

Republic of Iraq
Federal Supreme Court
Ref. 19 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 14.3.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Hussein Ahmed Hashem Al-Safi / candidate for the presidency of the Republic - his attorney, Ahmed Mazen Makiya.

The defendants:

1. The Speaker of the Council of Representatives / in addition to his position - his deputy, director-general of the legal department in the Council of Representatives, D. Sabah Juma Al-Bawi, legal advisor Haitham Majed Salem, and legal employee Saman Mohsen Ibrahim.
2. Candidate Barham Ahmed Al-Haj Saleh - his attorney, Iyad Majid Khalil Al-Tamimi.
3. Candidate Hashyar Mahmoud Muhammad Mustafa Zebari - his attorney, Shawkat Sami al-Samarrai.

The claim:

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The plaintiff claimed, through his attorney, that the Presidency of the Council of Representatives announced on 31/1/2022 the names of the candidates accepted for the presidency in accordance with the provisions of Article (4) of the Law No. (8) for the position of President of the Republic, and since the acceptance of the second and third defendants to run for candidacy violates the provisions of the constitution and the law and that they do not meet the conditions for candidacy, so the plaintiff requests that the first defendant be obligated to annul the acceptance of the candidacy of the second and third defendants for the position of the Presidency of the Republic and remove them from the list of names of accepted candidates, because the candidates (Barham Ahmed Saleh and Hashyar Mahmoud Muhammad) did not meet the condition of loyalty to the homeland according to the concept of the constitutional text, as they had voted for the separation of the Kurdistan region from the motherland, with attention to the fact that preserving the unity of the homeland, the land, the people and the destiny completely intersects with this procedure and clearly contradicts this position, as the responsibility to preserve the country's unity and sovereignty is one of the most important elements of sincerity among his most trustworthy and firmest foundations that the constitution stipulates that it be associated with the person of the President of the Republic, as he represents a symbol of the unity of the nation and the integrity of its lands and consolidates the cohesion of its existence as a land, a person, and a destiny according to what is stated in Paragraph (Third) of Article (68) of the Constitution, which stipulates that (a candidate for the presidency of the Republic requires: Third - of good reputation and political experience and known for his integrity,

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uprightness, justice and loyalty to the homeland), and Article (67) of the Constitution stipulates (the president of the republic is the head of the state and the symbol of the nation's unity, represents the sovereignty of the country, and ensures compliance with the constitution, and the preservation of Iraq's independence, sovereignty, unity, and territorial integrity, in accordance with the provisions of the constitution), and that they were among those who voted for secession through the declared position of the commission of elections in Kurdistan on the reality of the referendum and its details, in addition to the appearance of the first of them to journalists after casting his vote on the secession referendum, which constitutes a clear breach of the condition contained in the inability of Paragraph (Third) of Article (68) of the Constitution, as well as Paragraph (Third) of Article (1) of the Law No. (8) of 2012 regarding loyalty to the country, and this is what was decided by the Federal Supreme Court with its decision No. (89, 91, and 93/ Federal /2017) on 20/11/2017 and its explanatory decision No. (122/Federal/ 2017) in 6/1/2017. In addition, the third defendant (Hashyar Mahmoud Muhammad Mustafa Zebari) had been questioned by the Council of Representatives during his assumption of the position of Minister of Finance in September 2016, on the background of charges of corruption, mismanagement, and waste of public money. The result of the interrogation at that time resulted in their withdrawal of confidence and dismissal of him from his position after voting on that by a majority, which constitutes a clear breach of integrity and good reputation stipulated by the constitution and decisions of the electoral judiciary. His interest in filing this case is realized as an Iraqi citizen who is keen on the unity of Iraq, the cohesion of its

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existence, its social fabric, the preservation of its capabilities, sovereignty and the safety of its lands, and ensuring the commitment of the state and society in it to the provisions and contents of the constitution. Giving him a greater opportunity to compete for the presidency of the republic in the event that the second and third defendants are excluded from the nomination for this position. For all of the foregoing, the plaintiff requested the Federal Supreme Court to issue a state order to stop the voting procedures for the presidency of the republic until this case is decided and to annul the decision of the Council of Representatives to accept the candidacy of the second and third defendants, to remove their names from the announced list of accepted candidates, and to charge the defendants fees, expenses and attorney fees. The case was registered with this court in No. (19/ Federal/ 2022) and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) from the same Bylaw, the attorney of the first defendant replied in the answer list dated 20/2/2022 that his client, in addition to his position, had approached the official authorities about the candidates for the position of the President of the Republic and whether or not they were convicted of a final judicial decision. Other than that, some allegations have no place for the court to consider anything, as the accusation does not serve as a reason to deprive Iraqi citizens of their rights and freedoms, especially political freedoms in nomination and candidacy for official positions in the state, in addition to the court's decision No. (17/Federal/2022) the candidate (Hashyar Zebari) accepted his invalidity, therefore, he requested that

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the case be dismissed and that the plaintiff be charged with all judicial expenses. The second defendant's attorney responded with the answer sheet dated 6/2/2022 that the plaintiff's interest in filing this lawsuit is not available in accordance with what was decided by Article (6) of the Federal Supreme Court's Bylaw No. (1) of 2005 because his client did not compete with the plaintiff in the nomination and because the nomination is open to all, it is not reasonable that everyone files lawsuits against each other because of being competitive with the other. Rather, it is the result of the vote that determines who is the most fortunate in the position through merit, efficiency, and sincerity. In addition, the plaintiff's claim is incorrect and violates the Constitution of the Republic of Iraq for the year 2005 in Article (14) of it, where the constitution affirms that Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, sect, belief, opinion, economic status, or social. And the Council of Representatives decided to approve the nomination of his client (Barham Salih) for the position of President of the Republic, due to the fulfillment of the nomination conditions stipulated in Article (68) of the Constitution. Thus, the filing of the lawsuit is incorrect, because the constitutional lawsuit is not instituted against individuals, but rather against the official authorities to obtain a result and a judgment that requires implementation. In the case, it is also required that the defendant be a litigant whose recognition results in a judgment estimating the issuance of a statement from him and that he be judged or obligated to something based on the assessment of the evidence of the case in accordance with what was stipulated in Article (4) of the Civil Procedure Code. Acknowledgment is a judgment, thus negating the

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adversarial capacity in this case. All the conditions set by Article (68) of the Constitution and Article (1) of Law No. (8) of 2012 for the position of President of the Republic to run for the position of President of the Republic are available to his client, and the aforementioned law outlined in Article (5) the mechanism of objection and appeal against provisions of the nomination and the period of objection to the nominations for the position of President of the Republic within three days from the date of announcing the names of the candidates to fill the position and for the lapse of that period, so the plaintiff's lawsuit was filed outside the legal period. And since the committee formed under the chairmanship of the First Deputy Speaker of the Council of Representatives approved the names of the candidates for the position of President of the Republic in accordance with Article (4) of the aforementioned law, after verifying that the conditions stipulated in Article (68) of the Constitution and Article (1) of the same law, and approved the name of the candidate, Dr. Barham Ahmed Salih, which means that the committee has confirmed the availability of the legal conditions in it. And that his client had previously run for the position of President of the Republic in the fourth session of the Council of Representatives for the year 2018, and the conditions necessary for his nomination were checked and found that they are available to him, and he obtained the approval of the Council of Representatives for the nomination for the position of President of the Republic, and during years in which he held the position of President of the Republic, he proved his merit and competence and highlighted the name of Iraq during that period, he devoted himself to the cause of Iraq's unity, sovereignty, unity, and territorial integrity in accordance with the

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provisions of the Constitution. Therefore, due to the absence of a constitutional or legal basis in the plaintiff's request, he requested that the case be dismissed and that the plaintiff be charged with fees, expenses, and attorney fees. As for the third defendant, his answer was not received, despite being informed according to the law. After completing the procedures required by the court's Bylaw, a date for the pleading was set based on Article (2/Second) of it, and the parties were informed of it. On the appointed day, the court was formed, so the plaintiff's attorney, Ahmed Mazen Makiya, attended, the first defendant's representative attended, and his two agents Legal Counsel Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim, and the second defendant his attorney, Iyad Majid Khalil, attended, on behalf of the third defendant, his attorney, Shawkat Sami Fadel, attended. And started the session publicly, the plaintiff agent repeated the case petition requesting to rule according to it adding a request to invalidate the case for the second and third defendants, the court decided to reject the request of the plaintiff's attorney because the lawsuit is ready to be decided, the attorneys of the first and second defendant responded and asked each of them to reject the lawsuit from his client for the reasons mentioned in the list of them, the third defendant's agent answered requesting the dismissal of the case on behalf of his client, because it had already been decided by this court, and the attorney of each party repeated his previous statements and requests, and where there was nothing left to say, the court decided the conclusion of the pleading and issued the following ruling :

The decision:

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Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the summary of the lawsuit of the plaintiff, Hussein Ahmed Hashem Al-Safi, and through his attorney, Ahmed Mazen Makiya, is a request for a ruling to nullify the decision of the Council of Representatives dated 31/1/2022, which decided to accept and announce the candidacy of the second defendants, Barham Ahmed Al-Hajj Saleh and the third, Hashyar Mahmoud Muhammad Mustafa Zebari, for the position of the presidency of the Republic of Iraq, and their names were removed from the list announced by the Presidency of the Council of Representatives, and the defendants charged fees, expenses and attorney fees for the reasons mentioned in the petition, which were previously listed in detail in the foregoing, and after the public pleading and informing the court of the reasons The case, the plaintiff's arguments and requests, as well as the court's review of the list submitted by the first defendant's representative, the Speaker of Parliament, in addition to his position dated 20/2/2022, in which he requested the dismissal of the case. In which the case was dismissed for the lack of legal and constitutional basis for the reasons he listed in detail in his list referred to previously. The court also reviewed the response list submitted by the plaintiff's attorney On 7/3/2022, the court also heard the statements of the parties' attorneys in the pleading sessions, and the court rejected the request of the plaintiff's attorney in the 7/3/2022 session, in which he requested to invalidate the lawsuit petition against the second and third defendants, because the lawsuit is ready for decision-based on Article (88/1 civil procedures) the court noted, through the public pleading, that the third defendant, Hishyar Mahmoud Muhammad Zebari, had been ruled the invalidity of his candidacy for the post of President of

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the Republic of Iraq under its decision No. (17/Federal/2022 on 13/2/2022). It is obligatory to be dismissed because it has already been decided on according to Article (94) of the Constitution of the Republic of Iraq. After all, the decisions of this court are final and binding on all authorities, as well as based on Articles (105 and 106) of the Evidence Law No. (107 of 1979), where the judgments issued by Iraqi courts that have attained the degree of final argument is an argument with the rights it has settled, and it is not permissible to accept evidence that contradicts the authority of the final rulings. As for the nomination of the second defendant, the candidate Barham Ahmed Salih, that the plaintiff attributed in his lawsuit regarding the validity of his candidacy, which is the lack of loyalty to the homeland for his vote in favor of a minority secession in Kurdistan from Iraq, this court considers that the issue of the second defendant's support for the secession of the region or his lack of support cannot be proven with valid legal evidence, because the vote is supposed to be secret, and the plaintiff in his case did not submit to this court any credible evidence that the court can build its belief and its firm conviction that the nomination of the second defendant violated the conditions set forth in Article (68) of the Constitution of the Republic of Iraq for the year 2005 and Article (1) of Law No. (8) of 2012 the Law of Provisions for the Candidacy of the President of the Republic, those conditions that the court deems that some of them can be proven by documents Therefore, the plaintiff's lawsuit is obligatory to be dismissed because it lacks constitutional and legal basis. For the foregoing, the Federal Supreme Court decided the following:

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First - dismissing the claim of the plaintiff, Hussein Ahmed Hashem Al-Safi, against the first defendant, in addition to his position as Speaker of the Council of Representatives, and the third defendant, Hishyar Mahmoud Muhammad Zebari, regarding accepting the candidacy of the third defendant, because the case was previously decided.

Second - The ruling dismissed the above plaintiff's lawsuit against the first defendant in addition to his post and the second defendant, Barham Ahmed Al-Hajj Salih regarding accepting his candidacy for the presidency of the Republic of Iraq not being based on constitutional and legal reasons.

Third – charge the plaintiff with judicial fees and expenses, including attorney's fees, amount of one hundred thousand dinars, to be distributed equally among the defendants' attorneys, and the part that goes to the attorneys of the first defendant is distributed according to the legal ratios. The decision was issued final in agreement and binding on all authorities based on articles (68, 94) of the constitution of Iraq for the year 2005 and Articles (4 and 5) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and it was publicly understood on Sha'ban 10/1443 AH corresponding to 14/3/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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