

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 41 unified with 58 & 64/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 24. 3 .2022 headed by the Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiffs in the case (41/federal/2022): Members of the Council of Representatives (Vian Sabri Abdel-Khaleq, Rebwar Hadi Abdel-Rahman, and Sherwan Jamal Khader) - and their attorney, Shaukat Sami Fadel.

The Plaintiff in the lawsuit (58/federal/2022): Representative Alia Nassif Jassem and her attorney, Muhammad Majid Rasan.

The Plaintiff in the lawsuit (64/federal/2022): Dr. Shehab Ahmed Abdullah Al-Nuaimi - his attorneys are lawyers Hatem Karim Kazem and Amin Jalal Nazim.

The Defendants: 1- Speaker of the Iraqi Council of Representatives /being in his capacity his agents are the Director-General of the Legal Department in the Council of Representatives, Dr. Sabah Juma'a Al-Bawi, Legal Counsel Haitham Majed Salem, and legal employee Saman Mohsen Ibrahim.

2. The President of the Republic of Iraq /being in his capacity - his deputy, the head of legal experts, Ghazi Al-Janabi.

The Claim:

The plaintiffs claimed in the case No. (41/federal/2022), through their attorney, that the first defendant announced approval of the nomination of the second defendant, the candidate (Barham Ahmed Al-Haj Saleh) on the list of names of candidates accepted twice, the first on 31/1/2022, and the second dated 22/2/2022, and since the second defendant/being in his capacity, lacked the condition (good conduct and known for his integrity, integrity, justice and loyalty to the homeland) contained in Article (68/3rd) of the Constitution and Article (1/3rd) of the Law of Provisions Candidacy for the position of President of the Republic No. (8) of 2012 after issuing Republican Decree No. (2) on 10/2022, which stipulates in paragraph (1st) of it: (The convict, Jawad Louay Jawad, is exempted from the remainder of his sentence in the ruling issued by the Karkh Criminal Court in Case No. 283/jim/2018) as the pardoned person is sentenced to life imprisonment, and that the defendant's conduct of this act violates his good conduct, behavior, integrity, integrity and justice And his loyalty to the homeland because his approval of the issuance of the republican decree contradicts Article (72/2nd/alif) of the constitution, which stipulates that (the term of the President of the Republic ends with the end of the parliament's session), the session of the Council of Representatives ended on 7/10/2021, and it was necessary for it to be satisfied with exercising its urgently needed tasks, such as calling the Council of Representatives to convene in accordance with the provisions of Article (54) of the Constitution, and it was necessary for the President of the Republic and his employees to verify that the priorities of The special amnesty is legitimate in accordance with the provisions of Article (26 / 5th) of the internal system of the Presidency of the Republic No. 2 of 2019, but he has directly agreed to the inclusion of the Prime Minister for convicts with a special amnesty even though the Prime Minister heads a caretaker government, All that is available to

him under it is to take decisions and measures that cannot be postponed, which would continue the work of state institutions and public utilities in accordance with the provisions of Article (42/2nd) of the Cabinet's bylaw No. (2) of 2019, and this amnesty is considered perjury of the constitutional oath stipulated in Article 50 of the Constitution, which the President performed before the representatives of the people when he swore to God the Most High, the Great, to (perform his legal duties and responsibilities with dedication and sincerity, look after the interests of the people and abide by the implementation of legislation honestly and impartially). As this amnesty contradicts the concepts of dedication to perform tasks and responsibilities faithfully and also contradicts with the fact that the President of the Republic represents a symbol of the unity of the country and represents the sovereignty of the country and ensures compliance with the Constitution as stipulated in Article (67) of it, and this amnesty contradicts the principle of equality among Iraqis that it stipulates. Article (14) of the Constitution, he pardons a particular drug dealer while he does not ask for a pardon for his peers who committed the same crime, which is considered one of the dangerous crimes and its dangerous impact on society, and what is justified in not pardoning the thousands of citizens who are imprisoned, This amnesty also contradicts Iraq's international obligations, as it ratified many relevant international treaties in this regard, and it also contradicts the state's endeavor to confront its illegal spread in Iraq and is considered a betrayal of the blood of the martyrs of the security forces and their families who were killed by drug dealers, and it also contradicts the directives of The Iraqi legislator who did not include the perpetrator of this crime with a general amnesty, as he exempted it under Article (2/2nd/kaf) of the Amnesty Law No. (19) of 2008 and Article (8th) of the General Amnesty Law No. (27) of 2016; the President of the Republic had to follow the directions of the legislator in order to achieve integration in the work of state institutions, especially since his remedy to withdraw the decree and form the investigative committee does not negate the act of negligence

or negligence that involves the penal element that necessitates legal accountability with evidence of moving more than one criminal complaint against him to the competent investigation courts. Admitting him to commit an act in breach of his constitutional duties, Therefore, based on the provisions of Article (93/3rd) of the Constitution, the plaintiff requested the FSC to rule that the two decisions of the Council of Representatives to accept the nomination of the candidate Barham Ahmed Al-Haj Saleh for the post of President of the Republic, taken on 31/1/2022 and 22/2/2022, are invalid and not to accept His candidacy in the future for violating the provisions of Article (68) of the Constitution and other relevant constitutional articles, and violating the provisions of Article (1/3rd) of the Law on the Provisions of Candidacy for the Post of President of the Republic, especially since the election of the President of the Republic has not yet taken place, and the defendants are charged with fees, expenses and attorney fees. The case was registered with this court in No. (41/federal/2022), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the FSC's bylaw No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/1st) from the same bylaws above, the attorney for the first defendant replied in the answer list dated 9/3/2022, in summary, that the Council of Representatives received the requests of candidates for the post of President of the Republic, including the candidate who is the subject of the case, and took all measures to ensure that the conditions that must be met by the candidates are met. With a final judicial decision or not, the answers are in the negative, and that the republican decree is an administrative decision, and the decision to withdraw it makes it null and void and with retroactive effect, canceling all its effects and returning the situation to what it was before its issuance, And Article (72/2nd/beh) of the constitution stipulates (The President of the Republic shall continue to exercise his duties until after the end of the elections and the meeting of the Council of Representatives), which is what the esteemed court's

decision stated in No. (24/federal/2022) on (13/2/2022). Also, accusing the President of the Republic of perjury may not be released against his accuser without the issuance of a final judicial order of conviction, as the accused is innocent until proven guilty. Therefore, the attorney for the first defendant requested the Speaker of the Council of Representatives /being in his capacity, to dismiss the plaintiffs' suit and charge them with judicial fees, expenses, and attorney fees. The second defendant's attorney responded with the answer statement dated 10/3/2022, which included the same answer as the first defendant's attorneys regarding the continuation of the President of the Republic to exercise his duties in accordance with Article (72/2nd/beh) of the aforementioned constitution, As for his other arguments, it was summarized that Article (73/1st) of the Constitution granted the President of the Republic the authority to issue a special amnesty decree on the recommendation of the Prime Minister. The crime of drug trafficking was not an exempted crime, as was indicated by Article (154) of the Penal Code the issuance of the decree of special pardon is within his powers and does not constitute perjury, and the President of the Republic, in response to the social rejection, took the initiative to withdraw the decree, in addition to the fact that the legislator distinguished between a special and general pardon, the general amnesty is issued by virtue of a law from the legislative authority in accordance with Article (153) of the Penal Code, and many special amnesty decrees were issued during the face of the Corona pandemic, as the number of those covered by it exceeded more than (1500) one thousand five hundred convicts according to specific controls the President of the Republic is keen to give special importance to the crime of drug trafficking and dangerous crimes, taking into account their seriousness and social and health effects, and no amnesty has been issued for them, and there are many rejection decisions in this regard. However, the last decree came on the recommendation of the Prime Minister. Nevertheless, the President of the Republic took the initiative to

withdraw it, cancel its effects, and address the concerned authorities to take the necessary measures regarding the arrest of the convicts against whom it was issued. Collectively in accordance with Article (154) of the Penal Code, what indicates the good commitment of the President of the Republic to the security and safety of society is the formation of a committee to investigate how the decree was issued. Accordingly, all the allegations made by the plaintiffs are not based on facts, law, or material evidence, and are merely allegations based on conjecture and suspicion, so the second defendant's attorney /being in his capacity requested, the President of the Republic rejects the plaintiffs' suit and charges them with fees, expenses, and attorney's fees. After completing the procedures required by the aforementioned bylaw, the court appointed date for the pleading, based on Article (2/2nd) of it, and the parties were informed of it. The first defendant did not attend the Speaker of the Council of Representatives /being in his capacity and did not send a legitimate excuse or his legal representative despite being informed of the fundamentals and he started the public fundamentalist pleading. The second defendant's attorney responded, requesting that the case be dismissed for the reasons stated in his answer draft. The court noted that there is a lawsuit in No. (58/federal/2022) filed before it by the plaintiff, Representative Alia Nassif Jassem and the defendants, the Speaker of Parliament and the President of the Republic /being in their capacity and the subject matter of the nomination of the candidate, Reber Ahmed Al-Barzani for the position of President of the Republic, where she requested the ruling of the unconstitutionality and invalidity of his candidacy, as he belongs to the Kurdistan Democratic Party, which refused to implement the decisions of this court, including the decision to cancel the referendum on the secession of the Kurdistan region, the court also noted that there is another lawsuit, No. (64/federal/2022), filed before it by the plaintiff, Dr. Shehab Ahmed Abdullah Al-Nuaimi and the defendant, Speaker of the Council of Representatives /being in his capacity and the subject matter of which are to challenge Parliament

Resolution No. (7) of 2022 regarding the acceptance of candidates for the position of the Presidency of the Republic: (Abdul Latif Muhammad Jamal and Reber Ahmed Khaled - candidates of the Kurdistan Democratic Party) and (Khaled Seddik Aziz and Barham Ahmed Salih - candidates of the Patriotic Union of Kurdistan) and for the unity of the subject of the two lawsuits numbered (58/federal/2022) and (64/federal/2022) With the subject matter of Case No. (41/federal/2022), the court decided to unify and consider it together in accordance with the provisions of Article (76/2) of the Civil Procedures Law No. (83) for the year 1989, as amended, and to consider Case No. (41/federal/2022) as the original that had been previously instituted. In the case (64/federal/2022), the plaintiff in person and his attorney, Hatem Karim Kazem, attended, and the first defendant did not attend the Speaker of the Council of Representatives /being in his capacity, and he did not send a legitimate excuse or his legal representative despite being informed of the fundamentals, and the plaintiff did not appear in the case No. (58/federal/2022), the court noted that a request was submitted to postpone the case to another date, and because the case is related to the constitutional timing of the political process, it decided to reject the request, the immanence and public pleading commenced, and the plaintiff, Shehab Ahmed, and his attorney repeated what was stated in the lawsuit petition and requested the ruling in accordance with what was stated in it. The defendant's attorney responded to the President of the Republic /being in his capacity, requesting that the case be rejected for the reasons mentioned in his answer draft, and the parties' attorneys repeated their previous statements and requests, and since the court completed its audits and the end of pleading has been made clear the following decision:

The Decision:

After scrutiny and deliberation by the FSC it was found that the lawsuit (41/federal/2022) filed by the plaintiffs, Vian Sabri Abdel-Khaleq,

Rebwar Hadi Abdel-Rahman, and Sherwan Jamal Khader included a request to invite the defendants, the Speaker of the Council of Representatives / being in his capacity and the President of the Republic /being in his capacity to plead and judge the invalidity of the decisions of the Council of Representatives to accept Barham's candidacy Ahmed Al-Hajj Saleh for the post of President of the Republic adopted on 31/1/2022 and 22/2/2022 and its cancellation and non-acceptance of his candidacy in the future for violating the provisions of Article (68) of the Constitution and related constitutional articles, as well as violating the provisions of Article (1/3rd) of the Law of Provisions for Candidacy for the Position President of the Republic No. (8) of 2012, as for the lawsuit (58/federal/2022), filed by the plaintiff, Alia Nassif Jassem against the two defendants, the President of the Republic of Iraq /being in his capacity and the Speaker of the Iraqi Council of Representatives /being in his capacity, requesting a ruling unconstitutional in the nomination of Reber Ahmed Barzani for the position of President of the Republic, the lawsuit (64/federal/2022) filed by the plaintiff, Shehab Ahmed Abdullah Ali, in which the defendant is the Speaker of the Council of Representatives /being in his capacity, requesting the ruling of the unconstitutionality of the Council of Representatives Resolution No. (7) of 2022 taken in session No. (3) on 5/ 3/2022 canceling the acceptance of the nomination of Khaled Siddiq Aziz, Abdul Latif Muhammad Jamal Rashid, Barham Ahmed Salih and Reaper Ahmed Khalid for the post of President of the Republic of Iraq, and issuing a pro-state order to stop the work procedures by the aforementioned Parliament's decision until the case is resolved; and what was stated in the requests of the plaintiffs' attorneys during the pleading procedure and the court's review of the response regulations submitted by the defendants' attorneys and their requests during the pleading procedure, the court reached the following conclusions:

First: This court had previously issued its decision No. (19/federal/2022 on 3/14/2022), which includes rejecting the claim of the plaintiff, Hussein Ahmed Hashem, regarding accepting the candidacy of Barham Ahmed Al-Hajj Saleh for the post of President of the Republic of Iraq, and since the decisions of the FSC are final and binding on all authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5/2nd) of the FSC Law No. (30) for the year 2005 amended by Law No. (25) of 2021, therefore, the issue of accepting the nomination of Barham Ahmed Al-Hajj Salih for the position of President has been previously decided. The Republic is obligated to reject the case. Second: Regarding the plaintiffs' lawsuit against the President of the Republic /being in his capacity, this court finds that the contested decision containing the acceptance of the nomination of applicants for the position of President of the Republic was issued by the Council of Representatives and was not issued by the President of the Republic /being in his capacity Article (3) of the Law No. (8) of 2012 on the Provisions of Candidacy for the Post of President of the Republic stipulates that "those who wish to be nominated and who meet the conditions stipulated in Article (1) of this law shall submit their written requests accompanied by official documents proving the availability of these The conditions for them with their CVs to the Presidency of the Council of Representatives within a maximum date of (3) three days from the start of the announcement of the submission. The Presidency of the Council of Representatives announces the names of the candidates who meet the legal requirements in accordance with the provisions of Article (4) of the aforementioned law and since the defendant requires that his admission results in a judgment estimating the issuance of an acknowledgment from him, and that he be judged or obligated to something based on the assessment of the proof of the case based on the provisions of Article (4) of the amended Civil Procedures Law No. (83) of 1969, so the litigation is against the President of the Republic /being in his capacity it is not directed, and if the litigation is not directed, the court

shall rule, even on its own accord, to dismiss the case without entering into its basis in accordance with the provisions of Article (80/1) of the aforementioned law, which necessitates the dismissal of the case against him from this aspect. Third: Article (68) of the Constitution of the Republic of Iraq for the year 2005 included the constitutional conditions that a candidate for the presidency of the republic must meet. He is known for his integrity, uprightness, justice, and loyalty to the homeland, and has not been convicted of a crime against honor, and these conditions represent conditions of acceptance and conditions inherent in the continuation of the President of the Republic assuming his position, given that the President of the Republic represents the sovereignty of the country and a symbol of the nation's unity and ensures adherence to the constitution and the preservation of Iraq's independence, sovereignty and territorial integrity based on Provisions of Article (67) of the Constitution and since the plaintiffs did not base their claim regarding the acceptance of the candidacy of Khaled Seddik Aziz, Abdul Latif Muhammad Jamal Rashid and Reber Ahmed Khaled on credible evidence that denies the existence of the conditions stipulated in Article (68) of the Constitution at the present time, the plaintiffs' lawsuit regarding this is valid. In response to it and all of the above, the FSC decided the following:

- 1 . The ruling dismissed the lawsuit of plaintiffs Vian Sabri Abdul Khaleq, Rebwar Hadi Abdul Rahman, Sherwan Jamal Khader, and Alia Nassif Jassim against the defendant, the President of the Republic, in addition to his job because the litigation was not directed.
2. Judgment dismissing the claim of plaintiffs Vian Sabri Abdel Khaleq, Rebwar Hadi Abdel Rahman, Sherwan Jamal Khader, and Shehab Ahmed Abdullah towards the defendant, the Speaker of the Council of Representatives /being in his capacity regarding accepting the nomination of Barham Ahmed Al-Hajj Saleh for the position of President of the Republic, for the ruling on the same issue was preceded by this court.

3. The ruling dismissing the claim of the plaintiff, Shehab Ahmed Abdullah Ali, against the defendant, the Speaker of the Council of Representatives /being in his capacity regarding accepting the nomination of Khaled Siddiq Aziz, Abdul Latif Muhammad Jamal, and Reaper Ahmed Khaled. Plaintiff Alia Nassif Jassem received the lawsuit regarding accepting the candidacy of Reber Ahmed al-Barzani.

4. Charge the plaintiffs with fees, expenses, and attorney fees for the defendants' attorneys, an amount of one hundred thousand dinars, distributed according to the law.

The decision was issued by agreement, conclusive, and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/2nd) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public in 20/Shab'an/1443 coinciding with 24/March/2022.