

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 70/federal/media/ 2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 20/12/2016 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 Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this post, his agent the legal official (Ra.Nun.Ain.).

The Defendants:

1. The prime ministers/ being in this post, his agent (ha. Ain. sad.).
2. The secretary-general of the council of ministers/ being in this post.

The Claim

The agent of the plaintiff claimed that article (102) of the constitution stipulated that (the High Commission for Human Rights, the Independent Electoral Commission (I.H.E.C.), and the

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Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law), article (2) of the amended I.H.E.C. law No.(11) for 2007 stipulated that (the Commission is an independent, neutral, professional governmental body that enjoys legal personality and is subject to the supervision of the Council of Representatives), paragraph (9th) of article (4) of the law stipulated that (ratify the structure of the electoral management and appointments of senior positions), paragraph (10th) stipulated on (draw the line for the financial policy of the Commission), paragraph (Jim) of article (5) of the amendment law No(21) for 2010 stipulated on (the Secretary-General of the Board of Commissioners, assistants of the electoral management, the deputies of the commissioners, the directors of the departments, the directors of the regional bodies and the directors of the governorates offices, shall be as directors-general nominated by the Board of Commissioners with a majority of its members and appointed according to the law). The agent of the plaintiff commented that the F.S.C. has issued the decision No.(88/federal/2010) not to interference with the decisions and procedures of independent bodies, The consultants committee in the Council of Ministers also considered that it is not permissible to intervene in independent bodies and to refrain from interfering in its affairs. The I.H.E.C. has issued many decisions to nominate number of the directors-general to manage the commission offices, the governorates offices and the regional bodies according to the decisions of the Board of Commissioners, despite the passage of more than three and a half years on nominations, but the Council of

Ministers still did not approve the nominations, but on the contrary the General Secretariat of the Council of Ministers issued a circular that included (attributed to the Prime Minister, to delay the appointment of the positions of the acting Directors-General until the conclusion of the first package of rehabilitation procedure), despite the passage of eleven month there has been no resolution. The agent of the plaintiff clear that the compliance of the Commission which is an independent, with the circular of the Council of Ministers is unjustified and violates its independence, the agent of the plaintiff requested to call the defendant to the argument and to judge by illegitimacy of the prime ministers order. The defendant/ being in this post had been informed by the case petition and its files. He replied with the draft dated on 22/9/2016 which stated that the challenged order is out of the F.S.C. jurisdictions stipulated in article (93) of the constitution, as the circulation the subject of challenge considered as administration decision that the administrative court has the jurisdictions to challenge it, also the plaintiff did not distinguish between the appointment of the acting Directors-General and the nomination to the mentioned post, as the decision of the council of ministers No.(71) for 2011 granted the authority to the prime minister deputy to assign the acting Directors-General, as for the incumbent candidates of this post according to the council of ministers decision No.(307) for 2015 which was approved by the I.C.R. by it decision No.(15) for 2015, all the high level posts in the independent committees were excluded from quotas and sectarianism, a professional committee appointed by the Prime Minister shall select the candidates in light of the criteria of competence and integrity and exempt those who do not meet the

required conditions. it is also necessary to distinguish between the independence of the independent bodies in the exercise of their work and between the exercise of the executive power for the role guaranteed by the Constitution and the laws, with the note of the required appointment conditions stipulated in the Civil Service law, and the prime minister shall have the power to approve or to refuse according to article (80/3rd) of constitution, were the administrative structure of the state has witnessed inflation in the high level posts which necessitated the need to reconsider their numbers and competencies, which necessitated the delay in appointments. And requested to reject the case, the court set the date 20/12/2016 to proceed with the argument and call upon the parties, the agents of the plaintiff has attended, the agent of the first defendant has attended also, the second defendant/ being in this post did not attended. The agent of the plaintiff repeated the case petition and requested to judge according to what listed in it and the explanatory draft, the agent of the first defendant repeated what listed in the answering draft and clear that the explanatory draft is repetition to his statement, and found that the second defendant is an executive employee who implement the decisions of the first defendant, the case must be rejected to him as well. The argument has been closed and the following decision was issued publicly.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff/ being in this post challenged the illegitimacy of the prime minister decision listed within the circulation of general secretariat of the Council of Ministers No.(qaf/2/5/27/29817) dated

on 16/9/2016 which included (attributed to the Prime Minister, to delay the appointment of the positions of the acting Directors-General until the conclusion of the first package of rehabilitation procedure), under the claim that the mentioned decision violated the constitution, as the challenged decision considered as administrative decisions that the law has set the path for challenging it, its consideration is out of the F.S.C. jurisdictions stipulated in article (93) of the constitution and article (4) of the F.S.C law No.(30) for 2005. Accordingly the case must be rejected for the first defendant/ being in this post from the point of lacking the jurisdiction, also the case must be rejected for the second defendant because he lack the independent legal personality, his role in that is an exceptive role. According to that the court decided to reject the plaintiff case and to burden him the expenses and the advocacy fees for the agent of the first defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously on 20/12/2016.