

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 95 unified with 96/
federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 26.1.2016 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram 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:

- 1- Minister of the Environment/ being in this post – his agents the attorneys Dr.(mim.ta.) and (Jim.ain.).
- 2- (qaf.alif.teh.jim.)/ his agent the attorney (Jim.kaf.heh.ain.).

The defendant: the Prime minister/ being in this post – his agent the assistant legal advisor (ghain.jim.dal.).

The claim:

The agent of the plaintiff claimed that the defendant has issued the Divan order (the subject of the challenge) No.(312) ref. (mim/waw/1688) on 16/8/2015) as it included in (3/beh) of it the

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incorporation of the ministry of the Environment with the ministry of the Health, as this order has no constitutional or legal substantiation and its challenge related to the public interest of the state from the constitutional and legal aspect as the following:

First: The constitutional aspect: the jurisdictions of the council of ministers are stipulated in article (80) of the constitution and it didn't contain a text regarding the challenge subject, the government agenda included the availability of clean healthy environment and to maintain the components of the environment (water, air, soil) and the incorporation of ministry of the Environment with the ministry of the Health violate the governmental agenda from this aspect.

1. The defendant/ being in this post has depended on when issued the mentioned order (the subject of the challenge) on article (78) of the constitution, the mentioned article contain the right to dismiss the ministers by the approval of the council of representatives (I.C.R.) and not to incorporation the ministries.
2. The defendant also depends on when issued the mentioned order on the decision of the I.C.R. No.(15) for 2015 which stated ((approving the decision of the council of ministers No.(307) for 2015 and implementing it in accordance with the provisions of the constitution and the laws in force)) which means that this authorizing is restricted and not absolute, accordingly the prime minister doesn't have the authority to incorporate the ministries under article (78) of the constitution.
3. Article (33) of the constitution stipulated that every individual has the right to live in safe environmental conditions the State shall undertake the protection and preservation of the

environment and its biological diversity, as stipulated in article (86) of the constitution a law shall regulate the formation of ministries, their functions, and their specializations, and the authorities of the minister, resulted from the listed article above the enacting of laws related to the environment including the law No.(37) for 2008 which according to it the ministry of health was established, environmental protection and improvement law No.(27) for 2009, as the ministry of environment was established according to the provision of the law No.(37) for 2008 (article 2/1st) of it as it stated ((a ministry shall be established and to be called the Ministry of Environment, shall enjoy the legal entity and represented by the Minister of Environment or whom he authorizes)), therefore it's not possible to be incorporated with another ministry unless by a law equal it in power or even stronger than it, which was approved by article (80) of the constitution, the defendant should have proposed the law bill that authorizes him to incorporate the ministries and direct it to the I.C.R. to approve it and after its approval it shall directed to the presidency of the republic to approve it and then to be published in the official Gazette, after that the defendant/ being in this post could incorporate the ministries, in addition, that the ministry of environment is an important sovereignty and monitoring ministries, that cannot be repealed or incorporate with another ministry.

4. Article (13) of the constitution stipulated that: first ((this Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception. second: no law that contradicts this Constitution shall be enacted, any text in any

regional constitutions or any other legal text that contradicts this Constitution shall be considered void)), but the challenged order is Divan order and not as the same level of a law, so if the constitution has stipulated the unconstitutionality of the contradicting laws then the challenged order also must be not contradicting or violating the constitution.

Second: The formality aspect:

1. The agent of the plaintiff/ being in this post claimed that the ministry of health is an executive ministry and the activity of its directorates affect the environment and when referring to the provision of article (22) of the environmental protection and improvement law No.(27) for 2009 which stipulate that ((the activities that affected the environment shall submitted to the environmental oversee)) by that the ministry of health cannot exercise the executive and the overseeing process in the same time)) because the oversee work is a jurisdiction of the health ministry only.
2. Article (2/2nd) of the law of the environment ministry No.(37) for 2008 stated that the environment ministry is the sectoral body in the field of protecting and improving the environment on the internal and international level, therefore this text is binding and cannot be violated, and this rule is assigned for the ministry of environment exclusively for its independence in performing its duties.
3. The Ministry of Environment has been associated with several international conventions and treaties binding to Iraq, the cancellation of the environment ministry as representative of the

Republic of Iraq on one side leads to significant damage to the country.

4. The Ministry of Environment has made great achievements for the country since its establishment and has progressed in its work through these achievements, the most important of which is the reduction the violation of the environment, in order to protect the Iraqi citizen from the harm that affected him from these violations in addition to the precautionary measures and the work provided by the ministry and the courses for the dissemination of environmental awareness, as well as the control procedures on hospitals, sanitation institutions, washing garages, lubrication, massacres, fields, and protein factories, also monitoring of radiation devices and sources and monitoring of all sectors related to the environment, the agents of the plaintiff has attached part of these achievements for the years (2011, 2012, 2013, 2914) which show the big important of the environment ministry to the country. For all that the agents of the plaintiff/ being in this post requested to (the challenged order for its unconstitutionality and illegitimacy).

The agent of the defendant/ being in this post responds to the case petition stating that the plaintiff request is out of the F.S.C. jurisdictions that are stipulated in article (93) of the constitution of the Iraqi republic for 2005 and article (4) of the F.S.C. Bylaw No.(30) for 2005, because the order of incorporating the environment ministry was issued by the Divan Order No.(312) of the Prime minister with the letter No.(mim.ra.waw./4/1688) on 16/8/2015 which is an administrative decision submitted to the repealing monitoring, the challenge against it issuance is a

jurisdiction of the administrative judicial court under paragraph (dal) of clause (2nd) of article (7) of the state consultative council Law No.(65) for 1979, and decided to submit his objective defenses in later draft , also requested to reject the case for the mentioned reasons. After the case was registered according to paragraph (3rd) of the 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 26/1/2016 was scheduled for the argument, the court convened, the attorney (Jim.kaf.ain.) attended as agent of the plaintiff (the minister of environment/ being in this post), and attended for the defendant the prime minister Mr.(ghain.jim.) the advisor in the general secretariat under the power of attorney linked to the case petition and continue with the argument in presence and public, the plaintiff' agent commented that (my client has filed the lawsuit No.(96/federal/2015) before the court in his personal capacity on the same subject of the lawsuit No.(95/federal/2015) against the same defendant), as the subject of the lawsuits (95/federal/2015) is unified with the subject of (96/federal/2015) and the defendant is the same, the court decided to unify the cases and to consider the lawsuit (95/federal/2015) is the original, the agent of plaintiff repeated the case petition and requested to judge according to it, the defendant agent answered that (we repeat the answering draft stating that the court lacked the jurisdiction to consider the case), the plaintiff agent commented that we don't have answer for this defense and requested to judge according to the case petition. Whereas nothing left to be said 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 agents of the plaintiff has filed the lawsuit No.(95/federal/2015)/ being in this post as the minister of the environment challenging the Divan order No.(312)which was issued by the defendant (the Prime minister/ being in this post) that included in paragraph (3/beh) of it the incorporation of the environment ministry with the health ministry, as the mentioned order –according to their claim- has no constitutional or legal substantiation and the challenge against it is related to the public interest of the state from the legal and constitutional aspect, accordingly they requested to judge to repeal it, the court found that the plaintiff' agents have filed the lawsuit No.(96/federal/2015) against the same defendant –in the same subject- basing on the same reasons that are listed in the first case petition and repeated the same request, for the unity of the challenged subject and the unity of the defendant in both lawsuits the court decided to unify them according to the provision of article (76) of the civil procedure law No.(83) for 1969 (the amended) and to consider the lawsuit No.(95/federal/2015) the original as it was filed earlier. The F.S.C. finds that the Divan order (under challenge) issued by the council of ministers and it is among the administrative decisions that are not characterized as generally, so it is an administrative decision that is out of the F.S.C. jurisdiction that are stipulated in article (93) of the constitution of the Iraqi republic for 2005 and article (4) of the F.S.C. Bylaw No.(30) for 2005, therefore the court decided to reject the mentioned unified lawsuits from the point of lacking the jurisdiction and to burden the plaintiff the

expenses and advocacy fees for the agent of the defendant/ being in this post (ghain.jim.dal.) amount of (one hundred thousand) Iraqi dinars. The decision has been issued decisively and unanimously according to article (94) of the constitution and article (5/2nd) of the F.S.C. bylaw No.(30) for 2005 on 26/1/2016.