

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.75 /federal/media/2018



Kurdish text

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The Federal Supreme Court has been convened on 9.9.2018 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff : the Barrister (Feh.Alif.Feh)- his agent the Barrister(Mim.Ha.Ain).

The Defendants :

The First Defendant: Head of

The Second Defendant : Agent of bar association/being in this capacity- her agent the barrister (Heh.Kaf).

The Claim :

The Plaintiff agent claimed that the valid Iraqi constitution has stipulated in the clause (1st) from the article (19) of it ((The judiciary is independent and no power is above the judiciary except the law.) which mean that the authority and the first ruler is the law, nothing else have any power or decision as the article (87) for it , stipulated ((The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.)) which mean that the decisions doesn't issue only according to the law provisions or it's invalid. Also the article (88) from the constitution stipulated ((Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice.)). The law texts has been decided and obliged on respecting the law applying. The clause (6th) from the article (19)

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from the constitution has stipulate ((Every person shall have the right to be treated with justice in judicial and administrative proceedings.)) . as the clause (5th) from the article (19) from the constitution stipulated that ((The accused is innocent until proven guilty in a fair legal trial.)) and the article (14) from the constitution ((Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.)) whereas The first and second defendants, unanimously and participation, violated the provisions of the Constitution by issuing decisions that violated the provisions of the law in order to aggrieve the plaintiff by underestimate his legal rights by issuing a decision that violated the law and the constitution which is the highest and supreme law according to the provisions of clause (1st) of Article (13) of the valid Iraqi Constitution. The second defendant initiated a complaint against his client as (Bâtonnier) and at the same time she is the complainant, he is referred to the council of discipline with the file No.(40/discipline/2017for the charge of defaming her and this is one of the competence of investigation courts not the competence of the association , his client preceded that by recording reports about corruption files in the bar association before AL-Karkh investigation court , so how she can be the litigant and the judge at the same time , this violated all the principles and law provisions and principles of right and justice which obliged by the constitution especially that the compliant of the defendant is with the competence of investigation courts not the discipline council. Also the second defendant initiated a violation of the provision of article (110) from the advocacy law No.(173) for 1965 (amended) whereas it has stipulate in the clause (1) from it ( lawyer discipline is the competence of a council which convened by the association council headed by head from association council members and membership of two lawyers who are non-members of the council and they have membership conditions of the council , the association council assigns them and its decisions is able to challenge before the cassation court) but the aforementioned Defendant initiated with others a forgery of the decision No.(40/discipline/2017) on 13/3/2018 whereas listed in it what its text is (the discipline court is convened headed by a member of the association council the lawyer (Ain.Kaf.Sin) , worthy to mention that the lawyer (Ain.Kaf.Sin) is not a member in the association council , so he becomes impostor for a post not his post and to mislead the judgment , the decision issued against the ;aw provisions without considering the justice from many sides especially lack of functional competence also The conditions of the article(108) from advocacy law have

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not been met. The Plaintiff agent clarified that his client has practice his constitutional and legal right in referring the aforementioned decision before the cassation court of Iraq which headed by (the first Defendant/being in this capacity) by a cassation draft included the legal defenses and the fundamentalism formality and has been listed by No.(46/lawyers affairs/2018) the dossier hasn't been sent to the cassation court until the day 8.4.2018 . but his client surprised by the approving of the bar association council decision by the cassation court of Iraq on 10.4.2018 . during scrutiny of the attached and recorded decision by No.(53/bar affairs community) it has been found that it didn't include a causing for the decision approving which is against the provisions of article (259/Beh) of criminal procedure code No.(23) for 1971 (amended) which confirms the lack of scrutiny of the dossier, the draft and the decision which issued from the association council that headed by the second Defendant/being in this capacity- thereby she didn't concern the legal right for his client which listed in the article (19/4th,5th and 6th) and the article (14) from the constitution. . the same cassation commission also the first defendants and herby to many decisions and official letters, one of it is the letter No.(331/office/2017) on 3.5.2017 and the letter No.(502/office/2017) on 15.6.2017 mentioned to the lack of legitimacy for the Defendant (Alif.Ra.Alif) holding as batonneir after passing of former batonnier , this is what the cassation commission emphasized in same subject No.(65/commission of barristers affairs/2017) on 11.9.2017 which included (The replacement of the association's agent instead of the batonnier whose status is removed is inconsistent with the proper legal adjustment and that all decisions taken by the council of the association are not supported by the law) . The Plaintiff agent claimed that the decision (40/discipline/2017) which issued by the bar association is not supported by the law according to the federal cassation court decisions, relying on the issued letters from Head of Supreme Judicial Council (the first Defendant) who aforementioned above, where the article (93) from the Iraqi constitution determined the competences of the FSC especially the clause (3rd) of it, which stipulated clearly (Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others.). this case is the challenge of the issued decision by the bar association by its unconstitutionality, it is a decision issued by one of the federal power, the judicial power as the article (47) from the constitution stipulated. For the

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above the Plaintiff agent requested the decision (invalidity of the decision 40/discipline/2017) and the cassation decision (53/barristers affairs/2018) because it conflicts with the constitution provisions and the valid laws) . where freedom of speech is guaranteed and protected according to the provision of the article (38) of the Constitution unless he interrupt the public regulation and the morals. The First Defendant agent answered ( Head of Supreme Judicial Council/being in this capacity) on the case petition that the litigation is not directed to his client relying on the provisions of the articles (47,87,88) from the constitution and the article (2) from law of judicial organization No.(160) for 1979 and this what the FSC emphasized in its decisions (116/federal/2013) and (13/federal/2014). Also the case is not within the competences of the FSC which is stipulated in the article (93) of the constitution and the article (4) from its law No.(30) for 2005, the competence is from the public regulation according to provision of the article (80/1) of civil arguments law. The case subject related to discipline decisions issued by the bar association which organized its provisions the advocacy law No.(173) for 1965 (amended) and made a method to challenged it which the Plaintiff agent taken . thereby the hearing of this case outs of the competences of the FSC , for the above The defendant's agent requested to reject the case formally in terms of litigation and competence and subject for the reasons listed in its answer draft. The Defendant answered it (agent of bar association) on the case petition as following :

- 1.The case is outside the competences of FSC which texted in the article (4/2nd) of FSC law because the issued decision by the bar association is not administrative decision, it issued as implementation for a decision of decree which became final according to the provisions of advocacy law.
- 2.There is a mistake in the mechanism of filling this case, the Plaintiff shall filed the case during the hearing of discipline case which initiated against him or he shall filled it to the FSC directly and requests to delay the discipline case until this case being decided, which requires to reject the case formally.
- 3.also it is not within the provisions of the FSC law to annul the issued decisions by the federal cassation court which requires to reject the case from subject side (and the correctly from formality side) too.
- 4.The Plaintiff harm the complainants (batonnier and members of the bar association council) as it proved in the investigational dossier which belong to the complaint, he accused the by corruption ( corrupted members) . it has been proved that his accusing was wrong. Relying on the articles (119 and

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1/111) from valid law of advocacy, the committee of discipline according to the law provisions and proved the harming the Plaintiff for the Second Defendant made a decision by recommendation to oblige the sanction on the Plaintiff, according to the provisions of the articles (167 and 168) of the advocacy law he used his legal right to challenge the decision before the Federal Cassation Court which issued its decision No.(53/discipline/2018) , it approved the decision and the landmark decision became final according to the provisions of the article(168) of the advocacy law, till the provisions and the decisions which is decisive was evidence according to the articles (105 and 101) of evidence law so the challenging by the issuing decision is not possible according to the mechanism which the law of advocacy made it, it is a private law which organize the barrister's affairs and it doesn't conflict with Constitution's provisions or any other law.

5.Also the association council has derive its legality from the elections and agent of the batonnier which placed instead of the batonnier according to the articles (90 and 91) of advocacy law and supported the landmark decision No.(64/barrister's affairs/2017) on 11.9.2017 and the decision (75 dhal.Yeh/2018) on 16.1.2018 that issued by AL-Karkh crimes as discriminatory. A case was initiated before initial court of AL-Karkh for the same subject, it has been rejected and it has been approved discriminately. For the above the second Defendant requested to reject the case for the listed reasons in her answering draft. After recording the case relying on the provisions of the clause (3rd) of the article (1) from the bylaw of the FSC No.(1) for 2005 and after completing the requested procedure according to the clause (2nd) from the article (2) of the aforementioned regulation, a day 9.9.2018 has been appointed as a date for the argument, the court has been convened, the Plaintiff and his agent the barrister (Mim.Ha) attended and the agent of the first Defendant the Head of the highest judicial council/being in this capacity attended, and the agent of the second Defendant the acting batonnier/ being in this capacity – the barrister (Heh.Kaf) according to the agency that related by the case file. The argument has been started publicly and presently , the Plaintiff agent repeated the case petition and requested the judgment according to it, the agent of the first Defendant answered him (we repeated what listed in the answering draft) and he added that the judiciary of the FSC settled on the principle no power over the judiciary and his agent is the one who manages the judges administrative affairs not the one who issues the judicial provisions and decisions , he requested to reject the case because the lack of litigation to his client. The agent of the bar

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association answered that the Plaintiff has litigate his client and she is acting batonnier and didn't litigate the batonnier as a legal person, he added that the plaintiff has exhaust the challenging method for the issued decision against him and finally he requested as considering the issued decision against him is void. His request has been rejected. The Plaintiff has commented personally with what listed in the case petition and requested to annul the issued decision of his Disciplinary punishment. The FSC found the case completed the judgment reasons so it decided the end of the argument and the decision has been understood publicly.

#### The Decision :

During scrutiny and deliberation by the FSC the court found that the Plaintiff was referred to ((discipline council) by the bar association council for the charge of insulting the batonnier and members of the association council. The discipline council decided according to the dossier (40/discipline/2017) to direct to him a sanction of prohibition of practicing the profession for (three months) and the aforementioned decision approved by the association council. Because the Plaintiff is not convince by the aforementioned issued decision against him and according to the provisions of the articles(167 and 168) of the advocacy law No.(173) for 1965 (amended) he used his legal right to challenging it before the federal cassation court which issued its decision No.(53/barristers affairs/2018) by approving the challenged decision. Because the Plaintiff is not convince by the aforementioned issued decision against him he initiated by his client to challenge it before the FSC requesting the decision of (invalidity of the decision No.(40/discipline/2017 and the discriminatory decision 53/barristers affairs/2018) because its violation of the constitution provisions and the valid laws. The FSC finds that the first Defendant (head of the highest judicial council/being in this capacity) taking and according to the provision of articles (90 and 91/1st) of the constitution ((To manage the affairs of the judiciary and supervise the federal judiciary)) he doesn't represent the issued judicial decisions by Iraqi courts, thereby the litigation be not direct to him from this side. The FSC finds that the advocacy law No.(173) for 1965 (amended) has make in the articles (167 and 168) of it (( a special method to challenge the issued decision according to it and the Plaintiff has use this method in his case thereby he exhausted the decided challenging method in the aforementioned law)) where the competences of the FSC has been stipulated in the article (93) of the Constitution and in the article (4) from its law No.(30) for 2005, hearing the challenging of the

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decisions which the laws made a special method to challenge it is not within its competences. For the above the FSC decided to reject the case and to burden the Plaintiff the expenses and fees of the advocacy for the agents of the Defendants amount of thousand Iraqi dinar. The decision issued obliged, decisive relying on the provisions of the article (93) of the constitution and the article (5/2nd) from the FSC law No.(30) for 2005 unanimously and has been understood publicly on 9.9.2018

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