the F.S.C. finds that the challenged procedure for being unconstitutional has been issued under administrative decision from the executive authority therefore challenging it is out of the F.S.C. jurisdictions stipulated in article (4) of its law No.(30) for 2005 and article (93) of the constitution. According to that the court decided to reject the case from the aspect of jurisdiction and to burden the

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plaintiff the expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law and issued publicly on 16/12/2019.

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