

Republic of Iraq
Federal Supreme Court
Ref. 117 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 21.6.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The plaintiffs:

1. Attorney Saif Muslim Brihi Al-Khalidi.
2. Attorney Abeer Adel Saeed Al-Mahdawi.

Their attorneys Shawkat Sami Al-Samarrai and Ahmed Abdul Rahim Al-Shamri.

The defendants:

Speaker of the Council of Representatives / in addition to his post - his two attorneys are Legal Counsel Haitham Majed Salem and the legal official Saman Mohsen Ibrahim.

The claim:

The plaintiffs claimed, through their attorneys, that the defendant had enacted the Advocacy Law No. 173 of 1965 published in the Iraqi Gazette, No. (1213 on December 22, 1965), which was considered effective from the date of its publication in the Official Gazette in accordance with the provisions of Article (73) of it. Article (84) of it stipulates that (the president, the original members, and the alternate members are elected for two years, and the

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 117 / Federal / 2022



president may not be elected more than twice in succession from the date this law comes into force). The decision of the dissolved Revolutionary Command Council in force in No. (268) for the year 2001 on 6/12/2001, which stipulated that ((the duration of the electoral cycle for each of the Federation and the following unions shall be (3) three years)) and since the application of the provisions of the text of the aforementioned amended article was in violation Because they (i.e. the plaintiffs) have a direct, immediate and influential interest in their legal status, as they are included in the exclusionary provision contained in the amended article Masculinity, so they took the initiative to challenge it before this court for the following reasons: 1. The provision of the text states that it is not permissible to be nominated for the position of captain for two consecutive times, and it did not explicitly address the election of members and did not specify the number of terms they would hold. As for reserve members, they are not members in the real and realistic sense and did not occupy Any legal position, as they have no role, no presence, no right to vote, and no right to attend the meetings of the Syndicate Council in order to be deprived of their constitutional and legal rights based on the text of the article in question. 2. The letter of the Bar Association No. (1955) on 17/4/2022 indicated that each of the nominated plaintiffs had only one (reserve) cycle for the 2019 Bar Council elections, and neither of them held the position as an original member because there was no change in the number of members of the Bar Council The two former union members for the year 2019, and they have not received any position in the union or assigned to any post tasks. 3. The interpretation that was settled by the Lawyers' Affairs Committee of

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 117 / Federal / 2022



the esteemed Federal Court of Cassation for Article (14) caused the exclusion of many candidates for membership in the Bar Council, whether they were original or reserved. 4. The text of Article (84) includes an exclusionary provision and violates the principles of democracy and peaceful deliberation. authority, rights and freedoms, and the principles of equality and equal opportunities, and restricting the fundamental rights stipulated in Articles (2/b, 14, 16, 20, and 46) of the Constitution. By restricting it to occupy the original or reserve membership for more than one time in the Bar Council, it deprives the members of the Bar Council (original and reserve) of accumulated experiences that serve the service of lawyers, noting that the date of nomination is 01/30/2022 and the date of the elections is 3/24/ 2022 and the date of announcing the results 29/3/2022 and for all of the above, the plaintiffs requested from the Federal Supreme Court to rule the unconstitutionality of Article (84) of the Bar Association Law amended by Article (First, Paragraph 6) of the dissolved Revolutionary Command Council's decision in the number (268) for the year 2001 dated December 6, 2001, and determining the scope of the Federal Supreme Court's decision retroactively for the current electoral cycle of the Bar Association elections, and charging the defendant with expenses, fees, and attorneys' fees. The case was registered with this court in No. (117/Federal/2022), and the legal fee was collected for it in accordance with Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005 and informs the defendant of its petition and documents in accordance with Article (2/first) of The same internal system mentioned above, and his two attorneys replied with the answer statement dated 15/5/2022, summarizing that Law

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 117 / Federal / 2022



No. (173) of 1965 and its amendments are among the laws in force under Article (130) of the Permanent Constitution of 2005 unless it is repealed or amended, and the text under appeal is considered A legislative option that does not violate the constitutional provisions because the legislator is restricted to membership in the Bar Council for one electoral cycle only and did not differentiate between the original member and the reserve so that other members of the general body have the opportunity to run for membership in the Bar Council and participate in the management of the affairs of the union, and this position is not held by specific persons. Excluding the rest of the lawyers, in line with what is included in the compelling reasons for the law, and that the contested text does not contradict the constitutional provisions, in addition to what the plaintiffs called (the exclusionary ruling) regarding the reserve members. The legislative intervention was required if necessary to impose what was stated in the lawsuit petition, so the defendant's attorneys requested that the plaintiffs' lawsuit be dismissed and they be charged with judicial fees, expenses, and attorney's fees. After completing the procedures stipulated in the court's internal system, a date was set for the pleading, in accordance with the provisions of Article 2/Second of it, and the parties were informed of it. On the appointed day, the court was formed, so the two plaintiffs in person and their attorney, Shawkat Sami Fadel, attended, and on behalf of the defendant and his two attorneys, Legal Counsel Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim and the pleading in attendance and publicly, the plaintiffs and their attorneys repeated what was stated in the lawsuit petition and requested a ruling accordingly. The case is for the reasons stated in the answer list dated 5/15/2022. where

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 117 / Federal / 2022



nothing remains to be said, the court decided the conclusion of the pleading, and issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the subject of this case is the request to rule the unconstitutionality of Article (84) of the Law No. 173 of 1965 amended, which was amended under Article (First / Paragraph 6) of the Revolutionary Command Council Resolution The dissolved issue number (268) for the year 2001 on 12/6/2001, which stipulated (the duration of the electoral cycle for each of the following unions and unions shall be (3) years), and it was mentioned in paragraph (6) of it (the Bar Association) for its violation of the constitutional provisions, as the lawsuit included A request to determine the scope of this court's decision retroactively for the current electoral cycle for the Bar Association elections, bearing in mind that the nomination date is 01/30/2022, the election date is 3/24/2022, and the results are announced on 3/29/2022, and the defendant is charged with expenses, fees, and attorney's fees. Through the public pleading and reviewing the mutual regulations of the two parties, the court noted that the subject of this case had previously been presented to this court under the lawsuit brought by the plaintiff, lawyer Muhammad Waheed Farhan Al-Faisali, against the same defendant in addition to his position, in which he requested a ruling that Article (84) was unconstitutional. of the Law of Advocacy and the Court issued its decision No. (225/Federal/2018) on 28/1/2019, in which it was stated that the provisions of this article do not contradict its existence with the constitutional articles. In all, because the constitutional case is one of the cases in rem that relates to specific general provisions that

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 117 / Federal / 2022



apply to all, and therefore, if the court ends with a judicial ruling that the text whose constitutionality is not in conflict with the provisions of the Constitution, this ruling applies to all individuals and authorities based on the provisions of Article (94). From the Constitution of the Republic of Iraq for the year 2005 on it and for what was presented and by the request and for this case has already been decided according to Judgment Decision No. (225/Federal/2018) on 28 1/2019 The Federal Supreme Court decided to dismiss the claim of the plaintiffs, Saif Muslim Brahi Al-Khalidi and Abeer Adel Saeed Al-Mahdawi, and charged them with the judicial expenses, along with the attorneys' fees and the defendant's attorneys, in addition to his post, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars, which is disbursed according to legal ratios. The agreement was issued a final judgment based on Articles (93/First) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First) and (5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) For the year 2021 and I understand publicly on 21/Dhu al-Qa'dah/1443 AH corresponding to 06/21/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

Athraa