

Republic of Iraq
Federal Supreme Court
Ref. 131 /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: Saad Abd Al-muhaymin Sulaiman -his agents the attorneys Ali Salman Al-musawy and Mustafa Naji Hameed.

The defendant: The president of the federal cassation court/ being in this post -his agent the legal official Esam Fadhl Halwas.

The claim:

The plaintiff claimed in the case petition before the F.S.C. by his agent that the secretariat of the federal cassation court's reception has refused to receive his complaint against (Judge Khalid Taha Ahmad/ being in this post -the head of the cassation committee in Al-karkh court of appeal in its cassation capacity) which he based on the provisions of the in force civil procedures law articles (286 and 292) of it and the decision of the F.S.C. which decided that (the judge shall not be sued, and his rulings are subject to challenge

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methods according to the law, or the methods of the complain of the judges shall be followed against him) this act consider as violation to the mentioned Law in article (30) of it which obliged to receive the complaint, and also consider as violation to the right of litigation that is constitutionally granted in the text of article (19/2nd) of the constitution in force, it leads to the loss and prejudice of his rights, and assures in the justice of the F.S.C. the plaintiff requested to (rule to implement the law, and to receive his complaint, and to make justice decision in it). The agent of the defendant responded with the answering draft submitted to this court in (25/11/2019) stating that the lawsuit lack it legal substantiation, and filed in contrary to the legal principles, he requested to reject it for the following reasons: the president of the federal cassation court don't enjoy the legal personality therefore he cannot be litigated legally, because the litigation is of the public regulation, therefore the lawsuit is binding to be rejected according to the provisions of article (4) of the amended civil procedures law No.(83) of 1969, and the court shall reject the lawsuit according to article (80) of the mentioned law without considering it bases. And the judges cannot be litigated but the complaint against them shall be followed according to what stipulated in the provisions of articles (286/292) of the pleading law, also the subject of the case is out of the F.S.C. jurisdictions. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 16/12/2019 was

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scheduled for the argument, the court convened the agents of the parties has attended, the agent of the plaintiff repeated the case petition and requested to judge according to it, the agent of the defendant repeated requesting to reject the case for the reasons listed in it. The court 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 has challenged in his case petition the act of the federal cassation court secretariat reception that refused to receive his complaint against the president of the cassation committee in Al-karkh court of appeal, and requested to bind the defendant the president of the federal cassation court to receive his complaint based on article (30) of the civil procedures law, as the act of the reception secretariat consider violation to article (19/2nd) of the constitution. the F.S.C. finds that the subject of the lawsuit in case it was proved it represent a procedure govern by the disciplinary texts, and considering it is out of the F.S.C. jurisdictions that are stipulated in article (93) of the constitution and article (4) of it law No.(30) for 2005. Accordingly the court decided to reject the case from the aspect of jurisdiction, and to burden the plaintiff the expenses and the advocacy fees for the agent of defendant 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.