

Republic of Iraq
Federal Supreme Court
Ref. 239 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/11/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Ezz Aldeen Mohammed Ahmed. 2. Ameer Bayez Salih.
3. Dulair Hamid Salih. 4. Dilshad Qadir Mustafa.

Their agent the
barrister Abdul
Sattar Khudir
Ali

The Defendant: Head of Bar Association of Kurdistan Region – Iraq/ being in this capacity.

The Claim

The plaintiffs claimed, through their agent, that on 8/9/2023, the defendant/being in this capacity issued a circular No. (3970) - concerning the Bar Association Council meeting No. (171) on 7/27/2023, which expired - to the Judicial Council of the Kurdistan Region to issue circulars prohibiting lawyers who belong to the Iraqi Bar Association from practicing their work as an agent for their clients in all the courts of the Kurdistan Region, except after obtaining a practicing identity card from the Kurdistan Region Bar Association, which requires the lawyer to open an income tax file in the region to collect taxes. This does not fall within the principle of reciprocity, knowing that the law prohibits this, so double taxation is not permissible because the tax base in the federal government and the region is the same, the defendant/ being in this capacity does not hold any legal capacity in his position due to the passage of a period since the end of the electoral cycle and it was not held, which is what was indicated in the letter of the Presidency of Public Prosecution No. (889) on 7/23/2023, which included that most of the unions did not call for a procedure of elections to choose the president and his members, and the letter included a freeze on their decisions until the elections were held. Accordingly, the decision - the subject of the appeal - is invalid because it does not

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have any legal status. Therefore, the plaintiffs asked this court to rule to cancel the decision issued by the defendant in addition to his position under number (3970) dated 9 /8/2023 And the issuance of the state order to temporarily suspend work at his office No. 3/8/2419 dated 8/14/2023 until this lawsuit is resolved and to reserve for their clients the right to demand compensation for the material and moral damages they suffered as a result of the aforementioned suspension. The case was registered with this court under the number (239/Federal/2023), and the legal fee was paid for it, and the defendant was notified of its petition and documents in accordance with Article (21/ First and Second) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, and he responded with the answer list dated 29/ 10/2023 including detailed formal and substantive defenses that conclude: The court does not have jurisdiction to hear the case based on Article (93/First) of the Constitution, in addition to the fact that the petition does not contain a reference to the constitutional text that is allegedly violated, following what is required by Article (20/Fourth) of the court's bylaws, and that the Iraqi Bar Association A memorandum of understanding was signed with the Iraqi Kurdistan Regional Bar Association, according to which the Kurdistan Regional Bar Association has the right to audit lawyers belonging to the Iraqi Bar Association who reside permanently in the region and practice law in the courts of the Kurdistan Region, by being subject to specific procedures to ensure the existence of the conditions for practicing the legal profession following the Law of the Legal Profession for both associations, among them is that the lawyer must prove that he has not been convicted of crimes against honor, drug crimes, terrorism, and that he is not affiliated with state departments. The first component of a lawyer is the high moral commitment that puts him in harmony with his role in performing the mission of sacred defense and his participation in the function of administering justice. All legislation regulating the legal profession has stipulated Such qualities must be present in those who practice the legal profession. Rather, legislation considered them a condition for practicing the profession and required its continued availability. Legislation tended to eliminate the right to practice the profession when these conditions were not present, including the Law on the Law of the Kurdistan Region of Iraq No. (17) of 1999, as amended in Articles (40 to 43) Some lawyers violated these lofty principles, and their registration was

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promoted from the register of lawyers in the region, and after their registration was promoted from the register, they belonged to the Federal Iraqi Bar Association and began practicing the profession in the courts of the region, and they did not learn from what had been issued by them and began to practice business. Unprofessional dealing with citizens and challenging the regional bar because they do not belong to it and are not subject to the disciplinary committee formed by law in the bar association, therefore, the two unions needed to agree on a specific mechanism to regulate the legal profession and the affairs of lawyers in Iraq, including the Kurdistan Region of Iraq. Therefore, the defendant asked this court to dismiss the lawsuit and charge the plaintiffs its expenses and attorney's fees. After completing the procedures required by the court's bylaws, a date was set to hear the case without pleading, in accordance with Article (21/Third) of the court's bylaws. The court was formed and examined the plaintiffs' requests, their substantiation, and the defendant's defenses. After the court completed its scrutinies, the minutes has been made clear and the court issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, after reviewing the lawsuit list and the requests it contained, and after reviewing the defendant's defenses/in addition to his position recorded in his list dated 10/29/2023, it became clear that the plaintiffs filed the lawsuit before this court against the defendant, the head of the Bar Association in Kurdistan Region of Iraq / being in this capacity to demand a ruling to cancel the decision issued by the defendant being in this capacity No. (3970) dated 9/8/2023, addressed to the Judicial Council in the Kurdistan Region, to issue circulars prohibiting lawyers who belong to the Iraqi Bar Association from practicing their work as an agent on behalf of their clients in all the courts of the Kurdistan Region, except after issuing a practicing identity card from the Kurdistan Region Bar Association, an urgent state order was issued to temporarily suspend work on the Circular of the Judicial Council in the Kurdistan Region of Iraq No. (3/8/2419 dated 8/14/2023) until this lawsuit is resolved, with the plaintiffs retaining their right to demand compensation for the material and moral damages they suffered as a result of the plaintiff's decision/

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being in this capacity, he must appoint the Supreme Judicial Council in the Kurdistan Region, as mentioned above, and charge the defendant, being in this capacity with the fees, expenses, and advocacy fees, for the reasons indicated in detail in the list of claim. The Federal Supreme Court finds that the plaintiffs' claim is based on two matters: The first: is to demand the issuance of a state order following the wording requested in the statement of claim, and this court has previously issued its decision regarding the demand to ((issuing an urgent state order to temporarily suspend work on the generalization of the Judicial Council in the Kurdistan Region of Iraq No. (3/8/2419 dated 14 /8/2023) until this case is resolved)) according to the decision issued by this court No. (239/Federal/State Order/2023 on 10/15/2023) containing the rejection of the application for the reasons referred to therein, as for the second request: it is to demand the cancellation of the decision issued by the defendant / being in this capacity No. (3970) dated 9/8/2023, addressed to the Judicial Council in the Kurdistan Region, intending to issue circulars prohibiting lawyers who belong to the Iraqi Bar Association from practicing their work as an agent. On behalf of their clients in all the courts of the Kurdistan Region, except after issuing a professional identity card from the Kurdistan Region Bar Association. The Federal Supreme Court finds that the plaintiffs' claim in this regard must be rejected due to the lack of jurisdiction of this court in its consideration of the application of the provisions of Article (93/Third) of the Constitution and Article (4/Third) of Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and Article (25) of the Federal Supreme Court's internal regulations No. (1) of 2022, which stipulates that (every interested party has the right to appeal directly with a claim, It is submitted to the court to decide on cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority), as the decision - the subject of the appeal - was issued by the Council of the Kurdistan Region Bar Association, which the defendant is represented by the President of the Kurdistan Region Bar Association / in addition to his position, and that the Kurdistan Region Bar Association The Kurdistan Region's lawyer, its council, and its president, in addition to his position, are not considered among the federal authorities stipulated in the aforementioned articles, as the federal authorities are exclusively defined in accordance with the provisions of Article (47) of the

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Constitution, which stipulates that the federal authorities shall consist of the legislative, executive, and judicial authorities. It exercises its powers and tasks based on the principle of separation of powers. Article (48) thereof specifies the components of the legislative authority in the Council of Representatives and the Council of the Federation whereas Article (66) thereof, specifies the components of the executive authority, stipulating that: (The federal executive authority shall be composed, of the President of the Republic and the Council of Ministers, exercising their powers in accordance with the provisions of the Constitution and the law), while Article (89) thereof addressed the components of the judicial authority, and on the basis of the above, the Kurdistan Region Bar Association, its council and its president/in addition to his position are not considered among the federal authorities stipulated in Article (47) of the Constitution and in accordance with Articles (48, 66 and 89) thereof, and therefore the decisions issued by it are not subject to appeal before this court in application of the provisions of Article (93/3rd) of the Constitution, which requires dismissal of the case, In addition to the above, the decision - the subject of the appeal - No. (3970) dated 8/9/2023, cannot be a subject of challenge for constitutionality, as it does not rise to the level of applicable laws and regulations that can be challenged exclusively for unconstitutionality based on the provisions of Articles (93/First) of the Constitution and (4/First) of the amended Federal Supreme Court Law, and in terms of the internal regulations of the Federal Supreme Court and does not extend to others, such as instructions, decisions, and procedures issued by the federal authorities in the country, its institutions, civil society organizations, and unions, including the Kurdistan Region Bar Association, the Syndicate Council, and others, it is represented by the head of the Kurdistan Region Lawyers Syndicate/ being in this capacity. Accordingly, the Federal Supreme Court decided the following:

First: The claim of the plaintiffs was rejected by: (1. Ezzedine Muhammad Ahmed. 2. Amir Bayaz Saleh. 3. Dilor Hamid Saleh. 4. Dilshad Qadir Mustafa) according to which it is requested: ((A ruling to cancel the decision issued by the defendant, President of the Bar Association of the Kurdistan Region of Iraq/in addition to his position, No. (3970) dated 8/9/2023, addressed to the Judicial Council in the Kurdistan Region, to issue circulars prohibiting Lawyers who belong to the Iraqi

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Bar Association from practicing their work as an agent for their clients in all the courts of the Kurdistan Region except after issuing a practicing identity card from the Kurdistan Region Bar Association) due to lack of jurisdiction.

Second: to burden the plaintiffs with the fees and expenses.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93 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 edited in the session dated 5/Jamada Al-Oula/1445 Hijri coinciding with 20/November/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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