

Republic of Iraq  
Federal Supreme Court  
Ref. 151 /federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 27/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

**The plaintiffs:**

1. Jamal Naser Dely Al-Karboly.
2. Mustafa Riadh Mustafa/ the deputy director of Dijlaa company of satellite TV services/ being in this post – their agent the attorney Muhamad Akram Ali.

**The defendant:** the Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post- his agents the legal advisor Haytham Majid Salim.

**The claim:**

The agent of the plaintiffs claimed that the law of Media and Communications Committee No. (65) of 2004, chapter (4) (administrative structure) stipulates the formation of the (hearing committee) and the (appeal council) and granted them the legal personality, this text contradicts the constitution as the following:



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First: The hearing committee, clause (3) of chapter four of the law of Media and Communications Committee stipulates that:

- a) The formation of the hearing committee of five members with legal experience in closely related fields to this career, the Committee members hear cases involving serious and grave breach of professional practices, ethical behavior, and licenses, and make decisions about them.
- b) The board of commissioner appoints the members of the hearing committee throw consulting with Iraqi Governing Council and the administrative director of the Coalition Provisional Authority.
- c) The sessions of the hearing committee shall be public unless the director general decided otherwise, it decisions shall be declared to the public. this committee is a court the litigants shall present and argument before it about the litigation raised between the media institutions with the media and communications committee, and this text violates the constitution.

Second: The appeal council: clause (4) of chapter four stipulates:

- a) The independent appeal council that is consist of three persons shall hear what presented before him of appeal against the commission's decisions weather these decisions issued by the director general, or from the hearing committee.



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- b) The appeal council is consisted of a judge and an attorney experienced with communications organizing field, and the membership of whom had professional or commercial experience in the legal profession, the appeal council shall elect one of its members as president.
- c) the administrative director of the coalition provisional authority shall appoint the members of first council of appeal throw consulting with Iraqi Governing Council, two members shall be appointed for term of four years, the third member shall be appointed for term of two years. The minister of justice or the head of the committee to replace the ministry later, shall appoint the members of the appeal council after that, the members of the appeal council are allowed to re-appointed just once.
- d) The appeal council evidentiary session are public and available for the audience, unless the council decided otherwise, all the appeal council decisions to be declared to public.
- e) The members of the appeal council shall receive their compensation and awards from the ministry of justice or the committee to replace it later, to ensure the independency of the council of the committee.

The agent of the plaintiff clear that the formation of the hearing committee and the council of appeal violates number of the

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constitutional article, as article (19/1<sup>st</sup>) of the constitution which stipulates that the judiciary is independent and no power is above the judiciary except the law, also the establishment of the hearing committee violates article (19/6<sup>th</sup>) of the constitution, as the decisions of the council of appeal are final and doesn't submit to the higher judiciary council power, and violates the text of article (100) of the constitution which prohibited to stipulate in the law the immunity from appeal for any administrative action or decision, and violates article (95) of the constitution which prohibited the establishment of special or extraordinary courts, the agent of the plaintiffs requested to rule the unconstitutionality of the hearing committee and the council of appeal. The defendant/ being in this post was informed with the case petition, he responded with the answering draft dated on 12/12/2019 stating that the challenged text regard the hearing committee and the council of appeal in the law of Media and Communications Committee No. (65) of 2004, is of the valid laws, and it provisions doesn't violates the constitution, it represent an legislative choice, he requested to reject the lawsuit. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 27/1/2020 was scheduled for the argument, the court convened and call upon the parties and continue with the argument in presence and public, the plaintiffs agent repeated the case petition and requested to judge according to it, the agent of the defendant repeated the answering draft requesting to

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reject it. During scrutiny, the court found that the case is complete for reasons of judgment then 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 appealed the unconstitutionality of the (Hearing Committee) and the (Council of Appeal) on the media and communications committee stipulates in clause (3) and (4) of first chapter of the law of media and communications committee No. (65) of 2004 that was issued by the civil governor of the (dissolved) coalition provisional authority, for the claim that the decisions of the hearing committee and the council of appeals violates the constitution because it is an judiciary court formed outside the judiciary, and because its decisions are immune against appeals which is violation to article (100) of the constitution that stipulates (it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision). The F.S.C. finds that (the hearing committee) is an administrative party which consider the complaints filed before it, its members are specialist in that field, it is not judiciary court, its decisions are submitted to appeal before (the council of appeal). The challenge council (the council of appeal) is formed of three members headed by judge, considered as appeal party legally regarded, because it belief in the judiciary

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neutralism and the administrative professionalism, as it competent to consider the appeals against the decisions issued by the director general of the media and communication committee, also the decisions issued by the (hearing committee) in the mentioned committee, therefore the excitant of appeal party represented by (the council of appeal) is in accordance with the provision of article (100) of the constitution and doesn't violates it. Because the mentioned article didn't stipulates the right to appeal against the judicial work or decisions, therefore the texts and formations the subject of appeal came as legislative choice, which doesn't violates the constitution. the F.S.C. has decided that in its issued rules including (50/federal/2017) and (53/federal/2017) dated on 20.6. 2017 and 27.7.2017. accordingly the plaintiffs lawsuit has lost it constitutional substantiation, therefore it is binding to be rejected for this aspect. the court decided to reject the lawsuit and to burden the plaintiffs the expenses and the advocacy fees for the defendant agent amount of IQ.D (one hundred thousand). This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5/2<sup>nd</sup>) of the F.S.C. law No.(30) of 2005 and issued publicly on 27/1/2020.