

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 50/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 31/7/2019 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: the attorney Abd Alelah Abd Ali Mohammed Alabsali AlSaadi.

The Defendant: head of the supreme national committee for accountability and justice/ being in this post, his agent the legal official Hanaa Mohamed Hussein.

The Claim

The Plaintiff the attorney Abd Alelah Abd Ali Mohammed Alabsali AlSaadi claimed that he nominated himself for the election of the council of representative (I.C.R.) the cycle of 2018, however the defendant exclude him from the nomination based on (paragraph 8th of article 6 of the amended accountability and justice committee law No.(10) for 2008), for the claim that he is member of the dissolved Baath Party, and that is prejudice and great injustice against him and

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clear violation for the Iraqi constitution of 2005, after he was graduated from the law college for the year (1962- 1963), he joined the first cycle of the jurist police officers and graduated as a juristic police lieutenant, and work in the internal security forces until he was referred to retire on his request in (1/1/1991), after his progression in the service to the rank juristic chief in the border forces command, he joined the Iraqi Bar association and still working as attorney until now. As is well known the formal regime has forced all members of defense and interior ministry to join the Baath party ruling at that time, or to be expelled from the service in the state institutions were he and his family are being homelessness because they do not have a living even it was short time of service, that is the fact that should be considered when enacted the law of supreme national committee for accountability and justice, his excluding from the right of nomination as Iraqi citizen contradict with the constitutional texts, according to the following facts:

1. He wasn't member in the dissolved Baath party, his party rank was (advance patron).
2. His relationship with the mentioned party was severed sense (1991) which is the date of his retirement, (12) twelve years before the fall of the formal regime, in accordance with the text of clause (3rd/Jim/dal) that allowed the Iraqi citizen to participate in the most important position in the state (member of the presidency council) as he had quit the dissolved Baath party before the fall of the regime by (10) years if he was member of it. By that the supreme national committee for accountability and justice has violated in its mentioned decision the provision of the constitution which is the preeminent and supreme law that is

binding in all Iraq, and no law that contradict with it and its paragraph shall be enacted.

For all the aforementioned he requested the F.S.C. to consider his request by the spirit of justice and equity, and to judge by repealing the unfair decision of the accountability and justice committee in accordance with justice and law. The agent of the defendant respond to the case petition with the answering draft addressed to the F.S.C. by the letter of the supreme national committee for accountability and justice/ the head of the committee office/ litigation section/ No.(mim. Nun. Dal.142/10032) on 10/6/2019, with the following:

First: the supreme national committee for accountability and justice is a detector party for the covered by the procedure of the committee law No.(10) for 2008 according to article (2/2nd) of the law, the correct legal path to challenge the decisions of the committee is before the competent cassation committee to consider the challenges against the committee decisions according to the text of article (2/9th,/10th).

Second: The plaintiff was covered by the law of accountability and justice committee according to the text of article (6/8th) of the mentioned law under the letter of the committee No.(mim.kha./ 796) on 2/4/2018 that is addressed to the independent high electoral committee for 2018, he has challenged the decision before the competent cassation committee and it issued it decision to reject the challenge and to approve the committee decision by the decision No.(427/cassation committee/2018) on 10/4/2018, which is final and decisive decision, and have the plea of the decisions an judgment and cannot be challenge, he has

attached photo copy of the letter of his includes and the cassation decision of the plaintiff.

Third: The plaintiff has initiated a case before the administrative judicial court requesting in it to repeal his client committee decision, the court has issued it decision No.(2668/2018) on (19/11/2018) in the case No.(1910/qaf/2018) which rule to reject the plaintiff case and to burden him all the judicial expenses, this decision is final, he submitted photo copy of the decision.

Fourth: Your estimated court is functionally incompetent to consider the plaintiff case, were the constitution has determine the jurisdictions of your court in article (93) of it which is overseeing the constitutionality of laws and regulations in effect under paragraph (1st) of it, settling disputes that arise between the governments of the regions and governments of the governorates under paragraph (5th) of it, as it was stipulated in article (4/1st, and 2nd) of the F.S.C. law No.(30) for 2005, therefore the plaintiff case is out of your estimated court jurisdictions. For that reasons and the reasons cleared by your estimated court his client committee requested to reject the case from the formal and objective point, and to burden the plaintiff all the judicial expenses.

The plaintiff has submitted editorial draft explaining his claim and as answer to the answering draft submitted by the agent of the defendant. After completing the required procedure the court set a date to proceed with the argument, the court convened and the plaintiff attend by himself and the agent of the defendant and continue with the argument in presence and publicly. The plaintiff repeated what listed in the case petition and requested to judge

according to it and to burden the defendant the expenses, he clear that he went to the national committee for accountability and justice when objected against refusing his nomination for the I.C.R. they asked me about the party rank and I answered (I'm advance patron) and they answered (say you are a commander). So I commented that the commander must repeat the oath and I didn't do that, my intended from this case is to be excluded from being covered by the provision of article 8 and 6 of the amended accountability and justice law No.(10) for 2008. The agent of the defendant replied that what the plaintiff has stated is not truth, and that he is commander in the dissolved Baath party, and requested to reject the case. Whereas nothing left to be said 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 requested in his case petition the F.S.C. to judge by repealing the decision of the accountability and justice committee issued against him which include him by the provision of article (6/8th) of the supreme national committee for accountability and justice law No.(10) for 2008, as he has cleared the content of his claim before the court in the session dated on (31/7/2019) limiting his request to the rule for him to be excluded from the provision of article (6/8th) of the amended accountability and justice committee law No.(10) for 2008. The F.S.C. found that it jurisdictions determined in article (93) of the Iraqi republic constitution for 2005, and article (4) of the F.S.C. law No.(30) for 2005 and it don't include what the plaintiff has requested from the court, therefore the

plaintiff request is out of the F.S.C. jurisdictions which require to be rejected. According to that the F.S.C. decided to reject the plaintiff case from the point of lacking the jurisdictions, and to burden him the expenses and advocacy fees for the agent of the defendant the legal official Hanaa Mohamed Hussein amount of one hundred thousand Iraqi dinars. The decision has been issued decisively and unanimously according to the provisions of article (94) of the constitution, and article (5/2nd) of the F.S.C. law No.(30) for 2005, and issued publicly on 31/7/2019.