

In the name of god most gracious most merciful

Republic of Iraq  
Federal supreme court  
Ref. 119/federal/media /2015



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 10.10.2016 headed by 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:

The Plaintiff : (alif. ain. ain. mim. nun.) his agent (ain. ra. mim. ra.).

The First Defendant : The Prime Minister/ being in this capacity his jurists (ha. ain. jim.).

The Second Defendant : Speaker of the House of Representatives/ being in this capacity his two jurists (sin. ta. yeh.) and (heh. mim. sin.)

The Claim :

The plaintiff's agent claimed that the first defendant issued the decision (307 of 2015) on 9/8/2015 included abolish the positions of vice-presidents and prime ministers immediately. Two days later, the second defendant approved the decision, despite his explicit violation of the Constitution and the law. The resolution violated the provisions of the Constitution in item (2<sup>nd</sup>) of article (69), which stipulates that (regulated by the law of the provisions of the selection of one or more vice presidents of the republic) and the article (75) which stipulates that

(The Vice President replaces the President of the Republic when his office is vacant for any reason. The Vice-Presidents' Law No. (1) 2011 who gave the President of the Republic the choice of deputies and requested their approval from the House of Representatives and stipulates by the Vice President of the Republic the conditions of the President of the Republic and has been constitutional oath of office before the House of Representatives, the law also specified how to terminate the work of deputies by resigning or that the President of the Republic requested the exemption of the deputy and the deputy prosecutor that the decision of the first defendant is contrary to the Constitution and the law and the second defendant, because he has control over the performance of the executive branch, to reject the said decision regarding the period of cancellation Positions of vice-presidents for violating the Constitution and the law, he requested that the defendants be invited to plead, and to rule that the decision of the Council of Ministers to cancel the positions of vice-presidents of the Republic and to charge the defendants expenses and fees. The defendants/ being in their capacity were notified of the case and its documents, and the first defendant's agent replied with his draft on 29/12/2015 that the contested decision was outside the jurisdiction of the arbitrator because it was an administrative decision and it is the jurisdiction of the Court of Administrative Justice and there is no provision obliged to choose a vice-president of the Republic because article (75) of the Constitution dealt with the absence of the office of the President of the Republic by replacing him with the Speaker of the House of Representatives, and it is not for the plaintiff to initiate this case because he has lack post capacity, the President of the Republic was no objection to the prime minister's decision and the Cabinet, when it issued decision (307) on 2015, aimed at streamlining ministries and bodies and abolishing certain positions and in accordance with its authority under article (80) of the Constitution, the House of Representatives approved the decision by its decision No. (15) of 2015 that was in the reform paper. The second defendant's agent replied to the petition that the plaintiff requested the cancellation of the ministers' decision and not the decision

of the House of Representatives, which approved the decision of the first defendant, and that the decision of the Council of Ministers (9/August/2015) to cancel the positions of vice presidents and the prime minister immediately without suspending that cancellation on the approval of the House of Representatives and he requested that the case be rejected and the court included Mr. President of the Republic/ being in this capacity a third person in the case for clarification, whose agent replied that Mr. President of the Republic emphasizes the need to abide by the provisions of the Constitution, the agents of the parties exchanged regulations, the agents of the parties repeated their statements, as well as the third person's agent, and the court decided. The third person, Mr. President of the Republic, was removed from the proceedings after his client was cleared of it and the court concluded the case and issued the next decision publicly:

#### The Decision :

After scrutiny and deliberation by the FSC in its session held on 10/10/2016 found that the plaintiff was challenging his claim that paragraph (2/1<sup>st</sup>) of the decision issued by the first defendant/ being in this capacity was unconstitutional No. (307) on 9/8/2015 abolish the positions of vice-presidents immediately because they are contrary to the provisions of the Constitution. The FSC found that the presence of one or more vice presidents of the Republic is ordered by article (69/2<sup>nd</sup>) of the Constitution and accordingly law No. (1) of 2011 (Vice-President's Law) is issued to regulate the selection of one or more vice presidents, as well as their authority and how to terminate their duties. Then the article (75/2<sup>nd</sup>/3<sup>rd</sup>) of the Constitution, which entrusted them with exercising the functions of the President of the Republic in his absence and when his office was empty for any reason whatsoever. If there is a vice or more to the President of the Republic obligated provided by the Constitution necessity for general interest to prevention without make a vacancy in (executive power – Presidency of the Republic) so annulled the position

of vice president of the Republic which mean amended the provisions of the Constitution of Republic of Iraq for 2005 by interruption the provisions of two articles (69/2<sup>nd</sup>) and (75/2<sup>nd</sup>/3<sup>rd</sup>) of it, with another manner provided in the article (142) of the Constitution which necessity in such situations unanimously absolute for a number of a member of Council on amended and presented to the people to plebiscite on it. Therefor the decision challenge of unconstitutional the annulled the positions of the president of the Republic has issued violated of what the article (142) of the Constitution draw so it has been violated to its provisions so its necessity to rule of unconstitutional, according to and based on the provisions of article (93/1<sup>st</sup>) of the Constitution the FSC decided to: annulled the paragraph (2/1<sup>st</sup>) of the decision of the first defendant/ being in this capacity issued No. (307) on 9/8/2015 contained annulled the positions of the president of the Republic. And charging the two defendants all its expenses and attorneys' fees amount of (one thousand dinars). The judgment was issued in immanence and unanimously decisively and made clear publicly on 10/10/2016.