

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 76/federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 12/11/2019 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: Dr. Juad Abd Alkadhém Almusaoy -his agent the attorney Sattar Jabar Altimemy.

The defendants:

1. The Prime Minister/ being in this post - his agent the legal adviser Haider Alsoffi.
2. The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.
3. Head of the Integrity Commission/ being in this post- his agent the legal official Laith Husain Fadhil.

**The claim:**

The plaintiff claimed that first defendant/ being in this post has issued the Divan Order (18/sin) No.(mim.ra.waw./sin/1553) on 26/4/2018 paragraph (2) of it of assigning (Ibrahim Hameed

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Mohsen Alzubaidy) to the inspector general duties in the ministry of health (acting) in addition to his post duties, as he was inspector general in the ministry of agriculture for eight years in a row, this re-assigning consider as violation to the stipulated mechanism in paragraph (5) of chapter (2) of the Order (57) for 2004 which require that the renewal and assignment after five years of the appointment shall be submitted to approval by the national authority entrusted with legislative powers (the I.C.R.) that approve him with the majority of votes and that what was stated in the decision of the F.S.C. No.(70/federal/2011) on 26/12/2011 which bind the first-defendant when extending the appointment of the inspector general to follow the stipulated mechanism in the Order No.(57 for 2004) to present the re-assignment order of the inspector general before the I.C.R., the statement that first-defendant/ being in this post has practiced his jurisdictions on the appointment and renewal of the Order (19 for 2005) has no legal substantiation, because this order considered as amendment to the mentioned order of the Coalition Provisional Authority, but the first defendant maintain the mechanism of renewing the service of the inspector general as it is and didn't amend it. As the Iraqi constitution has authorized the legislative powers in the I.C.R. under article (48) of it which require when renewing the service of the inspector general by first-defendant to present the Order before the I.C.R., second-defendant has to neglect his oversight and constitutional role and neglect his

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task on renewing the job of the mentioned Ibrahim Hameed Mohsen Alzubaidy for three years as inspector general of the agriculture ministry and then assigning him as inspector general of health ministry in violation to the related Laws. The third-defendant was wrong to appraise when nominated Ibrahim Hameed Mohsen Alzubaidy as inspector general for the ministry of health without noticing that the process of nominating and presenting before first-defendant is in case of first time appointment. The plaintiff requested to revoke the Order of extending the service of inspector general Ibrahim Hameed Mohsen Alzubaidy for three years in the agriculture ministry, and to revoke the divan Order of assigning the mentioned to the duties of acting inspector general of the health ministry in addition to his post duties. The defendants were informed with the case petition and its documents, the agent of first defendant responded with the draft dated on 19/9/2019 stating in it that the challenged decision of the Prime Minister is an administrative decision that the F.S.C. is not competent to consider it as article (93) of the constitution has listed the jurisdictions of the F.S.C. and his client decision is not among these decision or laws, also the I.C.R. is not competent to consider it or approve it as its jurisdictions are listed in article (61/5<sup>th</sup>) of the constitution, this jurisdiction was practiced by the Prime minister according to his tasks and jurisdictions listed in article (80/2<sup>nd</sup>) of the constitution, and requested to reject the challenge and the case. Second-defendant

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responded with the draft dated on 4/8/2019 stating in it that the litigation is not directed against his client because he didn't issue the challenged divan Order and requested to reject the case. Third-defendant/ being in this post responded with the draft dated on 18/8/2019 stating in it that extending the service of the inspector general was under the proposer of the Ministry and the I.C.R. was approached to approve it after obtaining the approval of the Speaker pf the I.C.R., and the issuance of the divan Order was the recommendation of the investigation committee which recommended the dismissal of the inspector general of the ministry of health Ahmed Rahem Abd Allah, the recommendation has referred to the assignment of Ibrahim Hameed Mohsen Alzubaidy to the management of inspector general office in the ministry of health until suggesting a replacement, and requested to reject the case. on the scheduled date the agents of the defendants attended but the plaintiff agent didn't attend, the court continue with the argument, as the defendant agents requested to reject the case. The argument has been closed and the decision is issued publicly in the session.

### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff's case to challenge the divan order issued by the Prime minister No.(18/sin) informed by his office letter No. (mim.ra.waw./sin/1553) on 26/4/2018 paragraph (2) of it which included the

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assigning of Ibrahim Hameed Mohsen Alzubaidy to the duties of inspector general in the ministry of health (acting) in addition to his post duties as inspector general in the ministry of agriculture and extending his service for three years. The F.S.C. finds that the Law No.(24) of 2019 has revoked the (dissolved) Coalition Provisional Authority' Order No.(57) for 2004 that according to it the offices of the inspectors general was established, by that the inspectors general offices generally has been revoked since the publication of the Law No.(24) for 2019 as article (6) of it consider the date of its approval in the I.C.R. (8/10/2019) as it date to become in force, also article (3) of it has set the status of inspectors general either to be refer to retirement or to be returned to their previous governmental posts. Therefore considering the plaintiff's case become un-objective, accordingly the court decided to reject the case for the absence of the reason that it was based on, and to burden the plaintiff the expenses and the advocacy fees for the agents of defendants amount of one hundred thousand Iraqi dinars divided on them by the law. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 12/11/2019

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