

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 66/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 19.4.2016 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: (ain.ha.ain.)/ being in this post –his agents the attorneys (zin.dad.dal.yeh.) and (sin.zin.dad.dal.) .

The defendant: the Speaker of the council of representative (I.C.R.)/ being in this post -his agents the legal officials (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

The third party: the head of state consultative council/ being in this post –his agent the advisor Dr. (ra.mim.).

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Athraa

The clime

The agents of the plaintiff that the administrative judicial in Iraq was formed under the law No.(106) for 1989 the second amendment law for the state consultative council law No.(65) for 1979, and it formed a forward step on the path of finding competent judicial to consider the submitted challenges against the decisions and orders issued by the executive authority in case of abuse in using the right and when interpretation the law wrongly, but the administrative judicial in Iraq was established combined with its failure reasons, as the origin in its tasks is to confront the decisions of the executive authority which required it to be linked to the judicial authority, because this judicial is a component of the state consultative council which is a component of the justice ministry and the minister of justice is part of the executive authority, so how to provide neutrality in a court that is inked to the executive authority which is the litigant in the cases, this link consider as violation to the principal of separation of powers that is stipulated in the constitution of 2005 article (47), the agents of the plaintiff has listed the constitutional and legal articles that they based on in the law suit which are (2/beh, 3/Jim, 47, 87, 90, 91/1st) of the constitution and (1/1st, 4, 7/1st) of the law of the state consultative council No.(65) for 1979 the amended, and they challenged the constitutionality of forming and linking of the administrative judicial court, and requested to rule its unconstitutionality, also requested the council of representative to issue the required legal amendment and to repeal the legal articles listed within the state consultative council law No.(65) for 1979 the mended, and cleared that he have direct and current interest achieved by initiating the lawsuit, it damage is

clear, and that any decision issued by the court affect him as the post he occupy is aim to achieve democracy. The defendant/ being in this post was informed with the case petition and its documents, he respond with the answering draft dated on 27/7/2015 stating the case according to article (93/3rd) of the constitution required the availability of the interest and the existing of harm to the plaintiff that harm should be direct and the required text to be repealed was implemented on the plaintiff, the plaintiff has answered this matters in the case petition, the estimation of the interest availability is up to the court, the agent of the defendant clear that the plaintiff has limited his case to the challenge against the constitutionality of the administrative judicial court from the point of its like and its formation, but initially he requested to rule the unconstitutionality if the entire law, this request is binding to be rejected, and the plaintiff see that it's not allowed that the supreme administrative court and the administrative judicial courts to be part of the state consultative council, as that violate the principal of separation of powers. The defendant commented that this won't defect the constitutional condition that the Iraqi legislator work by the principal of duplicity of the judicial, and requested to reject the case. the head of the state consultative council requested to be introduce in the case as third party beside the defendant because the case affect the state consultative council, and he pay the fee, his agents submitted a draft stating that the plaintiff has no interest in initiating the lawsuit as the president of civil society organization that aim to defend democracy, so what is the relation between the plaintiff and this case, also the harm doesn't exist and unknown, also the constitutional text made the administrative courts out of the judicial

authority also the martial judicial and the internal security forces courts that are linked to ministry of defense and the internal ministry, as the link of the administrative judicial courts to the justice ministry do not violate constitutional text regard the executive authority, and requested to reject the case. in the in present argument on 15/3/2016 the agent of the plaintiff has limited his client case to rule the unconstitutionality of the administrative judicial court regard the link and the formation, as the member of the court are civil employees in addition to other reasons that he listed, the parties agents repeated their statements. Whereas nothing left to be said the argument is closed and the decision is issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff challenged the constitutionality of the administrative judicial court regarding the association and formation as its associated with the state consultative council that is linked to the minister of justice, it formation from other than the judges in implementing to the provision of article (1/1st, 4, 7/1st) of the state consultative council No.(65) for 1979 the amended by the law No.(17) for 2013 the fifth amendment law of the state consultative council law for the claim of contradicting the constitutional text in articles (2/beh, 2/Jim, 47, 87, 90, 91/1st), and requested to rule it unconstitutionality, and requested the I.C.R. to repeal the listed articles in the law of the state consultative council regard the formation of the administrative judicial court and its association.

The F.S.C. found that the administrative judicial court was established in 1989 in the state consultative council and associated with it since then, its members are not judges as it is part of the administrative judicial in Iraq that was ratified by the Iraqi republic constitution of 2005 as it mentioned in article (101) of it (the state council) and its jurisdictions including the administrative judicial, this council even if its law is not legislated until now but (the state consultative council) and its provisions regard the administrative judicial including the administrative judicial court consider as the core of the state council, also the Iraq republic constitution has define (the martial judicial) in article (99) of it as it associated with the ministry of defense, in addition each of the administrative and martial judicial was not mentioned in chapter three of the constitution that concern the judicial authority and its components that are stipulated in article (89) of it and it didn't included (the administrative court). Accordingly, for the mentioned reasons the plaintiff case has lost it constitutional substantiation, therefore the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agent of the defendant and the agent of the third party amount of one hundred thousand Iraqi dinars divided equally according to law. The decision has been issued unanimously on 19/4/2016.