

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 85/federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 14.10.2019 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, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Muhamad Rajab Al-Kubaysi who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: khair allah mushi shilaga –his agents the attorneys  
Muhamad Majed AlSaaedy and Ahmed Mazen Makia  
and Heba Mahmood Ashoor.

The defendant: President of Political Prisoners foundation/ being  
in this post.

**The claim:**

The agents of the plaintiff claimed that a decision has been issued from the Political Prisoners foundation (privet committee) on 13/7/2008 stated that their client is covered by the foundation law No.(4) for 2006 and that decision is final, the defendant has

complained on 7/12/2016 accordingly the first decision of the committee was nulled, the plaintiff challenge the decision before Al-Karada first instant court who issued a decision that he is covered by the law the subject of the case and to consider him as political prisoners, the defendant started a challenge against the decision of first instant court before Al-Resafa court of appeal in its cassation capacity and it decided to confirm the decision of first instant court, after the issuance of first amendment law to the Political Prisoners foundation law No.(35) for 2013 the defendant requested to reconsider the decisions that was issued under the implement of the law No.(4) for 2006 according to article (11) that authorized that, the committee decided to repeal the covering of the plaintiff by the law of the political prisoners foundation in contradict to articles (105 and 106) of the law of evidence, in light of that the plaintiff request to rule the unconstitutionality the decision of the privet committee in Al-Resafa No.(ain.zin./2/1776) on 24/9/2017, and to decide to re-cover him by the law of the political prisoners foundation and to release his financial rights retroactively. After the case was submitted and registered and notifying the defendant/ being in this post, he respond with the answering draft dated on 19/9/2019 stated in it his defenses that obliged to reject the plaintiff case, the most important one is that the F.S.C. lack the jurisdiction to consider the case as the political prisoners foundation law has set the path to challenge the privet committees' decisions after adjudicating it by the competent courts, finally article (11) of the political prisoners foundation law No.(35) for 2013 has authorize the foundation to reconsider its issued decision in contrary to the law. After completing the required

procedures according to the F.S.C. Bylaw No.(1) for 2005, the date 14/10/2019 was scheduled for the argument, the court convened and the agent of the plaintiff the attorney (Ahmed Mazen Makia) has attended, the defendant the president of political prisoners foundation/ being in this post didn't attend or his designee despite the notification according to law so the court decided to continue with the argument in his absent, the agent of the plaintiff repeated the case petition and requested to judge according to it. The court reviewed the defendant answer and found that the case is completed for reasons of judgment, 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 has obtained a decision to cover him by the provision of the political prisoners foundation law No.(4) for 2006, and in light of these provisions, after the issuance of the law No.(35) for 2013 (first amendment law to the Political Prisoners foundation law) the defendant has challenged the issued decision of covering the plaintiff by the provision of Political Prisoners law depending on article (11) of the amendment law which authorize the challenge against the decisions that are issued before the issuance of the amendment law, accordingly the competent committee decided to repeal the decision of the plaintiff covering by the Political Prisoners law provisions. Therefore the plaintiff requested in this case to judge the unconstitutionality of the competent committee' decision which exclude him from the political prisoner capacity, and to return his financial rights retroactively under the consideration

that the previous has become final before the issuance of the law of first amendment to the political prisoners law according to article (105) of the law of evidence as it not allowed to except evidence against the final decisions according to article (106) of the law of evidence. The F.S.C. found that the first amendment law to the law of political prisoners has authorize the defendant/ being in this post to challenge the issued decisions before issuance of the law if he found a reason for that, and set the challenge method against the issued decisions after reversing the issued decision before the amendment law, and that is before the administrative judicial court. Therefore the plaintiff case binding to be rejected from the point of jurisdiction, therefore the court decided to reject it and to burden him the expenses and the advocacy fees for the agent of the defendant/ being in this post amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 14/10/2019.