

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.16 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 22/6/2016, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Jaafar Nasir Hussein , Akram Taha Mohammed ,Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Sulaiman Abdullah Abd AL-Samad and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: (Sad.Alif.Mim.).

The Defendant: minister of interior/ being in this capacity- his agent the colonel jurist (Mim.Alif.Ain).

The Claim:

The plaintiff claimed that the defendant has convened an investigational council relying on the fifth sector/ second from the legislative decision No.(57) for 2004. He charged him according to the article (341) from the penal code No.(111) for 1969 and referred to imprison him according to the article (1/1st/Jim) from the law of Internal Security Force penalties No.(14) for 2008. Because that law is proceeding on the retired, out of the job removed, fired, those whose services were loaned and the resigned from the affiliates of the internal security force if they committed a crime during the service. He claimed that this law is being proceeded on the retired officers and because he is retirement officer he violated the provisions of Iraq Republic Constitution because he is a barrister and he doesn't subject to the

law of the internal security force penalties that defined the affiliates and defined the officer. Whereas there is no way for jurisprudence in the source of the text as was listed in the article (2) from the civil law. He requested to call upon the defendant to the argument. He challenged before the FSC the decision of the Defendant and to issue the decision according to the article (90/1st, 3rd) from the Constitution of the Republic of Iraq. The defendant-being in this capacity- had been notified by the case petition and the attached. The legal representative of the defendant answered on it by his draft that dated on 18/4/2016, which included that the plaintiff had initiated many cases for the same objective, one of it is the instant case No.(1659/ Beh/2015) which was rejected, and another case before the court of investigation of AL-Risafa and was rejected too, a case before the court of administration judiciary No.(605/2016) and was rejected , a case before the court of integrity achievement. His client the defendant didn't cross his legal authorities of convening an investigation council. The plaintiff presented a clarifying draft included his previous requests. The court called upon the two parties so the plaintiff attended by himself who is a barrister at the same time and the defendant agent attended. The plaintiff repeated what listed in the case petition. The defendant agent answered that he didn't have anything to add to the answering draft. The plaintiff commented that the private law of the internal security force his provision is being proceeded against the affiliates, while he is officer and cant be considered as an affiliate. both parties repeated their sayings and the court ended the argument and the following decisions had been issued:

The Decision:

during the scrutiny and deliberation by the FSc, the court found that the plaintiff challenges the decision of the ministry of interior- the general inspector No.(17077) on 18/10/2015, of convening an investigation council relying on the penal code of the internal security force No.(14) for 2008, to investigate with him when he was in the public directorate of the legal department because he is the legal representative of the ministry of interior in the case that was initiated by crosat company against the ministry. The court

found that the procedures that were taken against him are not according to his present capacity as a barrister but according to the capacity he had before being a barrister. And the decision of convening investigational council is an administrative decision that its trying is out of the FSC competences which were stipulated in the article (93) from Iraq Republic Constitution and the article (4) from the FSC law No.(30 for 2005. Based on this it was decided to reject the case from the competence point and to burden the plaintiff all the expenses and fees of the advocacy of the defendant agent the jurist colonel)Mim.Alif.Ain) amount of hundred thousand Iraqi dinars. The decision was issued unanimously on 22/6/2015.