

(Translated from Arabic)

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 15/federal/media/2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 23/8/2016 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, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the attorney (Nun. Jim. Ain. jim. Ain.).

The Defendant: (mim. Waw. Feh.) - the Bâtonnier/ being in this post /his agent the attorney (Ra. Ha. Ain.)

The Claim

The Plaintiff claimed before the F.S.C. in the case No.(15/federal/2016) that the defendant has nominated himself for the election of advocates that took place on (3/3/2016) which he won as the Bâtonnier of advocates for a third consecutive term, contrary to the provisions of the article (84) of the law of advocacy No.(173) for 1965, which did not authorized electing the same Bâtonnier for more than two consecutive terms, the defendant relied on his candidacy for the third time on the decision of the dissolved

Revolutionary Command Council No.(180) issued in (16/2/1977), which authorized re-election of the Bâtonnier for more than one consecutive term, where this decision is contrary to the constitution for the following reasons:

1. Paragraph (1st/beh) of article (2) of the republic of Iraq constitution for 2005 did not authorized enacting law that conflict with the principal of democracy, since the mentioned decision seeks to strengthen individualism and dictatorship, therefore it is contrary to the principles of democracy, which the constitutional paragraph is aims to, so the decision is violating the Constitution.
2. Paragraph (1st/jim) of article (2) of the constitution did not authorized enacting law that conflict with the basic rights and freedoms in the constitution, where this decision conflict with the basic rights and freedoms, as it does not give equal opportunities in the right to nomination, which is one of the fundamental rights and freedoms of individuals, therefore it contrary to the constitutional text contained in this constitutional paragraph.
3. This decision conflict with the provisions of paragraph (2nd) of article (13) of constitution which did not authorized enacting any legal text that conflict with it, while the content of the decision that is under appeal contradicts the basic rights and freedoms enshrined by the Constitution.
4. This decision violated the text of article (20) of constitution where this constitutional article granted the right to participate in public affairs, and to enjoy the political rights, including the right to vote, to be elected and to be nominated, while the contested decision restricted the right of candidacy in its narrowest limits, when granting infinite opportunities to the winner while depriving the other, it also limited the voter with limited choices in which the

probability of winning is to the candidate who was promoted during the previous terms he won.

5. This decision violate the provisions of article (46) of constitution, where this article prevented restricting or limiting the rights and freedoms listed in the constitution, except by a law or according to law, however, this limitation and restriction does not affect the essence of the right or freedom while this decision restricts and limited rights and freedoms, although it is a decision and not a law.
6. The aforementioned constitutional articles did not authorized enacting any laws that violate, restrict or limit basic rights and freedoms, So, if it is a decision such as the contested decision, which considered lower than a law. However, this decision has restrict and limit the text of the article (84) of the law of advocacy.

Accordingly the plaintiff requested the F.S.C. to judge the the decision of the dissolved Revolutionary Command Council No.(180) dated in (16/2/1977) to be unconstitutional because it violate the text of paragraph (1st/beh) and paragraph (1st/jim) of article (2) of the republic of Iraq constitution for 2005, and also violate the provisions of articles (13, 20, and 46) of the constitution. the agent of the defendant replied to the case petition by his editorial draft dated on 4/4/2016 stating that the claim must be rejected from the point of litigation, as his client can not consider as litigant in this case, and it was supposed to acting it against the speaker of the parliament/ being in this post, because he is the head of the legislative authority the competent authority to legislate federal laws based on the provisions of the article (61) of the Constitution, since the litigation of public order is governed by the court on its own, therefore he requested to reject the case, in addition to that the plaintiff does not have interest in the case, also the conditions of article (6) of the F.S.C. Bylaw No.(1) for 2005 are not available in the case, and to burden the plaintiff the expenses and the advocacy fees, the court convened on the appointed date, the plaintiff himself

has attended, the attorney (Ra. Ha. Ain.) has attended as agent for the defendant by letter issued from the Bar association No.4392 dated on 30/3/2016, and started the in present public argument, the plaintiff repeated what listed in the case petition and requested to judge according to it. the agent of the defendant repeated what listed in his answering draft, the legal base is not available, his litigation is not available, the lake of interest in the case, and the contested decision is still valid, he requested to reject the case and to burden the plaintiffs the expenses and the advocacy fees. Both parties repeated their statements. where nothing left to be said the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff raise his case against the Bâtonnier/ being in this appealing that the decision of the dissolved Revolutionary Command Council No.(180) dated in (16/2/1977) to be unconstitutional because it violate the text of paragraph (1st/beh) and paragraph (1st/jim) of article (2) of the republic of Iraq constitution for 2005, and also violate the provisions of articles (13, 20, and 46) of the constitution. whereas the Bâtonnier/ being in this post is not fit to be litigant in this case, because article (4) of the Civil Procedure law No.(83) for 1969 has defined the litigant by the following (it is stipulated that the defendant must be a litigant. His admission lead to a judgment by assessing issuing an admission from him, and he also must be convicted or obliged by something if the case was approved), whereas the contested decision was issued from the dissolved Revolutionary Command Council, therefore the real litigant in this case is the council of representatives (the legislation party), thus it's not right to litigant the defendant in this case, and if the litigation is not directed, the court shall decide to

reject the case by itself without going throw it bases according to article (80) of the amended Civil Procedure law. Therefore the F.S.C. decided to reject the case from the point that the litigation is not directed, and to burden the plaintiff the expenses and the advocacy fees for the agent of the defendant/ being in this post the attorney (Ra. Ha. Ain) amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and publicly on 23/8/2016.