

Republic of Iraq
Federal Supreme Court
Ref. 7/ 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 communications –being in his post, his agent the legal official (mim. Ain. mim.).

The defendant:

The president of the republic- being in this post, his agent the chef consultants (feh.jim.).

The claim:

The agents of the plaintiff claimed that the defendant the president of the republic has issued the republic decree No.(56) dated on 7.5.2009 which included the appointment of (ra.ain.dal.) as the acting minister of communications, violating the following:

1. The provisions of the articles (80, 93) of the in force constitution.
2. It violated the provision of article (42) of the Transitional Administrative Law which required the approval of the



-
- council of ministers and the presidency on the appointment, which didn't occur regard the person (ra.ain.dal) .
3. The aforementioned appointment also violated the provision of the articles (60/5th/b , 80 and 93) of the constitution of 2005, the appointment must be under the proposal of the council of ministers with the approval of the Council of Representatives, that appointment was done under the Transitional Administrative Law with the approval of the council of ministers on 27.12.2004 with the current constitution, noting that the Transitional Administrative Law has been repealed by the issuance of the new constitution.
 4. The above mentioned republic decree also violated the text of article (8/2) of the amended civil service law no.(24) of 1960. Therefore the agent of the plaintiff requested to repeal that republic decree and to remove its implications as there is no constitutional or legal substantiation for it, and for violating the listed constitutional provisions.

The defendant' agent responded to the case petition requesting to reject it formally and subjectively, formally because the subject of the case is competent of the Administrative Court or the employees judicial, and subjectively because the republic decree under challenge has meet the required procedures listed in article (42) of the Transitional Administrative Law of the Iraqi governorate, as it didn't create an appointment case rather it revealed it.

After registration the case according to paragraph (3rd) of article (1) of the F.S.C. bylaw no.(1) for 2005, and completing the required procedures according to paragraph (2nd) of article 2 of the mentioned bylaw, the date 13.7.2014 was appointed for the

Republic of Iraq
Federal Supreme Court
Ref. 7/ federal /media/ 2014



Kurdish text

argument, the agent of the plaintiff and the agent of the defendant has attended and continue with the argument in present and publicly. The plaintiff' agent repeated the case petition and requested to judge by it, the defendant agent repeated the answering draft requesting to reject the lawsuit for it reasons. The agent of the plaintiff commented that he had filed a lawsuit in this subject before the employees judicial court (request to re-trial) before initiating this lawsuit, that court ruled in the decision no.(2115/2013) on (26.12.2013) that the appointment procedures are not authentic. The defendant agent commented that the F.S.C. is not competent to consider the lawsuit but the employees judicial court is, 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 challenged the authenticity of the republic decree No.(56) dated on 7.5.2009 which included the appointment of (ra.ain.dal.) as the acting minister of communications requested to repeal that republic decree and to remove its implications as there is no constitutional or legal substantiation for it, and for violating the constitutional provisions of articles (60/5th/b , 80 and 93), as the of the republic decree No.(56) on 7.5.2009 is of the individual decisions that was issued by the federal authority in specific case, the decree wasn't caricaturized in generality as in the general pardon laws, therefore it is out of the F.S.C. jurisdictions stipulated in article (4) of it law No.(1) of 2005, and article (93) of the

Republic of Iraq
Federal Supreme Court
Ref. 7/ federal /media/ 2014



Kurdish text

constitution, and it is jurisdiction of the employees judicial court which has decided it. accordingly the court dismissed the plaintiff case and to burden him the expenses and the advocacy fees for the defendant' agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 13/7/2014.