

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 24/federal/media/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 10/4/2019 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 :

(Mim. Waw. Feh. Feh) – his agent the attorney (Alif. Jim. Ain. Heh.).

The Defendants :

1. The head of the Supreme Judicial Council/ being in this capacity – his agent the legal attorney (Ain. Feh. Ha.).
2. Chairman of the committee supervising the election of lawyers for 2019.

The Claim:

The Plaintiff claims that the first defendant has formed the general Judicial Committee which supervise the elections of the Bar association council under the judicial order (226/office/2019) On 19/2/2019, according to the text of article (95) of the advocacy law, the committee has violated the text of the code by exceeding its stipulated jurisdiction in the provision of article (100) paragraph (1 and 2), and that through its letter submitted to the Bar association which judge to annul the decision of the Bar association that was taken on 12/2/2019 regarding the nomination of the plaintiff for the post of (the Bâtonnier of the Iraqi lawyers), and that the formation of the committee by the defendant to supervise the elections of the Bar association consider as violation and serious legal precedent in the history of the Bar elections, where the committee included (6) names of the judges from the Federal Cassation Court, it is known that the appeal against the decisions of the Judicial Committee that supervise the elections will be before the Federal Court of Cassation, which means that the defendant made the committee the litigant and the judge at the same time and this is a violation to the Constitution and the law, and he cited by the articles (6, 14, 20) of the Constitution requesting to judge that the decision of formation the committee No(226/office/2019) on 19/2/2019 to be unconstitutional, and all the decisions and the implications of the formation of this committee, and to annul its decision about the removal of the plaintiff from the post of the Bâtonnier. After the registration of this case for this court according to paragraph (3rd) of article (1) of the F.S.C. bylaw No (1) for 2005. The answer of the first defendant was received on 11/3/2019 requesting to reject the case for the reasons listed in it , after the required procedures has completed according to paragraph (2nd) of article (2) of the

aforementioned bylaw, the date 10/4/2019 has set to proceed with the case, the court was convened in it, the agent of the plaintiff and the agent of the first defendant has attended, and no one attend to represent the second defendant despite the notification, and proceed with the case in presence and publicly, the agent of the plaintiff repeated the case petition and request to judge for what listed in it, the agent of the first defendant repeated what listed in the answering draft and requested to reject the case. And as the Court has completed its investigations, the argument is closed and the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the (F.S.C.), the court found that the plaintiff challenged by unconstitutionality of the decision of formation the general Judicial Committee which supervise the elections of the Bar association council under the judicial order No (226/office/2019) On 19/2/2019 that was issued by the first defendant/ being in this capacity, requesting to judge that its unconstitutional and all the decisions and the implications from the formation of this committee, and to annul its decision about the removal of the plaintiff from the post of the Bâtonnier of the Iraqi lawyers. The F.S.C. finds that the decision of forming the Judicial Committee which supervising the elections of the Bar Council is an administrative decision taken by the head of the Supreme Judicial Council/ being in this capacity, according to the jurisdiction of the Supreme Judicial Council to administrate the affairs of the Judicial bodies that stipulated in the article (90) of the Constitution, as for the removal the plaintiff from nomination for the post of (the Bâtonnier of the Iraqi lawyers) the code has set the path to appeal it

before the appealing party. For the aforementioned, and whereas the jurisdiction of the F.S.C. are determined by article (4) of its code, and article (93) of the Republic of Iraq Constitution for 2005, which don't include the consideration of what the plaintiff requested in the case petition, therefore the case lacks its legal substantiation which requires to be rejected. According to that the F.S.C. decided to reject the plaintiff's case against the first defendant/ being in this post for incompetence, and to reject the case against the second defendant for not having the legal personality of litigation. And to burden the plaintiff the expenses and advocacy fees for the agent of the first defendant amount of (one hundred thousand Iraqi dinars). The decision has been issued decisively and unanimously according to article (94) of the Republic of Iraq Constitution for 2005, and issued publicly On 10/4/2019.