

Republic of Iraq
Federal Supreme Court
Ref. 61/ 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 minister of justice being in this post, his agent the legal official (kha. Alif.mim).

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: 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 amending law to the criminal procedure law No.(23) for 1971 that stated in article (1) of it ((paragraph (b) of article (136) of the law shall be repealed)), as the approval of the council of ministers to enact that law wasn't obtained, and the

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repealed text authorized the minister to protect the employee from malicious actions, which leads to abuse and affects the performance of his duties, therefore he requested to repeal the law No.(8) of 2011. The defendant has been informed with the lawsuit, he responded with the answering draft dated on 29.5.2014 stating that the I.C.R. is authorized to enact the challenged law, this law went through several stages since 2005, the last one is the law bill presented by the council of ministers on 2007 but it wasn't enacted. The I.C.R. integrity committee submitted the law bill to the I.C.R. and was approved on 18.4.2011 and ratified by the president of the republic. The agent of the defendant discussed the case petition and the guarantees granted by the judicial to the accused, and that is equity for the principle of judicial independency, not leaving the issue to the minister or the president of the party not associated in a ministry, he requested to dismiss the lawsuit. The integrity committee chairman on 18.6.2014 requested to be introduced as third party in the lawsuit as he is involved in the lawsuit. The court call upon the parties and continue with the argument in present and public. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff being in this post has challenged the law No.(8) for 2011 the amending law to the criminal procedure law No.(23) for 1971 that stated in article (1) of it ((paragraph (b) of article (136) of the law shall be repealed)), for the claim of contradicting the constitution requesting to repeal it. The F.S.C. finds that the repealed provision listed in article (136) of that law which was repealed under the law No.(8) for 2011, this repealing came throw a law of the same level of the repealed provision, that represent legislative choice practiced by the legislation authority by its stipulated jurisdictions, this repealing doesn't contradict the constitution, on the contrary the text of paragraph (b) of article 136 limits the judicial jurisdictions in judging the accused in case he committed crime during performing his duties, claiming that the repealing limits the powers of the minister in referring the employee to the court is rejected because the judicial provide guarantees the accused fair trial. Accordingly the court decided to reject the plaintiff lawsuit and to burden him the expense and the advocacy fees for the defendant agent and the third party amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 13/7/2014.