

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/10/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Salim Jumaa Abdul Sahib. 2. Laith Abdul Qadir Khadhim.
3. Ahmed Rehan Duaijil. 4. Fouad Hammad Unaizi.
5. Essa Raheem Dakheel. 6. Mohammed Jabbar Hussein.
7. Mohammed Jawad Khadhim. 8. Ali Abdul Hussein Ali.

Their agents, the barristers
Mustafa Mohammed Hobi
and Abdulla Mustafa
Mohammed

The Third Parties Beside the Plaintiffs

1. Ali Sahaalan Mohan.
2. Abdul Jabbar Khalaf Lifta.
3. Akeel Abdul Sada Ubaid Hamza.
4. Naseem Uraibi Abdulla.
5. Abdul Khadhim Abid Ali Hasan.
6. Jaafar Maan Muhsin.
7. Alaa Abid Uda Jazia – his agent the barrister Dhiaa Salih Alwan.
8. Hanan Munthir Nusaif – her agents, the barristers Mustafa Mohammed Hobi and Abdulla Mustafa.

The Defendants: 1. The Speaker of the ICR/ being in this capacity – his agent the official jurist Saman Muhsin Ibrahim.

2. The Prime Minister/ being in this capacity.
3. The Secretary-General of the Cabinet/ being in this capacity.

Their agent, the
legal counselor
Hayder Ali
Jaber

The Claim

The plaintiffs claimed, through their agents, that the (dissolved) Revolutionary Command Council had issued Resolution No. (880) on 12/7/1988, which stipulates: (First: Every employee at the level of general manager or above who has decided to be referred to retirement due to his failure shall be referred to retirement at a lower level. In performing the duties of his job, whoever is scheduled to be transferred from his job will be

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

transferred to a lower grade than the one he held before his appointment as a general manager, or to a person with his grade or higher, except for those who are punished with a more severe penalty), and because this decision is contrary to the Constitution, and affects their interest, as the Council of Ministers issued it based on This decision is Resolution No. (23242) of 2023 to demote the rank plaintiffs to a rank lower than the rank that each of them held before his appointment to the position of Director General, therefore, they took the initiative to challenge its unconstitutionality based on Article (93/1st) of the Constitution and Article (20) of the internal regulations of the Federal Supreme Court, and for the following reasons: First - The challenged decision gave the administration authority to take administrative measures against general managers and those holding special grades, which it does not have. The requirements of the minimum fair treatment are stipulated in Article (19/Sixth) of the Constitution. If they are applied to the originally appointed Director General, according to the conditions of his appointment and assumption of responsibility for a long period, he will be relegated to the position of Chief Superintendent or Superintendent, regardless of the length of his service in the office position, especially since the decision created disciplinary penalties or measures aimed at taking revenge on him and lowering his rank without requiring him to be alerted to the nature of the failure attributed to him in order to give him the opportunity to remedy the situation, which the legislator required in less serious procedures, including Paragraph (3) of the Civil Service Instructions in Annual Bonus No. 16) of 1960, which requires the department, when it decides to delay an employee's bonus for one year because his service is unsatisfactory, to alert him to the reasons for dissatisfaction in writing and give him a year to remedy the situation, it is not fair to pay the pension contributions amounting to (15%) of the general director's salary, and then at the time of retirement, he receives the salary of a chief inspector, as well as for regular vacations. It is not possible to apply grade reduction to the general director who was not an employee before his appointment to the position of general director (there is

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

no crime and no punishment except by a text) according to Article (19/2nd) of the Constitution, and this text represents the general principle of penal legitimacy and includes disciplinary penalties, however, the legislator did not take this into account because it gave the administration free rein to punish the general director or the occupant of a special rank. With unspecified penalties, it was permissible to punish the employee with a more severe penalty than what was stipulated in this decision, he did not specify what the most severe punishment is, and there is no punishment in the Discipline of State and Public Sector Employees Law No. (14) of 1991 which meets the description of the most severe punishment. Article (19/4th) of the Constitution stipulates that: (The right to defense is sacred and guaranteed in all stages of investigation and trial. This principle is not limited to the criminal case, but rather it is an established principle that governs all procedures, including disciplinary procedures, and the decision - the subject of the appeal - involves a serious breach of the defense guarantee. This is because he gave the administration the power to punish the Director-General without an administrative investigation, hearing his statements, or defending himself, while the legislator takes this into account in the disciplinary penalties imposed on the employee under the Law of Discipline of State and Public Sector Employees, as Article (15/5th) of it stipulates that the Code of Criminal Procedure shall be applied to the disciplinary punishment, as Article (19/5th) of the Constitution stipulates: That: (The accused is innocent until proven guilty in a fair legal trial...) This principle expresses the presumption of innocence and is a general principle that governs criminal, civil and disciplinary cases. In the field of criminalization, it requires that the legislator deal with the person being addressed according to the legal rule based on the principle of innocence. As disciplinary punishment is based on the same basis as criminal punishment, the legislator applied these rules in the Law of Discipline of State and Public Sector Employees when it stipulated the employee's obligations in Article (4) thereof, and stipulated the prohibitions in Article (5) thereof. If the employee does not fulfill those

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

obligations or abstain from the prohibitions, he must be punished, and this is not prevented. Whoever is punished for another administrative violation not stipulated by law, but the description of the violation must be specific and clear and meet the same rules, and the legislator did not take this into account, where the legislator expressed (violation) with the word (failure to perform job duties); It is a general statement that has no control, and accordingly, the administration applied the decision to general managers who had been appointed to the position fifteen years or more, and each of them had letters of thanks in the position exceeding a hundred..., and the defect in the contested decision lies in its silence regarding the appeal procedures. This forces the court to apply general rules in appealing an administrative decision, and constitutional courts in various countries of the world take the principle of “legal security” as a criterion for the validity of laws, which the decision - the subject of the appeal - did not take into account. The previous political regime confirmed in the Legal System Reform Law No. 35) of 1977 that his punitive policy expresses his political thought, which he enshrined in the constitution, this decision, including the measures taken by the administration against the general director and above, expresses the philosophy of the political system. The foundations of state administration have changed in the 2005 Constitution, as has the philosophy of the political system. If the contested decision represented, for the previous political system, a legislative choice, it is no longer so. With regard to the legislative authority that was established under the 2005 Constitution, the decision - the subject of the appeal - represents a foreign body in the legal organization of public employment, and its legislation does not constitute a filling of a deficiency in the legislation, because the law includes rules that address the case of an employee who commits a dangerous act that makes his remaining in the service of the state harmful to the public interest. By removing him from the job through dismissal, in accordance with the Law on Discipline of State and Public Sector Employees. The law also placed the administration in the hands of the authority to deal with redundant positions in the staff, the

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

Council of Ministers was empowered to delete them in accordance with Article (7) of Staff Law No. (25) of 1960. The legislator dealt with leadership positions that were not stipulated in the law and gave the administration the authority to cancel these positions in accordance with the budget laws. The law does not prevent the administration from submitting them to the Director General should be referred to retirement based on his request, or they may request a referral to retirement, and their referral shall be with the title of Director General and his salary. Therefore, the plaintiffs requested this court to rule the (dissolved) Revolutionary Command Council's decision No. (880) of 12/7/1988 unconstitutional and to cancel it. The case was registered with this court, the legal fee was collected, and the defendants were notified of its petition and documents in accordance with Article (21/First and Second) of the internal regulations of the Federal Supreme Court No. (1) of 2022. The representative of the first defendant responded with the answer statement dated 6/19/2023, its summary, the decision - the subject of the appeal - is among the legislation in force based on the provisions of Article (130) of the Constitution, which stipulates that: (The legislation in force remains in force unless they are repealed or amended, in accordance with the provisions of this Constitution), considering whether the decision - the subject of the appeal - violates other laws is beyond the jurisdiction of the Federal Supreme Court to monitor the constitutionality of the laws in force in accordance with the provisions of Article (93/1st) of the Constitution, and the position of Director General is held by an employee by appointment and not by promotion, accordingly, the contested decision came to address cases of failure of the Director-General to perform his job duties, as it is considered a legislative option without a constitutional violation, and requested that the plaintiffs' lawsuit be dismissed and that they be charged the expenses and attorney's fees. The agents of the second and third defendants responded with the answering draft dated 7/12/2023, in which he requested that the lawsuit be dismissed because the dispute was not directed towards his client. This is because the Council of Representatives is concerned with legislating laws

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

and amending or repealing them following Article (61/1st) of the Constitution, the decision - the subject of the appeal - does not represent a disciplinary punishment but rather came for the requirements of the public interest and the functioning of public facilities, and whoever claims harm can resort to appeal before the judiciary, especially since Article (100) of the Constitution stipulates: (It is prohibited to stipulate in the laws the immunization of any work. or administrative decision of the appeal). After completing the procedures required by the court's internal regulations, a date for the pleading was set in accordance with Article (21/3rd) thereof and the parties were notified of it. The court was formed, the plaintiffs and their representatives attended, the defendants' two agents attended, and the public in-person pleading began. The court heard their statements and noted that both (Ali Shaalan Mohan) Abdul Jabbar Khalaf Lafta, Aqeel Abdul Sada Obaid, Naseem Uraibi Abdullah, Abdul Kadhim Abdul Ali Hassan, Jaafar Maan Mohsen, and Alaa Abdul Odeh Jaza') submitted an application dated 8/15/2023, and (Hanan Munther Nassif) submitted an application dated 8/30/2023, and the applications included the third persons alongside the plaintiffs because the appeal against Resolution (880) of 1988 was applied to them, the court decided to accept the requests and assign them to pay the legal fee. After paying it, the court heard their statements and requests, and reviewed the request submitted by (Lamia Kazem Abbas) through the mediation of her representative, lawyer Musa Abu Al-Shun, which included the entry of a third person alongside the plaintiffs, and because the case was ready for resolution, the court decided to reject the request, and after the court completed its scrutinies after the case and issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the lawsuit of the plaintiffs and the third persons alongside them included a request to rule the dissolved Revolutionary Command Council's decision No. (880) of 12/7/1988 unconstitutional and to cancel it on the

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

pretext of violating the provisions of Article (19) of the Constitution of the Republic of Iraq for the year 2005 in accordance with For the reasons mentioned in their petition, and as a result of the public pleadings, the court reviewed the regulations submitted in the lawsuit and heard the statements and defenses of the representatives of the parties to the lawsuit. The court finds that among the tasks entrusted to the employee is to perform his job honestly and with a sense of responsibility, preserve the dignity of the public job, and stay away from everything... This would affect his job, the employee must exert his utmost effort in carrying out the duties entrusted to him and must have a spirit of responsibility, manage time effectively, and be able to work within the team assigned to him. If he is negligent and does not adhere to the duties entrusted to him, he will be held accountable and punished, so the punishment is the punishment that he arranges. The legislator prohibits the employee's failure to perform his duties and job tasks. It aims to reform the employee, repair the job system, correct its distortions, and ensure the regular functioning of the public facility. It is a means to enable state departments to perform their basic tasks and provide the best services to individuals, as the public job is the main rudder that controls the course of the state and determines its directions. It is the basic criterion in evaluating the state in terms of the quality of its performance since the employee's righteousness is the state's administration, and in his corruption, there is its corruption. Therefore, the state enacts legislation and laws to protect its administration, protect it from employee tampering and corruption, and impose the maximum penalties on and discipline them, the public interest requires the removal of an employee who fails to perform his job duties, since the contested text includes the imposition of an administrative penalty on an employee at the level of general manager or above, and aims to evaluate the work of the administration and ensure the proper functioning of the public facility, so it is considered a legislative option and does not violate the provisions of Article (19) of the Constitution of the Republic of Iraq for the year 2005, and based on the above, the lawsuit of the plaintiffs and the

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

third persons alongside them lacks its support from the Constitution and the law and the freedom to respond concerning the first defendant in addition to his job. As for the second and third defendants, this court finds that their dispute in the lawsuit is not directed, it is required that the defendant be an adversary whose acknowledgment results in a ruling appreciating the issuance of an acknowledgment from him, following what is stipulated in Article (4) of the amended Law of Civil Procedure No. (83) of 1969. If the dispute in the case is not directed, the court shall rule on its initiative to dismiss it. Without entering into its basis following the provisions of Article (80/1) of the aforementioned law, and following the above, the claim of the plaintiffs and the third persons alongside them is free to respond from the opposing side regarding the second and third defendants. Given the above, the Federal Supreme Court decided the following ruling:

First: The lawsuit of the plaintiffs and the third persons alongside them was dismissed from the second and third defendants/ being in their capacity, as there was no litigation.

Second: The claim of the plaintiffs and the third persons alongside them was dismissed from the first defendant/ being in this capacity, as there was no constitutional violation.

Third: To burden the plaintiffs and the third persons alongside them with all legal fees and expenses, including the attorney fees of the defendants' agents, in an amount of one hundred thousand dinars, distributed to them in accordance with the law.

The decision has been issued final and unanimously according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Article (5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 2/Rabea Al-Awal/1445 Hijri coinciding 18/October/2023 AD.

saady

Republic of Iraq
Federal Supreme Court
Ref. 127 / federal /2023



Kurdish text

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court