

Republic of Iraq
Federal supreme court
Ref. 19/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 30.5.2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Louay Ismail Abdullah his agents Fadel Globe Obeid and Adnan Hassan Jabr.

The Defendant: Head of the Supreme National Authority for Accountability and Justice/being in his capacity his agent Human jurist Azhar Amori Jabr.

The Claim:

The plaintiff claimed that the defendant/ being in his capacity issued Law No. (qaf/teh/qaf/18/14639/539) of 8/1/2019 which is contained in the article (6/3rd) within the meaning of article No. (6 & 9) of Accountability and Justice Law No. (10) of 2008 he was challenged by the competent body to hear appeals against the decisions of the Accountability and Justice Authority and the authority issued its decision No. (214/cassation accountability and justice/2016) on 11/4/2016 ruled that his request should be rejected. Since he worked as a operator in the intelligence service and was transferred to the Ministry of Finance in 1995 and was covered by the Martyrs Foundation Law No.

(3) of 2006 to execute his late brother Laith Ismail Abdullah by the former regime because the mentioned decision was contrary to the provisions of the Constitution of the Republic of Iraq for 2005, article (2/1st-alif) stipulates that it is not permissible to enact a law contrary to the rewards of Islam, as stipulated in paragraph (jim) of it, it is not permissible to enact a law contrary to the fundamental rights and freedoms contained in the Constitution, and the article (14) of it noted that Iraqis are equal before the law without discrimination on the basis of sex, Iraq, nationalism, origin or color.... and the article (15) showed that everyone has the right to life, security and freedom, and article (16) referred to equal opportunities as guaranteed to all Iraqis. Article (19-2nd) indicated that there is no crime, no punishment except for the act prepared by law at the time it was committed, so he requested the repeal of the Decision of the Supreme National Authority for Accountability and Justice for not fulfilling the conditions of Article (6-3rd & 9th) of the Supreme National Accountability and Justice Law No. (10) of 2008. The case was registered with this court No. (19/federal/2020) and the legal fee is paid following article (1), paragraph (3rd) of the FSC's Bylaw No. (1) of 2005, and the defendant/ being in his capacity is informed of the petition based on the provisions of the article (2), paragraph (1st) of the bylaw of this court, and the defendant's agent/ being in his capacity answered by his answer draft on 11/2/2020 the following:

- 1- Prosecutor Louay Ismail Abdullah limited his claim to the annulment of the decision of the Supreme National Authority for Accountability and Justice, which requires comprehensiveness of the law of the authority following the text of Article (6/3dr) within the meaning of the article (1/9th and 10th) he was affiliated with the dissolved Intelligence Service and had the medal of courage in Customary No. (239) on the suppression of the Shaaban Uprising in 1991 thus, the plaintiff's case is outside the jurisdiction of the FSC.

- 2- The Supreme National Authority for Accountability and Justice it is a revealing body for those who are concerned with the procedures of the Law of The Authority No. (10) of 2008 based on the text of the article (2) it and that the legal process of challenging the decisions of the authority shall be before the discriminatory body competent to hear appeals against decisions of the Accountability and Justice Authority in the Federal Court of Cassation and the plaintiff has taken the path of appeal in question and the discriminatory body has ruled that the appeal should be rejected and that the decision of the Supreme National Authority for Accountability and Justice be ratified, and that the decision of the discriminatory body is a final decision and decisive and has the argument of judgments and decisions and may not be challenged.
- 3- The Head of the Supreme National Authority for Accountability and Justice can't be an opponent in this case because he doesn't have the right to legislate laws.
- 4- The text of the article (6/3rd & 9th) of the body's law No. (10) of 2008 doesn't violate any text in the Constitution.

So he asked for the plaintiff's case to be rejected and charged with judicial expenses. The prosecutor replied in his draft on 9/3/2020 that his client continued in the job until the administrative order issued by the State Real Estate Department (30-518) on 30/1/2020, which included his retirement based on the letter of the National High Authority for Accountability and Justice /Legal Department No. (qaf.kaf/qaf/19/17427) on 19/12/2019 and the text of the paragraph (3rd) from the article (6) of the Supreme National Authority for Accountability and Justice referred to the termination of the services of all members of the security services (repressive) and referred them to retirement under the Law of Service and Retirement, which does not apply to his client being a graduate of the middle school that qualified him for his job (operator) with the security

services in which he worked and was transferred from the personnel of the intelligence service to the personnel of the Ministry of Finance under the administrative order No. (120/1/7918) on 12/6/1995 and that his relationship with the secret service has been broken since the date mentioned. The articles (9th & 10th) from the article (1) if the body's law refers to the purpose of the expressions (the aides of the regime, ministries and security services) who was the owners of the security services until the cracks of the former regime, so his client is not covered by their provisions after being transferred to the owners of the Ministry of Finance since 1995 , his client's brother was executed by the former regime and covered by the Martyrs Foundation Law, so he is not covered by the provisions of the Supreme National Authority for Accountability and Justice, his client was also assigned to a function, and this job status does not entitle him to leave his position, and he does not know how the authority realized that his client participated in the suppression of the Shaaban Uprising, especially since the order of courage was given to the general members of the party that includes him, whether the participation of the affiliate or not participating in the suppression of the intifada. In addition to the above, the rights of individuals are included in the Constitution in Article (14) of the Constitution of the Republic of Iraq, which stipulates that Iraqis are equal before the law without discrimination, and article (15) shows that everyone has the right to life, security, and freedom, and it is not permissible, to be honest with these rights. therefore he requested that the decision of the content of the National Accountability and Justice Authority letter No. (lam.mim.ta/448/7846) on 24/4/2016 addressed to the Ministry of Finance be overturned, which referred his client to retirement. After completing the required procedures following paragraph (1st) of Article (2) of the FSC's Bylaw No. (1) of 2005. On 30/°/2020, a date was set for the case and the parties to the case were informed based on the provisions paragraph (2nd) of the article (2) of the mentioned system and on the day appointed to the case the court was formed and the agents of the parties

attended and the immanence public argument was started, the prosecutor repeated the petition and requested a verdict, and the defendant's agent answered, asking that the plaintiff's case be rejected and to charge him with judicial expenses and where there is nothing left to say, the end of argument has been made clear and the court issued the following decision in public.

The Decision:

After scrutiny and deliberation by the FSC found that plaintiff's case includes a request for a ruling to annulment the decision of the Supreme National Authority Accountability and Justice No. (qaf/teh/qaf/18/14639/539) of 8/1/2019, which ruled that the plaintiff should be included in article (6/3rd) within the meaning of article (6/9th) of the law of the Supreme National Authority for Accountability and Justice No. (10) of 2008, article (15) of the mentioned law authorized for the those who are included in the provisions under article (6) of the S.A. Law No. (10) of 2008 and the departments to which they belonged, the provincial council, the provincial government, which are located in those departments, and the Attorney General's Office in the body to challenge decisions issued before the cassation body within (30) days of the date of notification of the person involved in the decision or consider it an amount in accordance with the reporting rules of the Civil Procedure Law No. (83) of 1969 amended and the article (17) of the mentioned law state that the cassation body issues its decision in the objections received within more than 60 days and its decision is final and decisively. The plaintiff exercised his mentioned right and appealed the decision of the National Authority for Accountability and Justice to the cassation body competent to hear appeals against the decisions of the Accountability and Justice Authority in the Federal Court of Cassation, and that the latter decided on 11/4/2016 No. (241/ cassation body /2016) to reject the objection of the objector and the ratification of

the National Authority for Accountability and Justice and the decision issued by the mentioned cassation body is decisively and final in accordance with the provisions of Article (17) of the Supreme National Authority for Accountability and Justice Law No. (10) of 2008 and is not subject to appeal to this court, as the jurisdiction of reference of this court are defined by article (93) of the Constitution of the Republic of Iraq for 2005 and the article (4) of the FSC's Law No. (30) of 2005 (amended) it was not one of its jurisdictions to consider appealing by the decisions of the Supreme National Authority for Accountability and Justice and it did not have jurisdiction to hear or overturn appeals against court decisions. For all of the above the court's decision: **First-** he rejected the case of the plaintiff Louay Ismail Abdullah **Second-** charging him with judicial expenses and charging the lawyer of the defendant's agent/ Head of the Supreme National Authority for Accountability and Justice/ being in his capacity the jurist Azhar Amori Jabr amount (100,000) one hundred thousand dinars distributed following the law, decisively judgment issued with unanimously based on the provisions of Articles (94) of the Constitution on 30/May/2021 coinciding with 17/Shawwal/1442.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
Ghaleb Amer Shnain

Signature of
The member
Haidar Jaber Abed

Signature of
The member
Haider Ali Noory

Signature of
The member
Khalaf Ahmad Rajab

Signature of
The member
Ayoub Abbas Salih

Signature of
The member
**Abdul Rahman
Suleiman Ali**

Signature of
The member
**Diyar Muhammad
Ali**

Signature of
The member
**Munther Ibrahim
Hussein**