

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.11 /federal/media/2016



Kurdish text

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The Federal Supreme Court has been convened on 23/8/2016, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman and Mohammed Rijab AL-Kubaisi, who authorized in the name of the people to judge and they made the following decision :

**The Plaintiff:** (Mim.Sad.Mim) – barrister and candidate to Iraqi Bâtonnierpost- his agent the barrister (Mim.Mim.Sin)

**The Defendants:**

1- ICR speaker-being in this capacity- his agents the two legal official (Sin.Ta.Yeh) and (Heh.Mim.Sin)

2- (Mim.Waw.Feh)- the Bâtonnier - being in this capacity- his agent the barrister (Ra.Ha.Ain).

**The Claim:**

The plaintiff claimed before the FSC in the case No.(11/federal/2016) that the leadership council of revolution has already issued its decision No.(180) for 1977, it stipulated that (1) the Bâtonnier or the head of the associations and the functional unions may be re-elected for more than one time consecutively .(2) no text that contradicts the provisions of this decision shall be valid. Where this decision violates the Constitution and the text of the article

(6) of it (Transfer of authority shall be made peacefully through democratic means as stipulated in this Constitution.). also, violates the principle of authority transferring, and what the FSC judgment settled on, and its violation for the text of the article (84) from the law of advocacy and for the following reasons: first-the text of the decision was in general and for all associations including teachers association and doctors' association... Etc. the mentioned decision had been challenged by the illegitimacy of the second defendant nomination for a third term before the federal court of appeal on (25/2/2016) and before the judiciary committee that supervises on the elections on (14/2/2016), and it still under the scrutiny of cassation. Second: the text of the decision ( the Bâtonnier may be elected for more than once). Also, The text of the article (84) from the law of advocacy allowed that. Whereas it limited the Bâtonnier's term with two consecutively, therefore there is no conflict between the text of the above article and the provisions of the mentioned decision. Therefore the decision is not considered annulling for the provisions of the article (84) from the law of advocacy, therefore we figured that the provisions of the decision (180) cover the associations that its law didn't stipulate on the limitation of the terms' number which the Bâtonnier can act. On the contrary the article (84) from the advocacy law that limited the terms of the Bâtonnier. So the provisions of the decision don't cover the bar association, because there is no legal or linguistic contradiction about the two texts. From another side, it is known that the decision either being annulling or amending for the law text, (third) the mentioned decision became contrary to the Constitution (the article 6) that stipulated (Transfer of authority shall be made peacefully through democratic means as stipulated in this Constitution.). so the text of the decision (180) became void for its contrary to the Constitution texts). (Fourth) the second defendant holds on by the mentioned decision and announced his nomination for the Bâtonnier post although it violates the text of the article (84) from the advocacy law. So the plaintiff requested from the FSC to decide the unconstitutionality of the decision No.(180) for 1977, that was issued from the leadership council of revolution (dissolved) and what results from it, for the nomination of the second defendant for a third term and to burden him all the expenses and fees of the advocacy. The agent of the defendant ICR

speaker/being in this capacity- answered on the case petition by his answering draft that dated on (22/3/2016), that the decision of the leadership council of revolution (dissolved) represents a legislative will and organization choice, Iraqi legislator wanted to provide the chance for the Bâtonnier or the head in the associations and functional unions to nominate consecutively . this will is considered and obliged, and the reliance of the plaintiff on the article (6) from the Constitution is not productive, chairing of the association shall not be done through violence, and force means to make the conclusion by the mentioned article become true. It's being done through peacefully civilized mean, it is the elections and it is what was stipulated in the aforementioned article(6) from the constitution. The article is evidence against the plaintiff rather than evidence for him.also, resort to the article (84) from the law of advocacy No.(73) for 1965 (amended) is not productive because the decision was replaced by the provision of the article (3) from the decision of the leadership council for the revolution (dissolved) no.(180) for 1977, because the decision included a general absolute provision covers all the associations and the functional unions, and there is no interest from limiting what was released by the law text of provisions. So the article (84) from the law of advocacy is suspended according to the mentioned decision. He requested from the FSC to reject the case of the plaintiff formally and contently and to burden him all the judiciary expenses. The barrister of the second defendant (Ra.Ha.Ain) answered on the case petition by his answering draft that dated on(23/3/2016) that the plaintiff's case has no substantiation from the law and it is lacking for its legal and Constitutional substantiation because the decision of the leadership council No.(180) for 1977 is absolute and valid according to the provision of the article (13) from the Constitution and it covers all the associations and functional unions and it didn't address any specific party because the origin I all laws is the generality, not privacy. There is no Constitutional contrary to the article (6) from the Constitution as the plaintiff had claimed because the Constitution determined the three federal powers according to the article (47) and the article (109) from it. And the claiming of peacefully transferring of the authority, this progress of the plaintiff is not Constitutional and illegal because the bar association task is to defend the rights before the public and private courts

according to the article (22) from the law of the bar association No.(173) for 1965, it is not power within the federal powers. He requested from the FSC to reject the case and to burden the plaintiff all the expenses and fees of the advocacy. On the appointed day for the argument, the court had been convened and the plaintiff attended by himself and his agent the barrister (Mim.Mim.Sin) according to the power of attorney that its photocopy was attached in the case file. And the first defendant agents attended and the barrister (Ra.Ha.Ain) attended as the agent of the second defendant. The argument had been started publicly and presently and the first defendant agents repeated what listed in the answering draft and requested the decision to reject the case and the second defendant agent repeated what listed in the answering draft and requested to reject the case and added that the capacity of the plaintiff is banished because of disciplinary sentence and the plaintiff agent answered that it is temporary penalty and presented answering draft on what was presented by the agents of the parties and both parties repeated their sayings and the previous requests and requested the decision according to it. Based on this whereas nothing left to say the end of the argument had been understood and the decision had been understood publicly.

### **The Decision:**

During the scrutiny and deliberation by the FSC, the court found that the plaintiff case of challenging the decision of the leadership council of revolution (dissolved) No.(180) for 1977 by its unconstitutionality which allowed to re-elect the Bâtonnier or the head in the associations and functional unions for more than once consecutively The FSC found from studying the Constitution texts of the Republic of Iraq for 2005. It didn't include any text that prevents the election for more than once but the text of the article (72/1<sup>st</sup>) which limited the term of the president of the Republic by four years and allows to re-elect him for an only second term. Also the law of the advocacy No.(173) for 1965 has no text that prevent to re-elect the Bâtonnier for more than once, after the aforementioned decision of the leadership council of revolution (dissolved) was disabled which still in progress according to the

provisions of the article (130) from the Constitution, the article (84) from the law of advocacy which prevent to elect the Bâtonnier for more than twice consecutively before it had been disabled. Based on this and whereas the article (6) from the Constitution which the plaintiff relied on. Its content is the peacefully transferring of the power and through democratic means. It means that the transfer of the power shall be made with peacefully means after passing through the elections boxes and winning of whom the voters accept This article didn't prevent to elect the Bâtonnier through the elections boxes more than once. Based on this and for the above and whereas the case is lacking for the constitutional substantiation. The court decided to reject it and to burden the plaintiff all the expenses and fees of the advocacy of the defendants' agents. An amount of hundred thousand dinars divided between them in equal. The decisions had been issued decisive according to the provisions of the article (94) from the Constitution and the article (5/2<sup>nd</sup>) from the FSC law No.(30) for 2005 unanimously and had been understood publicly on 23/8/2016.