

Republic of Iraq
Federal Supreme Court
Ref. 132/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 19.4.2014 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 whom are authorized in the name of the people to judge, they made the following decision:

The plaintiffs:

1. (ha.mim.shin)
2. (ha.mim.shin)
3. (zin.ha.mim)
4. (dhal.ha.mim)

} Their agents the attorneys (sad.mim.kha) and (ain.mim.nun).

The defendant:

The president of the republic- being in this post, his agent the chef consultants (feh.jim.) and the legal consultant (mim.ha. feh).

The third party:

The Prime Minister- being in this post, his agent the consultant (ghain.jim.dal.).

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The claim:

The agents of the plaintiffs claimed that the defendant the president of the republic has issued the republic decree No.(140) dated on 23.7.2011 which included special pardon for the convicts (ha.mim.ain.), (sin.mim.ain.) and (waw.mim.ain.) for the remaining of their sentence period in the ruling issued by the Resafa Criminal Court , the second body in the lawsuit No.(1926\jim2\2012) that sentenced them with fifteen years in prison for each one of them according to the provision of article (406\alif\zin) of the penal code in terms of involving article of murdering the victim (nun.mim.shin.) and injuring others, the ruling included that the injured (the plaintiffs) shall have the right to refer to the civil courts to demand a compensation after the ruling become final. In light of these facts, the plaintiffs requested to repeal the decree for violating the constitutional provisions in article (73/1st) of it, as the decree violates their own rights to demand compensation, and it release the convicted of their remaining imposed penalty period under the penalty law. To complete the lawsuit procedures a date scheduled to the argument, on that date the agents of plaintiffs and the agent of the defendant has attended, the plaintiff's agent repeated the case petition and requested to rule according to it, the agent of defendant requested to dismiss the case for the reasons he mentioned, the pardon in the decree involve two executive parties the council of ministers and the presidency of the republic, the F.S.C. decided to introduce the prime minister in the case beside the defendant, after informing him to attend he submitted answering draft requesting to reject the case for number of reasons including that the case subject is out of the F.S.C. jurisdictions, also that public decree is an

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administrative decision subjected to the repeal supervising therefore challenging it is a jurisdiction of Administrative Judicial Court, and that the third party has practiced his authority to propose the special pardon according to article (73/1st) of the constitution after the waive of the plaintiff with personal right, as for the injured, the criminal court decision included that they shall reserve the right to refer to civil courts to demand compensations. The court decided to introduce whom was included by the special pardon as third party to inquire from them what is needed to decide the case, their cousin who is living with them in the same house was informed but they didn't attend, the court reviewed the dossier of the criminal case No.(1926/jim2/2012) and fined that the plaintiffs in all stages of the case for investigation didn't waive their personal right in the lawsuit, the court reviewed the ruling decision which included paragraph the injured claimer shall reserve the right to refer to the civil court to demand compensations after the decision become final. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs' agents requested in the case petition to repeal the republic decree No.(140) on (23.7.2014) for violating the provisions of article (73/1st) of the constitution which included special pardon for the convicts (ha.mim.ain.), (sin.mim.ain.) and (waw.mim.ain.) for the remaining of their sentence period in the

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ruling issued by the Resafa Criminal Court , the second body in the lawsuit No.(1926\jim2\2012) that sentenced them according to the provision of article (406\ alif\ zin) of the penal code in terms of involving article (47, 48, 49) of the same law. The court reviewed the republican decree and the dossier of the criminal lawsuit, it listened to the statements of parties with their drafts, the F.S.C. finds that the republic decree No.(140) on 23.7.2014 is an administrative decision issued by the federal executive authority in certain case to deal with specified legal position, the decree wasn't caricaturized in generality as in the general pardon laws, therefore challenging the special pardon is out of the F.S.C. jurisdictions stipulated in article (4) of it law No.(1) of 2005, and article (93) of the constitution. accordingly the lawsuit is binding to be dismissed from the aspect of jurisdiction. The court dismissed the plaintiffs case and to burden them the expenses and the advocacy fees for the defendant' agents and third party' agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 19/4/2016.