

Republic of Iraq
Federal Supreme Court
Ref 104/ federal/2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munther Ibrahim Husain and Jassim Jazaa Jafer who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Hamed Mohammed Ismail – His agent the barrister Haidar Natiq Hanno.

The Defendant: Head of the Iraqi Council of Representatives / being in this capacity - His his two agents, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed through his agent that the Iraqi Council of Representatives had already legislated Law No. (8) of 2012 on the organization of the provisions of candidacy for the post of President of the Republic, which came in violation of the provisions of the Constitution of the Republic of Iraq for the year 2005, as Article (68) of it included the conditions of who intends to nominate for this position, and referred Article (69/1st) of it to regulate the provisions of candidacy for the post of President of the Republic by law, and since Law No. (8) of 2012 is concerned with regulating the provisions of candidacy for this position without prejudice to the conditions of candidacy because the conditions Related to candidacy for the office of the President of the Republic has been stipulated in the Constitution exclusively in four paragraphs only, and that the aforementioned law has added two other conditions of candidacy that have no basis in the Constitution, where the

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law dealt with the organization of (the provisions of candidacy) and not (conditions of candidacy), and therefore the mere treatment of these conditions in this law is contrary to the constitution, as well as the existence of two other conditions that have no basis from the constitution, so the plaintiff asked this court to rule on the unconstitutionality of Article (1) of the Law Regulating the provisions of candidacy for the post of President of the Republic No. (8) of 2012 and charging the defendant in addition to his job fees, expenses and attorneyship fees. After registering the case with this court in the number (104/Federal/2024) and collecting the legal fee for it, and notify the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the internal regulations of the Federal Supreme Court No. (1) of 2022, his agents replied with the reply regulation dated 4/4/2024, which its summary: The plaintiff does not has the conditions of interest from filing the lawsuit, and that the text - the subject of the challenge - came as a legislative choice in accordance with the competencies of the Council of Representatives in legislating federal laws based on the provisions of Article (61/1st) of the Constitution, as the Constitution did not prevent of setting other provisions for candidacy for the position of President of the Republic, as Article (69/1st) of it stipulated that (regulated by law, the provisions of candidacy for the postion of President of the Republic) and the Council of Representatives, in accordance with its terms of reference, legislated the law (the subject of the lawsuit) and stipulated in those who nominate himself for the position of President of the Republic - in addition to what mentioned article (68) of the Constitution of the conditions for nomination - adding two conditions, namely: That his academic achievement is not less than the initial university habit recognized by the Ministry of Higher Education and Scientific Research in Iraq, and that

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he is not covered by the provisions of the procedures of the Accountability and Justice Law and any procedures that replace them, in addition to that the subject of the lawsuit was previously decided by the court according to its decision No. (242/Federal/2023) on 20/11/2023, therefore, they requested the dismissal of the plaintiff's lawsuit and charging him fees, expenses and advocacy fees, after completing the procedures required by the rules of procedure of the court, set a date for the pleading based on Article (21/3rd) of it, and inform the parties, in which the court was formed, so the agents of the parties attended and began to conduct the public presence pleading, and after the court heard the statements of each party and its requests and completed its scrutinies, the conclusion of the pleading has been understood, and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focused on the request to rule on the constitutionality of Article (1) of the Law Regulating the Provisions of Candidacy for the Office of the President of the Republic No. (8) of 2012, and then charge the defendant in addition to his job all judicial fees and expenses and attorneyship fees. Since the constitutional lawsuit is like all other lawsuits, the condition of interest of the plaintiff is required in order to accept it when it is filed and until the issuance of the final judgment therein, as there is no lawsuit without interest, which is the benefit that accrues to the plaintiff by ruling on his requests contained in the lawsuit petition, as stipulated Article (6) of the Civil Procedures Law No. (83) of 1969, as amended, and Article (20) of the Internal Regulations of the Federal Supreme Court for the year 2022, that the plaintiff in the subject matter of the lawsuit has a case direct and

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influential interest in his legal, financial or social status, and that this interest is available from the filing of the lawsuit until the issuance of the final judgment in it, and it is also required that the contested text has already been applied to the plaintiff, and that he has not benefited from the contested text in whole or in part, since the condition of interest, according to the foregoing, is not fulfilled in the plaintiff's lawsuit, so his lawsuit must be rejected from this view, and based on the foregoing, the Federal Supreme Court decided to reject the plaintiff's lawsuit (Hamid Mohamed Ismail) for the absence of the condition of interest for its filing, and charging him judicial fees and expenses, including attorneyship fees of the defendant's agents, being in this capacity, an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously, final and binding based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended, and it has been made clear on 11 Dhu al-Qa'dah 1445 A.H. corresponding to 20/5/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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