

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 79/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 10/7/2018 headed by the 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, Hussein Abbas Abu AL-Temman and Mohammed Rajab Al-kubisi who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (feh. ain. mim.) his agent (ta. kaf. zin.).

Defendant / Secretary General of the Council of Ministers / being in this capacity his agent His legal counsel (ha. sad.).

Claim:

The agent of the plaintiff claimed that the Board of Trustees of the Iraqi Media Network at the (66) meeting held on 19/12/2017, a decision to ensure the appointment of his client the prosecutor as head of the Iraqi media network authenticity for four years can be extended only once, and that according to article (10/2nd) of the Iraqi Media Network Law No. (26) of 2016 and that the General Secretariat of the Council of Ministers considered the resolution described as incorrect because of the lack of quorum, for the plaintiff is not convinced that he has initiated an appeal against it to this court for the following reasons: The vote was taken by secret ballot and the elections were conducted in a professional and transparent manner, the meeting was held in the presence of its four active members as well as the presence of the

(Assistant Inspector General) of the network as well as the attendance of the Committee of counting the votes of five people as observers for this meeting, a quorum was achieved by a simple majority of four members out of a total of six members. The plaintiff also claimed that his client had obtained two pictures in addition to the vote of the head of the session in his favor on the basis of article (12/3rd) of the Iraqi Media Network Law (Decisions and recommendations shall be taken at the meetings of the Council by a majority of the number of votes and, if equal, the side to which the Chairman presides). Thus, the election of the plaintiff is in accordance with the law. That the defendant in the above-mentioned decision contrary to the provisions of article (108) of the constitution that the Iraqi media from independent bodies and was established under article (108) of the constitution that mentioned before, this body enjoys a moral personality and independence and is represented by the head of the network or the person authorized . (The decision to cancel the decision of the Secretary General of the Council of Ministers) and the annex to the petition (and to consider the vote is acceptable to the law. The defendant's agent response (General Security Council of Ministers/ being in this capacity) on the petition is filed in three aspects which is: 1- In terms of formality : In this regard, the agent of the plaintiff pointed out that the jurisdiction of the FSC is limited to monitoring the constitutionality of laws and regulations in force in accordance with the provisions of article (93) of the constitution, and that the subject of the appeal is (administrative decision) issued by the defendant in implementation of the directives of the Prime Minister, which he issued in turn in accordance with his powers stipulated in article (78) of the constitution, and that the defendant is directly linked to the Prime Minister and his powers are the exercise of the tasks entrusted to him, in accordance with article (30/3rd) of the Bylaw of the Council of Ministers No. (8) of 2014. Thus, the -subject of the challenge- comes out of the jurisdiction of the FSC, and this is what was settled by the decision of the above court, in a number of its resolutions, including resolutions (65 , 36 , 38/federal/2017 & 59/federal/2018).

2- In terms of constitutional authority : The agent of the defendant/ being in this capacity claimed that the decision issued by the defendant was in pursuance of the directives of the Prime Minister because he is directly related to him and that his powers are to exercise the tasks assigned to him by him as previously stated, the defendant's role of the respondent (in making the decision) (the place of challenge) shall be an executive role, accordance to the decision of the FSC No. (70/federal/2016) the fact that the Secretary-General of the Council of Ministers does not enjoy an independent moral personality, so the challenge has no basis in the constitution. Article (8/8th) of the Iraqi Media Network Law No. (26) of 2015 (amended), states that "the Board of Trustees shall take its decisions by a simple majority of its members and the decisions shall be effective as soon as they are voted upon" given the lack of a simple majority in the selection of the head of the Iraqi media network, the decision to elect the plaintiff as head of the network contrary to the provisions of the law.

3- In terms of the direction of rivalry : The defendant's agent claims that according to the provisions of article (4) of the Civil Procedure Law No. (83) of 1969 (amended), the defendant must be convicted or bound by something, in order to assess the case. Since the defendant, in accordance with paragraphs (1st & 2nd) of his pleading (referred to above), issued his decision in implementation of the directive of the Prime Minister) not with his personal authority over him, the dispute is not achieved in this challenge. For the above reasons and other reasons, the defendant's agent requested the following: 1. The judgment rejected the challenge, for lack of jurisdiction under paragraph (1) above. 2. The judgment rejected the challenge, for the lack of hostility against his client according to paragraph (3rd) above. 3. The judgment rejected the challenge, for the absence of a summons to appeal under paragraph (2nd) above. 4. The plaintiff charged the expenses and fees of the lawyer. After registration this case to this court according to the paragraph (3rd) of the bylaw of the FSC, and after completing the required procedures according to the paragraph (2nd) of the article (2) of the bylaw. Appointed on 10/7/2018 as a date for the argument, in which

the court was formed, the agent of the plaintiff the lawyer (ta. zin.) attended and the defendant was attended by the Legal Counsel (ha. sad.) and argument was initiated immanence and public. The plaintiff's agent repeated what was stated in the petition and requested for judgment, the defendant's agent replied that he repeats the answer list and requests that the case be rejected for the reasons stated therein. As the case has been completed for reasons of judgment. Decided to close the pleadings and understand the verdict publicly in the hearing.

The Decision :

For scrutiny and deliberated by FSC found the agent of the plaintiff claim that the Board of Trustees of the Iraqi Media Network at the (64) meeting held on 19/12/2017 a decision to include the appointment of the client of the plaintiff (feh. ain. mim.) as head of the Iraqi Media Network, incumbently for (four years), may be extended only once, based on the provisions of article (10/2nd) of the Iraqi Media Network Law No. (26) of 2015. But the General Secretariat of the Council of Ministers objected to the mentioned decision for lack of a simple majority in the selection of the head of the Iraqi media network. Contrary to the provisions of article (8/8th) of the Network Law referred to above, which states (the Board of Trustees shall take its decisions by a simple majority of the number of its members and the decisions shall be implemented by virtue of voting thereon) In the absence of the plaintiff's conviction of the decision taken by the General Secretariat of the Council of Ministers not to approve his selection as head of the Iraqi Media Network, Bader and through his agent appealed the said decision before this court for the reasons stated in his petition, requesting a cancellation and considering the vote to be acceptable. The FSC finds that the decision taken by the General Secretariat of the Council of Ministers regarding the selection of the head of the Iraqi Media Network under its letter No. (qaf./2/5/90/42) on 24/12/2017. Is an administrative decision that has a reference to the appeal, which is not challenged before the FSC whose jurisdiction is specified in article (93) of the constitution and

article (4) of its law No. (30) of 2005. So the FSC decided reject the case formally. The FSC decided to reject the case in a form of jurisdiction and to charge the plaintiff expenses and attorney fees to the defendant's agent amount of one hundred thousand dinars and issued a binding judgment on the basis of the provisions of article (94) of the constitution and article (5/2nd) of the Law of Court No. (30 and by agreement and understand publicly on 10/7/2018.