

Republic of Iraq  
Federal Supreme Court  
Ref. 4 / federal / 2021



Kurdish text

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The Federal Supreme Court (F.S.C.) convened on 30.6.2021 headed by Judge Jasem Mohammad Abbood 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 plaintiff:**

Omar Mahmood Mohamed – attorney.

**The defendant:**

The Bâtonnier – in addition to his post/ his agents the attorneys Hadi Hussain Hassan and Osama Hayawy Hamza.

**The claim:**

the plaintiff claimed that the defendant in addition to his post has issued the regulation of (rules of professional conduct) based on the provision of the article (117) of the Advocacy Law No. (173) of 1965, this regulation included violation of the Constitution, as stipulated in clause (Jim) of paragraph (5<sup>th</sup>) ((it is not permissible to litigate on behalf of persons who have agents or attorneys or to give legal consult. he may join his colleague in the case or litigate on behalf of his colleague's client if he agrees to that in writing, resigns, or withdraws from it)), this text contradicts what is stated in

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paragraphs (3<sup>rd</sup>, and 4<sup>th</sup>) of the article (19) of the Constitution of 2005 and clear and explicit restriction that prevents individuals from exercising their right to pursue their cases and forfeits their rights stipulated in Paragraph (4<sup>th</sup>) of the article (19) of the Constitution. therefore, he requested to call upon the defendant for argument and to rule the unconstitutionality of clause (Jim) of paragraph (5<sup>th</sup>) of the rules of professional conduct. According to the provision of the article (1/3<sup>rd</sup>) of the Federal Supreme Court bylaw No. (1) of 2005, this lawsuit was registered before this Court by the No. (4/Federal/2021), the defendant in addition to his post was informed with the case petition according to the provision of the article (2/1<sup>st</sup>) of the bylaw. The defendant agent responded with the draft presented to this Court on 29/6/2021 stating in it that the regulations of the attorney's professional conduct especially the article subject of the challenge was issued under the decision of the general committee of the bar association that was issued in its meeting held on 5.5.2016, and that its decisions subject to challenge before the Federal Cassation Court under the article (165) of the Advocacy Law, in addition, there is no direct effective interest in the legal post of the plaintiff, and that the plaintiff didn't present evidence that true damage has affected him, as the text requested to be abolish wasn't implemented on him. And the decision of the bar association of issuing the regulation of professional conduct came following the provision of the article (2/77) of the advocacy law based on the decisions of the committee issued in the session held on 5.5.2016,

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therefore he requested to dismiss the plaintiff's lawsuit and to burden him the expenses and fees. After completing the required procedures stipulated in article (2/2<sup>nd</sup>) of the Federal Supreme Court bylaw, a date for the argument was set and the parties were informed according to the provision of clause (2<sup>nd</sup>) of the mentioned article, on that date the Court convened and call upon the parties, the plaintiff on behalf of himself has attended, for the defendant, his agents has attended and started in presence public session, the plaintiff repeated the case petition requesting to rule according to it, he presented draft dated on 30.6.2021 included the reply to the answering draft of the defendant, both parties repeated their statements and requests. The court decided to close the argument to issue the decision, the following decision was issued publicly.

### **The decision:**

During scrutiny and deliberation by the F.S.C., it found that the plaintiff initiated this lawsuit against the defendant the Bâtonnier – in addition to his post challenging the constitutionality of clause (Jim) of paragraph (5<sup>th</sup>) of the rules of professional conduct that was issued from the Iraqi bar association on 5.5.2016, during scrutiny, the Federal Supreme Court finds that deciding this lawsuit is out of the jurisdiction of this Court stipulated in article (93) of the Constitution of 2005 and article (4) of the F.S.C. law No. (30) of 2005 amended by the law (25) of 2021, also the advocacy law No. (173) of 1965 has set the path to challenge the decisions issued by the general

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committee of the bar association in the article (168) of it which referred that challenging the decisions of the mentioned committee must be submitted to the Federal Cassation Court. By that this Court is not competent to consider this lawsuit, for all the aforementioned the Federal Supreme Court decided the following:

1. dismiss the plaintiff lawsuit.
2. burden the plaintiff in addition to his post the expenses and fees for the defendant agents amount of (one hundred thousand) IQ.D distributed according to the law.

This decision has been issued unanimously, final, and binding according to articles (93, 94) of the Constitution of 2005, and article (168) of the amended Advocacy Law No. (73) of 1965, and articles (4, 5) of the Federal Supreme Court amended law No. (30) for 2005 amended by law No. (25) of 2021, issued publicly on (19. Dhul-Qidah. 1442) AH., (30.6.2021) A.D.

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Signature of  
The president

**Jasem Mohammad  
Abbood**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Sameer Abbas  
Mohammed**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Abdul Rahman  
Suleiman Ali**

Signature of  
The member

**Ghaleb Amer  
Shnain**

Signature of  
The member

**Khalaf Ahmad Rajab**

Signature of  
The member

**Diyar Muhammad  
Ali**

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