

Republic of Iraq
Federal Supreme Court
Ref. 28/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 13.7.2014 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 plaintiff:

The Governor of Diwanya –being in his post, his agent the legal official (sin. Ain. kha.).

The defendant:

The Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

The third party:

The integrity committee chairman being in this post- his agent the legal official (ha.ain.ain).

The claim:

The agent of the plaintiff claimed that the I.C.R. issued the law No.(8) for 2011 the Law of amending the criminal procedure law no.(23) for 1971, by repealing paragraph (b) of article (136) of it, as

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article (47) of the constitution stated the principal of power separation, thus the executive authority may exercise its powers to take administrative and disciplinary measures against the employee as it is linked to his supreme chief, and that the state's employees discipline law specifies the authority of the minister over the employee who commits acts contrary to his job duties by referring him to the competent court without affecting the independence of the judiciary in the fight against corruption. The contested text gives the minister a certain amount of assessment of the situation in referring the employee to the courts or disapproval if he finds that the accusation does not deserve the assignment or was malicious in which intended to harm the reputation and prestige of the public office, repealing paragraph (b) of article (136) of the criminal procedure law leads to deprive the executive authority of its power. The plaintiff' agent requested to repeal the law no.(8) for 2011 for violating article (47) of the constitution. the defendant was informed with the case petition he responded with the draft dated on 3.3.2014 stating that the text of article (136\ paragraph b) doesn't allowed the employee referral to the trial unless with the permission of the minister, which violates article (19\1st) of the constitution regard the independency of the judicial, the mentioned text prevented the judicial from practicing it duties, the judiciary is the one that provides guarantees to the accused, by repealing paragraph (b) of article 1336 the I.C.R. has hold the principle of independence of the judiciary, the defendant agent requested to dismiss the lawsuit. The integrity committee chairman being in this post submitted the request dated on 18.6.2014 to be introduce as third party in the lawsuit beside the defendant as he have an interest in it, the court

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decided to accept the request. The call upon the parties for in present argument, the plaintiff' agent repeated the case petition and requested to rule according to it, he submitted answering draft dated on 10.7.2014 to the defendant' agent' draft included discussion of the defendant arguments with repeating to the case petition. The defendant agent repeated his argument in the answering draft requesting to dismiss the lawsuit, the third party requested to dismiss the lawsuit for the reasons listed in the defendant draft. 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 plaintiff agent has challenged the law no.(8) for 2011 the Law of amending the criminal procedure law which article (1) of it stated that ((paragraph (b) of article (136) of the amended criminal procedure law no.(23) for 1971 shall be repealed)) requesting to repeal it under the claim of violating the article (47) of the constitution which states the principle of separation of legislation , executive and judicial powers, the repealed text listed in the criminal procedure law and was repealed by the law no.(8) of 2011, the repealing came throw law of the same level of the text listed in the repealed law. The F.S.C. found that this law is a legislative choice practiced by the legislative authority according to it stipulated jurisdictions and doesn't contradicts the provision of article (47) of the constitution of separation of powers but on the

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contrary the text of paragraph (b) of article (136) of the criminal procedure law no.(23) for 1971 limits the power of judiciary to trial the accused n case of committing crime during performing his function, the stating that the repealing limits the minister' powers in referring the employee to court is rejected as the judicial provides guaranties for who commits crime to conduct justice trial. accordingly the court dismissed the plaintiff case and to burden him the expenses and the advocacy fees for the defendant' agent and the third party agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and publicly on 13/7/2014.