

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 121/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13.11.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges, Jaafar Nasir Hussein, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman, Mohammed Rajab Al-Kubaisi, Mohammed Qasim Al-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff / the lawyer (feh. sin. Jim. kha.).

Defendants / 1- President of the House of Representation / being in this capacity his agents is the director in the legal department (sin. ta. yeh.) and assistant legal counsel in the legal department (heh. mim. sin.).
2- President of the Iraqi Bar Association / being in this capacity his agent (heh. ha. ha. kaf.).

Claim:

The plaintiff the lawyer claimed (feh. sin. Jim. kha.) that the judge (ain. nun. ha. ain.) Judge of Personal Status in Sadr City has already instate lawsuit (35/sin/2017) against him before Council of the Bar Association for the reasons he listed in the petition of his complaint , the (professional behavior committee) in the Bar Association recommended (closed the case) instate against him. However, the Bar Council decided at the hearing (12) held on 5/3/2018 :

(1) Reject the recommendation of the Committee on Professional Conduct in the complaint above. (2) As the Bar Association Council

decided at the same time (to impose the penalty of prevention from practicing the profession of law for three months) against him and complained to the other lawyer(ain. jim. ain.) according to the provision of article (109) of the Lawyers' Act No. (173) of 1965 (amended) within the meaning (108) of it and ratified the decision of the Bar Council referred to above of the Cassation Federal Court by its decision No. (68/75/Lawyers Affairs Authority/2018) date 14/5/2018. the Cassation Federal Court based In its decision, the Court relied on the fact that the provisions of the Criminal Procedure Law were not binding on the Bar Council when considering the case where the provisions of article (112) of the Lawyers' Act allowed the Bar Association to not stick to it if it violate clearly or evidently with the provision of the Lawyers' Act. The plaintiff challenge the article (112) of the Lawyers' Act No. (173) of 1965 request to judge of unconstitutional of it because its violate the provision in the Constitution of Republic of Iraq 2005 for this reasons:

1. Refer to article (112) Of the Law of the Bar Association No. (173) of 1965 (amended) which is stat on : ((The Council shall be followed in the proceedings and judgment the provisions stipulated in the Criminal Procedure Law unless they violate clearly or evidently with this law)). Therefore, clear from the text that the general origin is that it must be applied Criminal Procedure Law by the Bar Association and its Council in the case of an exception represented violate between the text of the Criminal Procedure law and the Lawyers' Act, only then drop this obligation on the Council of the union and therefore can apply the provisions of the law of the Bar Association.

2. The adoption of the provisions of article (112) of the Bar Association Law is contrary to the principle of equality before the law approved by the article (14) of Constitution which state on ((Iraqis are equal before the law without distinction because to race, sex, nationality, origin, color, sect , religion, belief or economic or social status)).

The application of the text of article (112) of the law of the union according to personal jurisprudence and the discretion of the union is a flagrant violation of the principle of equality, it is understood that while the Criminal Procedure Law applies to a citizen in order to achieve the desired justice, we find that the law will not be applied to the lawyer who is a citizen at the same time, therefore necessary to equalize with any other citizen in guaranteeing the right to equality, which was approved by the Constitution of the Republic of Iraq for the year 2005 in the above article.

3. The article (112) of the Lawyers' Act is violated with the Constitutional rights with the criminal nature of the Constitution, the most important of which is defense. The article (19/4th) of the Constitution which states that: ((The right to defense is sacred and guaranteed at all stages of investigation and trial)). Therefore, this right is wasted by not obliging the Bar Association to follow the Criminal Procedure Law and provide the defense guarantees prescribed in this law it is understood to waste the human rights of the lawyer when he is subject to the investigation and then to issue the decision either to the Council of the Bar which is not transferred to him the administration of the constitutional law.

4. The article (112) of the Bar Association Law is violated with the right of the lawyer to obtain a fair trial in accordance with the constitutional and legal standards stipulated in the article (19/6th) of the Constitution which states that ((Everyone has the right to be treated fairly in judicial and administrative proceedings)). Thus, the provision of article (112) of the Lawyers' Act means that the lawyer cannot enjoy the right to a fair trial before the council of the union so as to enjoy the council of the union with a wide discretionary authority, disabling the application of the provisions of the Criminal Procedure Law, as it deems fit in each case

5. The article (112) of the Bar Association Law is violated with the state of the article (5) Constitution of the Republic of Iraq for 2005

which state that ((Sovereignty of law)) The meaning of sovereignty is the application of the principles and elements of the rule of law to all citizens among themselves and not subject to the application of the law and interpretation of the qualitative and personal interpretations of the administrators of the Council of the Bar, If the discretionary power of the Syndicate Council in applying the Criminal Procedure Law is retained in each case, it is understood that there is abuse of power, which contradicts the principles of the legal state in Iraq Because if we allow the Council of the Bar to apply the Criminal Procedure Law in a specific case and allow at the same time the Council of the union to dispose of this legal obligation and explicit constitutional led to chaos in the application of the law as well as the absence of legal security as the inherent nature of any law aimed at providing a sense of justice Criminal Procedure applied before the courts or before the authorities, which the law decided to apply to the Criminal Procedure Law when disciplining its members.

6. The article (112) of the Bar Association Law is violate with the provision of article (13/2nd) of Constitution which state that: (It is not permissible to enact a law that contradicts this constitution. It is null and void every text that appears in the constitutions of the regions or any other legal provision that conflicts with it).

7. The article (112) of the Bar Association Law is violate with the standards of fair trial provided for in the Bar Association No. (173) of 1965. As the legal requirement must apply the texts of law are integrated and homogeneous, in reference to article (111) of the law, it is not permissible to bring a disciplinary action against a lawyer except by a decision of the Council Bar or the Head of the Public Prosecution which is to say that the survival of this discretionary authority of the Association Council in the application of the Criminal Procedure Law whether or not it contradicts with the said provision and contrary to article (114) of the Bar Association Law which states that (the Council shall have the jurisdiction of the Court with regard to

the system of the hearing and the crimes before it), therefore, it is understood from these texts that it is not possible for the boycott or the Council of the union to waste some of the provisions of the Criminal Procedure Law and apply some of them, according to what they think as it constitutes a violation of the criminal justice desired by the Iraqi legislator.

8. The article (112), as currently drafted, permits the union to issue instructions for professional conduct in which it is stated that the complaint cannot be filed by the lawyer or the judge's response unless after a decision of the Council of the Bar. This constitutes a dangerous precedent in the Iraqi legal state and constitutes a manipulation of the provisions of the law of law and a more extensive provision of the text than it can afford, Since the inability of the lawyer to file a complaint against the judge only after the Council of the Bar Association issued an explicit decision to do so means disabling the work of the provisions contained in the Criminal Procedure Law By a decision issued by the union it is a serious consequence of the legal logic and everyone who is responsible for the application of the law. Therefore, the survival of this article in its current form means the destruction of the pillars of the legal state that the Iraqis sought to draw in the new Iraq with the blood that was shed to paint the state of law.

9. The establishment of the Council of the Bar and the Federal Court of Cassation affirms to the Council of the Bar that it has the right to waste the application of the provisions of the Criminal Procedure Law Constitutes a flagrant violation of the principle of "separation of powers" , the article (47) of the constitution state that (The federal authorities consist of the legislative, executive and judicial authorities exercising their powers and duties on the basis of the of the principle of separation of powers) . Therefore, the Council of the Bar and then the Federal Court of Cassation in its above-mentioned resolution to the Council of the Bar (the possibility of disabling the provisions of the law and the failure to apply the Criminal Procedure Law).

It is understood that the violation of the principle of separation of powers is based on the fact that no authority may suspend or suspend the provisions of a particular law as long as the Iraqi legislator's will is to enforce the provisions of this law as reflected in many of the provisions of the above-mentioned law. Finally, the plaintiff asked to stop the implementation of the decision of the Council of the Bar against the absence of the first defendant in this case, Mr. Speaker of the House of Representatives / being in this capacity for the end of the electoral session until the new meetings of the House of Representatives and his election to a new President based on the provisions of article (151) of the Civil Procedure Law No. (83) of 1969 within the meaning of article (93) of the constitution and article (152) of the Civil Procedure Law and until the case is settled on the subject of the appeal of the unconstitutionality of article (112) of the of the Lawyers' Act No. (173) of 1965, which was based on the Federal Court of Cassation ratification of the decision of the Bar Council. The defendants' first agents responded to the petition in their draft with the following: 1. The provision of article (112) of the Lawyers' Act - the subject of the case has allowed the council of the union not to adhere to the Criminal Proceedings Law if its provisions contradict explicitly or implicitly with the provisions of this law and the text is not binding on the union council to follow the criminal assets law until it notes the nature of the complaint or the circumstances surrounding it. prosecutor. 2. The plaintiff refers to the violation of the text of the appeal to several constitutional provisions, including article (14) of the Constitution and equality intended in this article is equality in the same case and the diligence of the Council of the Bar and discretion is not absolute, because the decision of the Council can be challenged before the Court of Cassation and ratified by it. In addition to the violation referred to by the plaintiff with the text of the Constitution (19/4th) has no substantial, as the means of defense available to the lawyer, including the validity of the appeal

against the decision issued against him and this applies to what is stated in article (19/6th) of the Constitution too. The article (5) of the Constitution which is referred to by the plaintiff that the sovereignty of the law, and the Lawyers' Act (law) is in force according to the rules and approved by the Constitution and the legislative will, as pointed out by the prosecutor of other constitutional provisions do not in the case of what intersects or contravenes. When the defendant's agents requested to dismiss the claim, the defendant's second defendant's petition was rejected on the petition in his draft date (9/7/2018) attached to the case file with the following: **First.** The Lawyers' Act No. (173) of the year 1965 of the laws in force which regulate the union and professional work of the syndicate and the bar of lawyers. Article 112 of the mentioned law is a regulatory legal text that is still in force and has not been repealed or amended by the House of Representatives and is still in force and does not violate the provisions of constitutional **Second.** Articles (112) of Lawyers' Act challenged which are unconstitutional in contravention of the provisions of article (2/jim), (13/2nd) & (19/3rd) of the Constitution as it is a legislative option for the legislator and within the power of prosecution before the disciplinary council for consulted Because the council of the union is the profession of the profession and its context, and that the decisions issued by the Council of the Bar was not immune to the challenge, where the law of law in article (110) secured a way to challenge the decisions issued under article (112) of it before the Federal Court of Cassation and that the path of the plaintiff. **Third.** That one of the most important reasons that prompted the plaintiff to challenge the unconstitutionality of article (112) of the law is after the issuance of the penalty against him and issued after violating the provisions of article (4th) of the Code of Professional Conduct (The duties of the lawyer towards the judiciary) is not to behave towards the judiciary in a manner consistent with the dignity, status and prestige of the judge, and did not depart from anything that

violates the imposition of punishment. The Council's decision was not a proper application of the law. **Fourth.** If there are ideas and suggestions to the plaintiff to make an amendment to the Lawyers' Act or any of its articles can submit to the House of Representatives or the executive branch to submit proposals to amend it. The plaintiff submitted a draft in response to the second defendant on 23/7/2018 and included a repetition of what was stated in his draft of the case and after the registration of the case according to the provisions of the paragraph (3rd) of article (1) of the bylaw of FSC No. (1) of 2005, After the completion of the proceedings required in accordance with paragraph (2nd), article (2), of the mentioned system, the date of the argument was set on 9/10/2018, in which the court was formed. The plaintiff himself attended and the agents of the first defendant the Speaker of the House of Representatives and the second defendant the Bar Association agent attended. The court scrutinize the proceedings for the case and found that the plaintiff was the lawyer (feh. sin.) and filed the case himself and where it is prohibited to practice law from 29/7/2018 to 28/10/2018 so there is no right to attend and plead during the period prevented from practicing the profession, The plaintiff requested that the prosecution be adjourned, because he had appointed a lawyer for him the lawyer (mim. ha. ha.), and perhaps the appellant did not attend, and he was ordered to postpone the pleading until 13/11/2018, in which the court was formed and the prosecutor himself, the agents of the first defendant and the second defendant's agent attended, and the pleading was immanence and public. The plaintiff and the agents of the parties said they have nothing to add to their previous statements and since the case was completed the reasons for the judgment decided to end the pleadings and the judgment was read publicly in the hearing.

The Decision

When scrutiny and deliberation by FSC found that the plaintiff challenged his case by unconstitutional the article (112) of the Lawyers' Act No. (173) of 1965 which, when exercising its functions in respect of lawsuits instituted against a lawyer, has been given to the Council of the Bar Association the power not to apply the provisions of the Criminal Procedure Law No. (23) of 1971 when the trial of that lawyer was conducted professionally, The plaintiff, in his case, has litigate both the president of the Bar Association/ being in this capacity and the Speaker of the House of Representatives/ being in this capacity the plaintiff shall be liable to the text of the object of the appeal (112) that mentioned above which violate the provision of article (14) of Constitution which requires equality before the law, the FSC find that the review of the petition and its substantiations and defenses of the defendants:

1. The plaintiff has litigate the President of the Bar in his challenge the unconstitutionality of article (112) of the Lawyers' Act the President of the Bar Association in this case shall not litigate in accordance with the provisions of article (4) of the Civil Procedure Law No. (83) of 1969. The case should be rejected by the Bar Association.
2. The article (112) of the Lawyers' Act subject of challenge The legislator has taken into account that it is applied in case of violation of professional conduct by a lawyers when disciplinary proceedings are held before the Bar Council for the privacy of the lawyer and the privacy of the act assigned to him, which requires his trial before the disciplinary reference and not before a criminal court, this article did not apply the provisions of the Criminal Procedure Law against him. This approach of the legislator took into account this privacy and did not exceed the principle of equality provided for in article (14) of the Constitution. The intended equality is in the case of similar legal centers and the status of the lawyer when his trial is disciplined before the council of the union to the same status as a citizen tried before a

criminal court. Therefore, the FSC finds that the legal article subject to appeal is not contrary to the provisions of the Constitution. Accordingly, the FSC decided to reject the plaintiff's claim on the part of the litigation for the defendant the President of the Bar Association / being in this capacity and objectively for the defendant, the Speaker of the House of Representatives/ being in this capacity. And the costs of legal fees and the amount of one hundred thousand dinars distributed according to the law between the agents of the defendants. The judgment was issued with decisively on the basis of article (94) of the Constitution and the article (5/2nd) of the law of FSC No. (30) of 2005 was made publicly in a hearing on 13/11/2018.