

Republic of Iraq
Federal Supreme Court
Ref. 121 /federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 18/12/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The plaintiff:

The attorney Fayiq Muhsen Hommud/ Head of the Anbar advocate chamber commission -his agent the attorney Rahim Hassan Kulaib.

The defendant:

The Bâtonnier/ being in this post - his agent the attorney Hady Husain Al-Kadhmy.

The claim:

The agent of the plaintiff claimed in the case petition that the bar association issued the administrative order No.(4607) on 14/4/2019 under the decision of the bar association council issued in the session No.(4) on 10/4/2019 (earlier) which rule to dissolve the Anbar advocate chamber commission (which was elected throw judicial decision, direct democratic election and was ratified by the



federal cassation court by the No.(6874/ civil committee on 2018), and for illegal reasons it has dissolved the elected committee and breached the court decision No.(45/federal/ media/ 2017), and the decision of the estimated court has obliged the bar association to not violate the constitution because article (2) of it paragraph (1st /b) stipulated that no law may be enacted that contradicts the principles of democracy, as the advocates chamber can't be represented unless throw the election, and appointing the advocates chamber is an establishment for the dictatorial regime and to facilitate the upcoming election of the Bâtonnier, for the aforementioned he requested to rule the unconstitutionality of the article (4) text or article (87) of the advocate law No.(73) for 1965 (the amended) as implementing to the provision of article (13/2nd) of the constitution and the meaning of article (3/1st/beh), for the consideration that who manage the attorneys affairs and protect the association funds and according to the provision of article (2/1st/4) of the constitution which guaranteed the freedom of opinion and speech by all means, as article (38/1st) of the constitution stated, that it is the right of electing who represent the advocates to manage their affair, accordingly and for what stipulated in the F.S.C. decision No.(45/ federal/ media/ 2017) he requested to:

- (1. Repeal the appointing the interim committee in the administrative order (4607) on 14/4/2019 related to the



decision of the association council on the session (4) on 10/4/2019 (earlier).

- (2. Restore the elected committee by the decision of the federal cassation court (6874/ civil committee /2018 on 25/11/2018 and to fulfill the electoral cycle (3 years) and after that a new committee shall be elected according to the democratic principle and the constitution.)

After informing the defendant with the case petition he responded with the answering draft dated on 8/12/2019 stating the following:

1. The bar association is a regulatory body that is aware of the advocates affairs and their demands, with all that, your estimated court has decided the unconstitutionality of paragraph (4) of article (87) of the advocate law by it decision No.(45/federal/ 2017) on 20/6/2017 so it can not be decided again as it already has been adjudicated in it subject and content according to articles (105 and 106) of the law of evidence.
2. The decision of the bar association was not matron from being challenged against before the federal cassation court according to the provision of article (166) of the advocate law, also the provision of articles (167, 168) of the advocate law has determine the period of time to challenge and its party, so the plaintiff should have follow the law path set by the provision of the mentioned articles.



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3. Your estimated court has stated in the decision No.(45/federal/2017) on 20/6/2017 the legal path to implement the provision of paragraph (4) of article (87) advocate so the plaintiff should have follow the law path in implementing the issued provisions.
 4. The bar association is a regulatory occupational body that is aware of the advocates affair, and not legislative party, and the provision of article (87) of the advocate law is in accordance with the constitution. For the aforementioned the defendant requested to reject the lawsuit.

After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 18/12/2019 was scheduled for the argument, the court convened, the plaintiff the attorney Faiyiq Muhsen Hommud and the attorney Hady AlKadhmy attended as agent for the defendant the Bâtonnier being in this post and continue with the argument in presence and public, the plaintiff repeated the case petition and requested to judge according to it, the agent of the defendant repeated the answering draft and added that the court is not competent to consider the lawsuit, the plaintiff commented that he based the lawsuit to the decision issued by the F.S.C. No.(45/federal/2017). During scrutiny the court found that the case is completed for reasons of judgment and decided to close the argument, and issued the following decision publicly in the session.

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff challenged in his case petition the unconstitutionality of article (87/4) of the advocate law No.(73) for 1965 for the reasons listed in the case petition, he litigate the Bâtonnier/ being in this post, the F.S.C. found that litigating the plaintiff on the unconstitutionality of article in the advocate law is not directed legally according to the provision of article (4) of the civil procedure law No.(83) for 1969 as the defendant the Bâtonnier being in this post is not the one who enacted the advocate law so he would be convicted when admission the plaintiff claim in what he requested, therefore the lawsuit is binding to be rejected from the aspect of litigation, the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the defendants' agent amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 18/12/2019.