



The Federal Supreme Court (F S C) has been convened on 4.11.2017 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-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / the Head of Iraqi Bar Association/ being in this capacity/ his agents the barristers (raa'.haa') and (taa'.qaf.haa') and (sheen. seen. faa').

Defendant / Speaker of the ICR/ being in this capacity/ his agents the two legal officials (haa'.meem.seen) and (seen.taa',yaa').

Claim

The agents of the plaintiff the barrister (meem.waw.al) claimed that the ICR had enacted the Code No. (48) for 2017 , they claimed that this Code violates the Constitution and article (13) of it, which prohibited enacting a Code violates with its provisions, pretending that this Code conflict with principles of Democracy, which makes its implementation, opening the way to compete in reaching the post of Head of Bar Association with the Democratic means, and cancelling this principle meaning going back to the provisions of advocacy law, which restricted the principle of freedom in nomination, with its limitation, the number of carrying out the post of Bar Association Head for two session only. The agents of the plaintiff clarified that the aforementioned Code violates the principle (the People is the source of Powers) which listed in article (5) of the Constitution, which gave the right to the People to elect who they decide to elect even more than a session. As well as, the Code violates article (22/2nd) of the Constitution which decided

(the State shall guarantee the right to form unions, and because the ICR is a part of the State, so it should be committed to this guarantee, and it should not issue a Legislation that includes egress of this guarantee, and its legislation regarded an interference in the independency of the Syndicates, also the challenged Code violates article (38/1st) of the Constitution, which guaranteed the freedom of expression and candidate and competition between the nominees. Once again the Constitution did not determine or restricting the prefecture of any one has a post except article 72/1st as for the President of the Republic, also all the Constitutional regimes used to on how many times of Bar Association Head to be elected, as well as the rationale of the Code listed (to grant opportunity for all members and the cadres in this Code, whereas the aforementioned Code did not grant opportunity for all members, and reactivate action of the principle that listed in the Dictatorship States. So the enacting of the Code was on the contrary of enactment Mechanism, which stipulated on in article 60/1st of the Constitution and the articles of the Bylaw. The agents of the plaintiff requested to cancelling the Code No. (48) for 2017 and judge with its unconstitutionality, the defendant/ being in this capacity was notified by the petition of the case, so he answered according to its draft dated on 3.6.2017 which he listed in; that the plaintiff litigate according to his career personality, and because of the Code validate, therefore he had lost the litigation. As well as the agents of the plaintiff said that the Code violates article (2/1st/b) of the Constitution, pretending its violates the principles of Democracy, while they contradict themselves, because the Constitution had admitted the Democratic Approach, and peaceful handing over of the Power, because the decision of Revolution Leadership Council (dissolved) No. (180) for 1977, which issued as an exception and restricted a number of valid Laws, never allows for nominating twice. As well as what the agents of the plaintiff pointed to, that the People is the source of the Powers as listed in article (5) of the Constitution, the challenged Code had enacted by the ICR, which represent the People and including its Original specialties in article (61/1st) of the Constitution. As well as the guarantee of the State the right of forming Syndicates, that means these Syndicates are immunized and guaranteed with its valid Laws, and it's quite to protect it from the exceptional decisions. Also there is no violation

for article (38/1st) of the Constitution, because the advocacy Law regulates the matter of nomination and election and no dispute about it. As well as the rest of articles which the agents of the plaintiff pointed to, the challenged Code is a Legislative option. The two agents of the defendant/ being in this capacity requested to reject the case. The agents of the plaintiff answered the answering draft according to their draft dated on 3.13.2017, which they listed in, that the claim came from the Association itself, not from the Head himself, and the claim stay active as long as the Association continues, as for the rest of the answering draft clauses, it is just a repetition to what listed in petition of the case. The Court had invited the two parties, the agents of the plaintiff attended, as well as the two agents of the defendant, the agents of the plaintiff repeated what listed in the petition of the case and the answering draft, the two agents of the defendant requested to reject the case, because the plaintiff is irreparable to be a Litigant in it. The Court ended the pleading, and issued the following decision.

Decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff (meem.waw.al) had litigated the aforementioned case as the Head of Iraqi Barristers/ being in this capacity, and he paid the fee of it on 2.15.2017, challenging the Code No. (48) For 2017, pretending its unconstitutionality, whereas that Code had cancelled the decision of Revolution Leadership Council (dissolved) No. (180) for 1977, which was allowing to elect the Head of the Barristers more than two consecutive times. The FSC finds that the plaintiff with the personality he litigated with it, irreparable to be a Litigant, because he lost the personality of the Head of the Barristers, according to the issuance of the Code No. (48) For 2017 and publishing of it in the Gazette on 2.13.2017, the issue No. (4434), based on that, his litigation should be rejected for adversarial, therefore the Court decided to reject the case for adversarial, and to burden him the expenses and advocacy fees for the agent of the defendant, amount of one hundred thousand Iraqi dinar. The decision issued unanimously on 4.11.2017.