

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 40/federal/media /2013



Kurdish text

The Federal Supreme Court (F S C) has been convened on 23. 7 .2013 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs : 1- Ali Jassim Muhammad } their agents
2- Mohammed Razzaq Najjar } Ali Khalif Mansour

The Defendants : 1- Mr. President of the Republic/ being in his capacity
his agent is the chief legal expert Fathi Al-Jawary.

2- Mr. Speaker of the House of Representatives / being
in his capacity his agent the jurists Salem Taha Yassin
and Haitham Majid Salem.

The Claim:

The plaintiff's agents claimed that the claimed that on 19/3/2008, the Presidential Council issued the Law of The Irregular Provinces in The Province No. (21) of 2008 and for the violation of the employment discrimination of the district manager district both are the head of a financially and administratively independent administrative unit, and

because of the lack of equal opportunities between them, his clients have suffered significant damage in terms of salary and allowances. Because his clients are heads of administrative units of district managers and the law has defined the administrative unit as (the Governor, the District and the district manager) each has an independent moral personality and financial and administrative independence, and article (23) of the law stipulates that (The Governor, the District and the district manager are the highest executive officer in his administrative unit..) the provisions of the law equalized the district and the district manager in the legal descriptions in terms of qualifications and responsibility, but distinguished between them in terms of the degree of article (39/4th) that (The District is as general manager and district manager with the rank of assistant general manager). This text contradicts article (40/1st), which says that "in the absence of the District, the governor assigns one of the directors of the judicial districts to take his place." It is a burden on the text that the District, which is to the degree of general manager, requires that the one who takes his place in the same degree not with the degree of Assistant Director-General. The prosecutor pointed to matters in which he concluded that the levels of some district managers are greater than the responsibility of the District. He requested that the last paragraph (with the degree of Assistant Director-General) contained in paragraph (4th) of article (39) of the Law on Irregular Provinces in the Province. The defendants/ being in their capacity have been informed of the petition. The first defendant's agent replied to his draft on 28/5/2013, which stated that the Presidency Council did not approve Law No. (21) of 2008, but published for the duration of the legal period, so he cannot be prosecuted as he has a face to ask the plaintiffs to request a ruling against unconstitutionality. Because the law does not conflict with article (16) of the Constitution and equal opportunities does not mean that the district manager is the degree of director general and asked to reject the case. The second defendant's agent also answered the petition on 15/5/2013 and requested that the case be rejected because the fourth

paragraph of Article (39) of Law No. (21) of 2008 amended to include that the degree of district manager with the degree of assistant director general is not contrary to the Constitution, so the court is not competent to hear the case. The court invited the parties, and the plaintiffs' agent came and asked their agent to limit the case to the first plaintiff and to annul the petition for the second plaintiff and submitted a explanatory draft of which reached a copy to the defendants' agents and recited the draft literally during the argument and requested the verdict in accordance with the petition and clarification. The first defendant's agent answered, repeating the answer list, and that he had no answer to the plaintiff's list filed in this day and requested that the case be rejected. The second defendant's agents answered, repeating what was said in the answering draft, and we indicated that they had no answer to the plaintiff's draft and requested that the case be rejected, and then both parties repeated their statements and where there was nothing left, the end of argument has been made clearly and the court issued the following decision:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent challenges the unconstitutionality of paragraph 4 of article 39 of the Law on Irregular Provinces in The Province No. (21) of 2008, which determined the degree of district manager with the degree of assistant director general and he asked for the level of the district manager to be equal to the level of the district so that the director of the district is a general manager on the grounds that this paragraph was contrary to the text of article (16) of the Constitution which stipulates that ((Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken)). The FSC finds that the plaintiff's claim is groundless by the law because the principle of equal opportunity stipulated in the Constitution does not mean

overcoming the career ladder in the state that is regulated by the Civil Service Act and the Staff Act, but rather equality and equality in the starting line for the corresponding. And that the manager of the district works District agency, in his absence it doesn't mean his career degree by degree District unless he live in accordance with the conditions stipulated by law and otherwise, the application contained in the suit itself violates the principle of equal opportunity because the district manager who is attributed to see the works District agency and for his absence, it's going to be a degree District while his colleague as requested by the plaintiff while the director of the other side who was not attributed to see the work of the District absent will remain his degree (district manager). Accordingly, the text of article (39), paragraph (4th) of the Irregular Provinces Law No. (21) of 2008, is not contrary to the Constitution. So the case is to be rejected. Decided to reject it for the first plaintiff Ali Jassim Mohammed and the annulment of the case for the second plaintiff at the request of their agent and to charge them relative expenses and the fees of the lawyers of the plaintiff's agent Mr. Fathi Al-Jawari and the agents of the second defendant Messrs. Salem Taha and Haitham Majid amounting of (100,000) one hundred thousand Iraqi dinars half of it to the first defendant's agent and the second half to the second defendant's agents. This is based on the provisions of Article (166) of the Civil Arguments Act and Article (63) of the Lawyers' Act No. (173) of 1965, within the meaning of Cabinet decision (220) of 2013, the verdict was issued unanimously and decisively and the decision had made clear public on 23/7/2013.