

Republic of Iraq
Federal Supreme Court
Ref. 97 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 12/11/2019 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: Jaafar Rasol Jaafar Alhamdany/ his agent the attorney Dr. Ziad Abd Allateef Saeed AlQuraishy.

The defendant: President of the federation of chambers of commerce/ being in this post.

The claim:

The agent of the plaintiff claimed that his client is the winner candidate to the presidency of Baghdad chamber of commerce on 6/11/2018 and the federation of chambers of commerce has issued decision No.(4) on 22/12/2018 to nullify the result election of Baghdad chamber of commerce regard electing the president of the chamber Jaafar Rasol Alhamdany basing on the amended Bylaw of (2002), the agent of the plaintiff clear that the decision of the federation' chamber has based on the amended Bylaw that was

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issued by the federation on (2002) which was violation to the required formality for the regulations and Laws to be in force that are characterized by the approval of the minister of commerce, and the publication in the Official Gazette, as last Bylaw was issued in 1/1/1989 and published in the Official Gazette No.(3279) on 30/October/1989. The decision of the federation chamber was based on article (5) of the amended Bylaw which stipulated that the federation chamber is the supreme power of the federation and chambers, who is responsible of stating its general policy, it shall have the right of overall supervision on the management of the federation and commerce chambers, monitoring and guiding it to ensure the safety of it taken procedures, and it accordance with the provisions of the Law. The agent of the plaintiff stated that the amended article (5) of the federation's Bylaw violated the provisions of the Law and constitution and contradict with what stipulated in the Law of the commerce chambers No.(34) for 1989 which stipulated the jurisdictions of the federation chamber and it didn't authorized it to nullify the elections result, article (7) of the Law has stated the principle of the financial and administrative independency and granted the commerce chamber it legal personality, the Law has set the working method of the federation chamber and its objectives in articles (2) and (3) to enhance the role of this activity in the development process, article (5) of the Law has stated the tasks practiced by the federation, the Law didn't

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mentioned the power of the commerce chambers federation on the commerce chambers or the power to nullify the elections result but stipulated for the federation a coordinating role between the commerce chambers. The agent of the plaintiff showed that the federation has committed violations to the Bylaw and issued a decision to state new mechanism to approve the elections and granted itself the power to nullify it which consider exceeding to the legal procedures and violation to the democratic rights, as for the constitutional violations, the principle of democracy stated in the constitution required that the elections and it results are the ruler, and the presidency of the commerce chambers federation shouldn't have the right to nullify the elections results. The legal personality earned by the commerce chambers gives it the power to manage the chamber and conduct financial, administrative and legal actions without any direct authority of the commerce chambers federation on the decision issued as result of elections. The agent of the plaintiff requested to judge that the decision No.(4) on 22/12/2018 of the commerce chambers' federation to be illegal and unconstitutional and to nullify it, and requested to judge that the amended Bylaw that is unpublished in the Iraqi Gazette to be illegal, also requested to judge the authenticity of his client winning in the elections of Baghdad commerce chamber that was ratified by the committee supervising the elections. The defendant/ being in this post was informed with the case petition and it documents, he

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responded with the answering draft submitted to the F.S.C. on 24/9/2019 stating in it that the plaintiff has filled the lawsuit No.(136/federal/2018) requesting to nullify the Law No.(50) for 2002 related to amending the law of commerce chambers federation No.(43) for 1989 which was rejected, and also filled the lawsuit No.(4682/beh/2018) before Al-Karada first instant court challenging the elections of the president of the commerce chambers federation which also was rejected, the civil committee in the federal cassation stated in it decision No.(4033/civil committee/2019) that the plaintiff Jaafar Rasol Jaafar Alhamdany has lost his post capacity, and all the amendments on the Bylaw of the commerce chambers federation from 2007 until 2018 was approved by the federation chamber according to his powers while he was the president of the federation and the amendments was not published in the official gazette, the agent of the defendant requested to reject the case. The agent of the plaintiff responded to the answering draft with the draft dated on 29/9/2019 which included a repeating to his requests listed in the case petition. The date 12/11/2019 was scheduled for the argument the parties were informed and started the argument in presence of the plaintiff and in absence of the defendant because he was informed but didn't attend. The agent of the plaintiff repeated the case petition and requested to judge according to it. The court scrutinized and closed the argument and issued the following decision publicly.

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff who was elected as president of Baghdad Commerce Chamber for the third time, his electing decision was nullified by the decision of the Commerce Chambers Federation No.(4) on 22/12/2018, in his lawsuit No.(97/federal/2019) he challenged the legality and constitutionality of the decision of nullifying his election that was issued by the mentioned Commerce Chambers Federation, and also challenged the illegality of the amended Bylaw of the Commerce Chambers Federation. The F.S.C. finds that the Iraqi Commerce Chambers Federation is a professional economic organization according to what listed in it Law No.(43) of 1989, by that the decisions issued by it earned the character of administrative decisions which the Law has set the method of challenging it, and it is not challenging it before the F.S.C. that article (93) of the constitution and article (4) of it law No.(30) of 2005 has listed it jurisdictions, and didn't includes the decision the subject of challenge issued by the Commerce Chambers Federation. On the other part of the lawsuit where the plaintiff listed a challenge of illegality and unconstitutionality of article (5) of the Bylaw amendment regulation of the federation that the Commerce Chambers Federation based on when issued the challenged decision, during scrutinizing this challenge the court found that considering the violation of the Bylaw to the Law of federation is out of the F.S.C. jurisdictions. As regard the plaintiff basing on article (1) of the constitution, it is an article that determines the system of government in Iraq and the nature of that government, and it doesn't

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fit to be substantiation for the mentioned specialty in the challenge. Accordingly, as the lawsuit become not based on substantiation from the Law or the constitution and contradict the jurisdiction, therefore the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agent of defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 12/11/2019.