

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 95 unified with 96
and 104/federal/2019



Kurdish text

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 plaintiffs in the lawsuit (95/federal/2019):

1. Hameed Salman Abas.
2. Manae Abd Alhasan Hasoon.
3. Hayder Skender Mansy.
4. Abd Alsatar Sehel Najem.

The plaintiffs in the lawsuit (96/federal/2019):

1. Abd Alkareem Auda Mahdy.
2. Muhamad Khatab Ahmad.
3. Abd Alkarem Hameed Ibrhem.

The plaintiff in the lawsuit (104/federal/2019):

Kadhem Jasim Muhamad

Their agents the attorneys Flah Hasan Ali Alkahjee and Abd alsada Shnawa Fahad.

The defendants:

- 1- The Prime Minister/ being in this post –his agent the legal adviser Haider Alsoffi.
- 2- The Minister of Interior/ being in this post- his agent the jurist major Hekmat Loqman Hanen And the legal official Saif Saad Habeab.

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The claim:

The agents of the plaintiff in the lawsuit (95/federal/2019) claimed that the second-defendant the minister of internal/ being in this post has requested first-defendant the prime minister/ being in this post to referral their clients to the retirement, so he issued the Divan order No.(184 on 30/5/2016) which was amended with the Divan orders (231 on 26/6/2016 and 399 on 23/10/2016) that according to it the referral to retirement reason was changed, the Supreme Administrative Court has issued a judgment to reject the case filed by their clients from the formal aspect for the reasons listed in that judgment, whereas there is no crime and no penalty unless by a provision text and each individual has the right of equal treat in the judicial and administrative procedures according to article (19/2nd and 6th) of the constitution, also the constitution has prohibited the immunity any administrative action or decision under article (100) of it, and according to article (93) of the constitution which state that the jurisdictions of the F.S.C. to adjudicate the cases arising from implementing the federal laws and the decisions and regulations issued by the federal authority, the agents of the plaintiffs requested the F.S.C. to revoke the aforementioned divan orders and to repeal it implications. The agent of first-defendant responded with the answering draft dated on (19/9/2019) requesting to reject the case from the point of jurisdiction because his client

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decision is an administrative decision that he issued according to his constitutional jurisdiction. The agent of the second-defendant has responded with the answering draft dated on 24/9/2019 requesting to reject the case from the aspect of jurisdiction because considering the challenged order is out of the F.S.C. jurisdictions that are listed in article (4) of it law No.(30) for 2005. The summery of the plaintiffs' agents claims in the lawsuit (96/federal/2019) is requesting the F.S.C. to revoke the Divan orders No.(159 on 15/5/2016, and 231 on 26/6/2016, and 399 on 23/10/2016) which included the referral of their agents to the retirement for the same reasons listed in his request in the lawsuit (95/federal/2019), the agents of the defendants has requested in the attached drafts to the case petition to reject the case from the point of jurisdiction. The summery of the plaintiffs' agents in the lawsuit (104/federal/2019) is requesting the F.S.C. to revoke the divan orders No.(245 of 2016) that was amended with the divan order No.(399 on 23/10/2016) which included the referral of their clients to retirement for the same reasons listed in his request in the lawsuit (95/federal/2019) the agents of the defendants requested in the attached drafts to the case petition to reject the case from the point of jurisdiction. After completing the required procedures according to the F.S.C. bylaw No.(1) for 2005 the date 12/11/2019 was scheduled for the argument in the mentioned lawsuits. The court convened to consider

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the lawsuit No.(95/federal/2019), the agents of the parties has attended and continue with the argument in presence and public, the agents of the plaintiffs repeated the case petition and requested to judge according to it. The court scrutinized and found that there are two lawsuits in the same subject and the defendants are unified in it which are (96/federal/2019 and 104/federal/2019), in order to save time and effort and under article (75) of the civil procedure law the court decided to unify the three lawsuits and to consider the lawsuit (95/federal/2019) is the original as it was filed earlier. The agents of the defendants in the unified lawsuits and continue with the argument, the agents of the plaintiffs in the unified lawsuits repeated what stated in it, the agent of first-defendant repeated the answering draft in the three lawsuits and commented that considering the lawsuit is out of the F.S.C. jurisdiction, the agent of second-defendant repeated the answering draft and requested reject the three lawsuits. The court found that the original case and its unified are completed for reasons of judgment, the argument is closed and the decision is issued publicly.

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs in the lawsuit No.(95/federal/2019) and it unified lawsuits has requested to revoke the divan orders issued by the council of ministers that are mentioned in the case petitions and to repeal it implications and to return to previous status before it issuance. The F.S.C. finds that the mentioned divan orders are administrative orders according to the standards of the administrative law according to the party that issued it and according to it entity, and the law has set the path to challenge it which is not the challenging it before the F.S.C. which it jurisdictions are stipulated in article (93) of the constitution and article (4) of it law No.(30) for 2005. Therefore the original lawsuit and the unified two lawsuits are binding to be rejected from the point of jurisdiction. The court decided to reject the case from this aspect and to burden the plaintiffs the expenses and the advocacy fees for the agents of the defendants amount of (one hundred thousand Iraqi dinars) divided on them by the law. The decision has been issued unanimously and final and issued publicly on 12/11/2019.

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