In the Name of God most gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 225/Federal/ Media /2018

Kurdish text

The Federal Supreme Court (F S C) has been convened on 28.1.2019 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-Nagshabandi, Michael Shamshon Qas Georges, Aboud Salih Al-Temimi and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the barrister (mim.waw.fa.fa) – his agents the barristers (alif.jim.ain.heh) and (ta.teh.beh).

The Defendant: the Speaker of the ICR/ being in this capacity - his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

The Claim

The agents of the plaintiff claimed that the defendant previously issued the law No. (48) For 2017, and according to article (1) of it the decision of the revolutionary leadership Council (dissolved) No. (180) for 1977 had been annulled. Article (2) of it stipulated that the aforementioned law shall be implemented from the date of its publishing in the gazette, its provisions becomes in effect from (9.4.2003). The rationales of enacting the aforementioned law is to give opportunity for all members and cadres to determines and eliminate the period of assuming posts by the Heads of unions and societies earlier, before it becomes in effect. Whereas the Iraqi Constitution for 2005 which regarded the highest law and should be followed had indicated in article (20) to the right of vote and electing. Article (6) of the Constitution also obliged that handing over the power shall be peaceful and according to the Constitution, and article (20) of the Constitution equalized between citizens and not to be

discriminated because of sex, race or religion…etc.). The law No. (48) For 2017 had annulled the effect of the revolutionary leadership Council (dissolved) decision No. (180) for 1977, this mean it had reactivate the article (84) of advocacy law No. (173) for 1965 which determined the electing of the Bâtonnier for two sequent sessions only. According to provisions of the law No. (48) For 2017, the superintendent committee of the bar association elections which took place on (3.3.2016) decided to void his client's electing as a Bâtonnier, aforementioned committee had exceed the timeline of its work which must be ended when the results are announced. Accordingly, the agent of the plaintiff requested to (judge by unconstitutionality of article (84) of advocacy law No. (173) for 1965 (amended). The agents of the defendant answered the petition of the case that the text (challenge subject) doesn't violates the provisions of articles (6 & 14 & 20) of the Constitution as the plaintiff claimed, and the right of nomination and its stipulations are regulated by concerned laws. Equality shall be between one case, and challenged text considered a legislative choice and corresponds to the Constitution. Accordingly, the agents of the defendant requested to reject the case. After registering this case according to provisions of clause (3rd) of article (1) of the FSC's bylaw, and after completing required procedures according to provisions of clause (2) of article (2) of the aforementioned bylaw, the day 28.1.2019 had been set as a date for argument. On this day the Court has been convened, the barristers (alif.jim.ain.heh) and (ta.teh.beh) has attended and the agents of the defendant the Speaker of the ICR has attended too. The public in presence argument proceeded, and the agents of the plaintiff repeated what listed in the petition of the case and they requested to judge according to it. The agents of the defendant answered that they repeat what listed in the answering draft, and they requested to reject the case for the reasons listed in the aforementioned draft. The agents of the plaintiff commented that they repeat what listed in the case's petition and its substantiations. The agents of the defendant answered that they have nothing to add on their previous sayings. The Court scrutinized the case, it found that the case had completed the reasons to take a decision about it. The end of the argument has been made clear, and the decision was recited in the session publicly.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff and according to the petition of his case had requested to judge by unconstitutionality of article (84) of advocacy law No. (173) for 1965 which doesn't allows to elect the Bâtonnier more than two times consecutively. The plaintiff relies in his challenge on articles (6) and (14) and (20) of the Constitution, whereas he finds that the text (challenge subject) is violating these constitutional articles. The Court had scrutinized these texts, and it found that these texts had been listed in general including article (20) of the Constitution which were includes the substantiations listed by the plaintiff in his challenge. These text are talking about the right of the citizen in participating the public affairs and the political rights. By returns to article (84) of advocacy law, we finds that this law is (private law) and it regulates the affairs of a specific segment of citizens, which is it the barristers segment, starting from their belonging to the bar association until they retires. The privacy of this law is depend on the segment it regulates, and it had been enacted in a normal circumstances, its rules were settled more than fifty years and a half. These provisions considered private, and its existence doesn't contradicts with the Constitution articles which listed by the plaintiff. Accordingly, whereas the case is lacking to its constitutional substantiation. The Court decided to reject the case, and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to provisions of article (5) of the FSC's law No. (30) For 2005, and article (94) of the Constitution. The decision has been made clear on 28.1.2019.