

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/2/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Khaled Ahmed Taha who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: the members of the ICR

1. Ali Turkey Jassoum.
2. Dylan Ghafour Salih.
3. Karwan Ali Yarois.
4. Kareem Shakour Mohammed.

Their agent the Barrister
Phd Waleed Gasid Yassir

The Defendant: the Speaker of the ICR/ being in this capacity – his
Agent the Director-General of the legal department in
The ICR Ph.D. Sabah Juma'a Al-Bawi.

The Claim

The plaintiffs claimed through their agent that the defendant/ being in this capacity had already issued through the committee of reviewing the applications for the post of President of the Republic in the Council of Representatives a decision dated 31 January 2022 and published on the official website of the Iraqi Parliament to ensure the acceptance of the nomination of a number of gentlemen applying for the election of the President of the Republic of Iraq, including the candidate (Hashyar Mahmoud Mohammed Zebari), since the aforementioned decision concerning the said candidate violates the

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

Constitution and the laws in force, they appealed to this court, demanding that it be ruled unconstitutional as far as the elite is concerned, based on an article (93/3rd) of the Constitution for the following reasons and arguments: 1. The explicit violation and constitutional violation of the policeman of good reputation and integrity stipulated in article (68/3rd) of the Constitution, as Mr. Hashear Mahmoud Mohammed Zebari had already been questioned by the Iraqi Parliament on charges of financial and administrative corruption in the numbered session (14) of 25 August 2016. The vote of disapproval of his answers was voted on at the numbered session (15) of 27 August 2016 and confidence was withdrawn by decision of the Council of Representatives in the numbered session (17) of 21 September 2016 and the decision to withdraw confidence was due to the presence of Charges of financial and administrative corruption. 2. The existence of cases concerning al-Mouma in the Court of Integrity in Karkh, including the numbered case (98/Qaf/2018) when he was Foreign Minister and did not appear before the competent court, according to the letter of the second Court of Integrity in the number (300) on 1 February 2022 and the existence of another investigative case of his current pending in the Court of Integrity in Al-Rasafa for exploiting his influence and authority by spending large amounts on a property that does not belong to the state, he was also sentenced by two decisions of the Court of Integrity in Al-Rusafa, including damages to public funds. 3. The defendant violated the provisions of article (1/3rd) of the Presidential Nomination Law No. (8) of 2012, which is the procedural law of the Constitution, which sets out the conditions for a candidate to hold office to be reputable, politically experienced, and recognized for integrity and integrity. 4. Implicit violation of the Decision of the Council of Representatives to accept

saady



the nomination for the duties of the candidate if elected to this position provided for in article (50) of the Constitution which (obliging the president-elect to perform his legal duties and responsibilities with dedication and sincerity and to ensure the integrity of his wealth and to abide by the application of legislation honestly and impartially). 5. The decision to accept the nomination of candidate Hashear Zebari contained a clear and clear violation of the Law of the Council of Representatives and its formations No. (13) of 2018, as article (27) of it stipulates (the Council exercises its supervisory powers contained in the Constitution, the laws in force and its rules of procedure in accordance with the procedures stipulated in this law and its rules of procedure by means available including: Requesting information and documents from any official body on any subject related to the public interest or the rights of citizens, the implementation or application of laws from the institutions of the executive branch and independent bodies). Therefore, because the subject matter of the case falls within the jurisdiction of the court in accordance with the text of article (93/3rd), the plaintiffs asked the Federal Supreme Court to rule that the decision to accept the nomination of candidate Hashear Mahmoud Mohamed Zebari for the post of President of the Republic is unconstitutional because of the loss of the conditions of candidacy stipulated in article (68) of the Constitution. . The case was registered with this court in number (17/Federal/2022) and the legal fee for it was met in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005, the defendant is informed of its petition and documents in accordance with the provisions of article (2/1st) of the same Bylaw, and his agent replied by the answering draft of 8 February 2022 requesting that the case be

saady



dismissed in accordance with article (6) of the Court's Bylaw for lack of interest and absence of the element of damage, and article (5) of the Provisions for nomination for the Office of the President of the Republic indicated how to challenge the procedures of the Presidency of the Council of Representatives regarding the announcement of the names of the candidates and gave the right to those whose name did not appear in the announcement of the names of accepted candidates, and didn't grant the right to anyone else in challenging. The matter of electing the President is related to the will of the ICR according to the law of accepting the candidate for the post. Whereas the law had drawn the only path to challenge the nominations represented by the jurisdiction of the FSC, therefore, the case of the plaintiffs was considered a path that was not set by the law. This matter requires rejection of the case in the form of the incompetence of the Court to try it. The withdrawal of confidence from the Minister is also a decision to strip him of his political confidence, which is political and relates to his performance and does not include the meaning of a conviction for corruption or negligence, and therefore the decision to withdraw confidence is in no way similar to the decisions made by the judge and is stripped of any political interest, and therefore constitutions do not result in a decision of no confidence any judgments that are similar to the effects of judicial decisions, such as considering the withdrawal of confidence condemned by the facts assigned to him. Or deny that it has a reputation or a good biography, and the Constitution of the Republic of Iraq is no exception to those constitutions, its texts did not result in the decision of the Council of Representatives to withdraw confidence from the minister any effect that includes the denial of political rights in the subsequent nomination and candidacy on the decision to withdraw confidence

saady



but does not prevent the Constitution from giving the House of Representatives the minister himself confidence again after he has withdrawn it from him in a later post of Minister, and maybe the Constitution had taken this path without burdening the decision of confidence withdrawal more than it burdens because the constitutional legislator knows well that confidence withdrawal decision is issued by the ICR which consist of political and partial forces which work in a burst competitive atmospheres not among the withdrawal of confidence criteria the same that followed by the judge when he issues a decision of convicting the accused. Therefore, the Constitution had stripped the decision of confidence withdrawal from any impacts that may touch the political rights and other rights or freedoms which it stipulated. But it only created one single effect which represented by considering the Minister resigned, as article (61/8th/Alif) of the Constitution stipulated without building any accusation of conviction on this judgment of what the Minister was accused with and this constitutional text is decisive in its meaning of the only effect based on the decision of confidence withdrawal. As for the claim of a case with the number (98/Qaf/2018) involving the deliberate damage to the Foreign Ministry's funds by former Minister Hashyar Zebari, the candidate (Hashyar Zebari) submitted to the Legal Department of the Council of Representatives a request with photocopies (from the committees minutes and official letters) regarding the answer to this accusation. The minutes of the committee of inclusion formed by the two ministerial orders (1420 on 6 February 2019 and 7419 on 30 June 2019) in the Ministry of Finance dated 31 January 2021 and the Committee concluded that he was not neglected and not obliged to pay any dues and recommendations did not include the determination of the amounts

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

spent on apartment rent, The minutes of the recommendations were accompanied by the approval of the Minister of the Foreign Affairs and the decision of the Criminal Court Judge of Al-Kharkh 2nd with its appeal capacity by the number (555/The/2021) on 8/3/2021 had adjudged with (the administrative investigation shall be carried out by a neutral body, then, an investigative committee had been formed in the Ministry of Justice by the Ministerial order No. (11/Teh/Teh/2021333/397/5603) on 2/9/2021 dated on 31/10/2021 and the summary of aforementioned committee recommendations were (to close the administrative investigation against him about leasing the houses and the residential apartments in Al-Salhiya compound), and the letter of the Ministry of Finance No. (5402) on 3/2/2022 which addressed to (the Commission of Integrity/ Department of Investigations/ Directorate of Baghdad Investigation) which includes not to complan against (Hashyar Zebari) the former Minister of Finance about four cases under the consideration of the Commission. Moreover, the letter of the Financial Advisor to the Ministry of Finance in the number (212) of 28 December 2021 sent to the Integrity Commission/Investigation Department/Baghdad Investigation Directorate/Investigations Division (212) dated 28 December 2021 and attached with a report of recommendations concerning the investigation of the exchange of the property, which the plaintiffs' agent indicated was not belong to the State, the conclusion of the recommendations (the property belongs purely to the Ministry of Finance (according to the Letter of the Ministry of Justice/Real Estate Registration Department in number (5/6/1/10997/Alif) on 14 October 2021, which indicated that the properties belonged to dissolved entities) and that the contract for its restoration was legal, and the record concluded by recommending the

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

closure of the investigation because there was no indication of any legal violation). The two cases under investigation were administratively resolved by the acquittal of the candidate (Hashear Zebari) and administrative investigations included reports of the closure of the investigation and were accompanied by the approval of the competent minister and the prosecutor did not indicate where the Constitution stipulated that those being investigated in a case would be denied their right to run for president of the Republic or where the Constitution stipulated that the mere investigation of a case constituted an infringement of the good conduct of the person in connection with the investigative case, the Constitution of the Republic of Iraq for 2005 preserved and protected the rights and freedoms of citizens and made them untouched only in the circumstances provided for by law, whereas article (15) of the Constitution stipulated (every individual has the right to enjoy life, security, and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority). As well article (19/5th) stipulated (the accused is innocent until proven guilty in a fair legal trial) and article (20) stipulated (Iraqi citizens, men, and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office) and article (46) has ended the separation of freedoms by stipulating on (restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom). These constitutional texts represent guarantees to the Iraqi citizen that his rights and freedoms should not be held hostage to political moods and disputes, and to be

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

excluded, marginalized, and targeted, but it must be respected, protected, and guaranteed and no decisive judicial decision issued by a fair Judge in a fair legal trial shall touch it. These and other texts were in the eyes of the committee set up by the Presidency of the Council of Representatives to study the applications of candidates for the post of President of the Republic, and therefore the Committee took it upon itself not to pay attention to what the political parties raise against each other, but rather to exclude candidates for the post of President of the Republic, which may reach judicial decisions that are now valid only and not only as a basis for excluding candidates from the race for competition, The Committee was not informed that any such decision had been made against any of the candidates. The Council of Representatives had corresponded (the Ministry of Higher Education, the Accountability and Justice Authority, the Directorate of Criminal Evidence, and the Integrity Commission) to verify that candidates are not covered by the provisions of laws that block the right to stand for election and that their answers did not indicate the right of the candidate to serve as a basis for his exclusion. The procedures for accepting the nomination of the mumma shall be in accordance with the Constitution and the Law on the Provisions of nomination for the post of President of the Republic No. (8) of 2012. The plaintiff's statement that Mr. Hashear Zebari would not be able to do what article 50 of the Constitution imposes is a personal, unproductive assessment and therefore should not be taken into account when examining candidates' applications and the court is not competent to examine them, in addition to the fact that the court is not concerned with the claim of violating the law to impose it because it is not competent to consider the legality of the authorities' actions but the constitutionality of them. On the other hand, the

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

Constitution of the Republic of Iraq did not require the Council of Representatives to take specific measures following its decision to withdraw confidence until the Council abides by it and is liable when it does not observe it, in addition, the candidate in question was never a member of the Council of Representatives, as a minister who does not enjoy parliamentary immunity, and finally the defendant's agent requested from the Federal Supreme Court to dismiss the case because the court was not concerned with examining the personal assessments of the plaintiffs but was considering their substantive appeals indicating only that the Constitution was violated, and after completing the procedures stipulated in the court's Bylaw, a date for the case was set in accordance with article (2/2nd) of it. Both parties were notified, and on the appointed day, the court was formed, and the plaintiff's attorney, Walid Kasid Yasser, attended and the defendant attended the speaker of the Council of Representatives being in this capacity as his agent, Ph.D. Sabah Juma al-Bawi/ Director-General of the Legal Department of the Council of Representatives, and the plaintiff's agent repeated his statements and previous requests, and after the defendant's agent answered the request for a dismissal of the case for the reasons in his answering draft, and the agent of each party reiterated his statements and previous requests. The court completed its scrutiny, heard the statements of the parties, reviewed their answering lists. The end of the argument has been made clear, and the Court issued the following decision:

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs asked this court to rule that the decision to accept the nomination of candidate Hashear Mahmoud Mohamed Zebari for the post of President of the Republic was unconstitutional because of the loss of the conditions of candidacy stipulated in article (68) of the Constitution and through the scrutiny the court reached the following results: first: The federal authorities in Iraq consist of legislative, executive and judicial authorities exercising their powers and functions on the basis of the principle of separation of powers on the basis of the article (47) of the Constitution, and the federal legislature consists of the Council of Representatives and the Council of the Federation on the basis of the article (48) of the Constitution. The federal executive, on the basis of article 66 of the Constitution, consists of the President of the Republic and the Council of Ministers and exercises its powers in accordance with the Constitution and the law, while the judiciary is regulated under the provisions of the articles of Chapter 3rd of Title 3rd. Second: under article 67 of it, the Constitution defines the President of the Republic as the head of state and the symbol of the unity of the nation, representing the sovereignty of the country and ensuring compliance with the Constitution and preserving Iraq's independence, sovereignty, unity, and territorial integrity in accordance with the provisions of the Constitution, and therefore the Constitution, under the provisions of article 68 of it, has established constitutional conditions for the presidency of the Republic and therefore these conditions cannot be interpreted or exceeded other than what is stated in the Constitution, which, under the above article, must be the candidate for the

saady



presidency of the Republic is Iraqi by birth and from Iraqi parents, and to be fully qualified and complete 40 years of age, and to have a good reputation and political experience and be known for his integrity, honesty, justice and loyalty to the homeland, and not sentenced to a crime of dishonour, and the Constitution has set those conditions considering that the president is the leader who must have the specifications set out in article (67) of the Constitution where these specifications are given its humanitarian, national and scientific implications for the purpose of the post of President of the Republic. Third: Based on the provisions of article (69/1st) of the Constitution of the Republic of Iraq of 2005, which stipulates (regulated by law, the provisions of candidacy for the post of President of the Republic.) Article 1 of the Presidential Candidate's Terms of Office was passed in 2012, which stipulated the conditions of the candidate for the post of President of the Republic, including those in paragraph (3rd), which stipulated that "those who run for president of the Republic are required to do the following: a good reputation, political experience, and who is known for his integrity, honesty, justice, and loyalty to the homeland." Fourth: the constitutional requirements of article (68) of the Constitution and the legal requirements listed in article (1) of the Presidential Nomination Provisions Law are all related to the powers exercised by the President of the Republic in accordance with article (73) of the Constitution, where the article gave the President of the Republic the power to issue amnesty on the recommendation of the Prime Minister except for the special right and those convicted of international crimes, terrorism, financial and administrative corruption, and the ratification of the International treaties and conventions after the approval of the Council of Representatives, and as it approves laws enacted by the Council of Representatives, as

saady



well as, he has the right to call upon the elected Council of Representatives for convening within a period not more than 15 days from the date of ratification of the results of the elections and in other cases stipulated in the Constitution, he has the granting of medals on the recommendation of the Prime Minister, the issuance of republican decrees, the acceptance of ambassadors, the approval of death sentences handed down by the competent courts, and the task of the supreme command of the armed forces for the purposes of fragmentation and ceremonial purposes, and the exercise of any other presidential powers contained in this Constitution. Fifth: The Constitution granted the President the power to submit bills based on the provisions of article (60/1st), which stipulated (bills submitted by the President of the Republic and the Council of Ministers), thus making the President of the Republic equal to the Council of Ministers in that authority and this authority is of great importance and dangerous, it is the first building block in the legal construction of the country. Sixth: for the importance of the post of President of the Republic as stated in the above clauses, the Constitution required the election of the President of the Republic by the Council of Representatives, which represents the entire Iraqi people among the candidates for the presidency of the Republic by a two-thirds majority of its members according to the article (70/1st) of the Constitution, and the Constitution specified the mandate of the President of the Republic by four years for the purpose of assuming the presidency of the Republic of Iraq in accordance with article (72/1st) of the Constitution. Seventh: the Constitution authorized the President of the Republic to submit a motion of no confidence to the Council of Representatives on the basis of the article (61/8th /Beh/1) of the Constitution, and may also submit a joint request with the

saady



Prime Minister to the Council of Representatives to declare war and a state of emergency based on an article (61/9/Alif) of the Constitution, the President of the Republic and the Council of Ministers combined to propose amending the Constitution based on an article (126/1st) of the Constitution. Whereas the candidate for the presidency of the Republic of Iraq, Hashear Mahmoud Mohammed Zebari, was questioned by the Council of Representatives at the numbered session (14) on 25 August 2016 on the topics contained in the subject of interrogation and was the result of the interrogation (vote not to be satisfied with Mr. Hashear Mahmoud's answers) Finance Minister Mohamed Zebari during his interrogation session and vote of no confidence in him with the approval of 158 deputies in exchange for the rejection of 77 deputies and the reservation of 14 deputies according to the session No. 17 Wednesday, 21 September 2016) on him the withdrawal of confidence by Representatives of the Iraqi people as a minister of finance violate the constitutional and legal requirements of those who run for president, especially, the Constitution of the Republic of Iraq for 2005 did not require anyone nominated to the Council of Representatives what it required for those nominated for the presidency to be of good reputation and political experience and known for their integrity and honesty in accordance with the text of article (68/3rd) of the above-mentioned Constitution, and since the President of the Republic of Iraq represents all Iraqis, regardless of nationality or religion, and represents a symbol of Iraq's unity and strength and a symbol of building and the democratic future on it and all of the above, the Court decided:

saady

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal /2022



Kurdish text

1. Ruling that the decision of the Council of Representatives to approve the acceptance of the candidacy of Hashyar Mahmoud Mohammed Zebari for the post of President of the Republic adopted on 31 January 2022 and its cancellation and non-acceptance of his future candidacy for violating article (68) of the Constitution of the Republic of Iraq 2005.
2. To burden the defendant the fees, expenses, and the advocacy fees amount of one-hundred thousand Iraqi dinars.

The decision has been made with the majority, decisive and binding for all powers according to the provisions of the articles (68 and 93/3rd and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 11/Rajab/1443 Hijri coinciding 13/February/2022 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

saady