

Supreme Court of The Maldives

Malé
Republic of Maldives



Mohamed Fahmy Hassan v People's Majlis (State)

- **Case Number:** 2012/SC-C-/35
- **Applicant:** Mohamed Fahmy Hassan, G. Kokkori/Male'
- **Respondent:** People's Majlis (State)
- **Nature of the Case:** Constitutional Matter
- **Date of Decision:** 14 March 2013
- **Bench:** Chief Justice Ahmed Faiz Hussain, Justice Abdhullah Saeed, Justice Abdhulla Areef, Justice Ali Hameed Mohamed, Justice Adam Mohamed Abhdulla, Justice Dr. Ahmed Abdhulla Didi, Justice Ahmed Muthasim Adnan
- **Case Summary**

This case was reviewed by the Supreme Court of the Maldives under Article 43(b) and (c) of the Constitution when the applicant requested for a decision to proclaim that the procedures applied by the Independent Institution's Committee of the People's Majlis in response to the criminal charges brought against him were unconstitutional and the actions taken by the People Majlis against the applicant based on these procedures be nullified for the reason that the vote taken at the People's Majlis to remove him from position as member of the Civil Service Commission was contrary to Article 8, 17(a),

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Article 20, 42, 43(a) and Article 51(h) of the Constitution and against the principles and tenets of the Constitution. The reservations put forward by the State, which claimed the matter may not be taken to any court for clarification of validity as the decision against the applicant by a vote of the People’s Majlis was taken by the powers vested in the People’s Majlis under Article 187 of the Constitution and pursuant to Article 88 of the Constitution the decision was a matter related to a proceeding of the People’s Majlis, were considered in the case review.

- **Summary of Highlighted Issues:**

1. It was evident that no reason existed wherein the Supreme Court’s decision to review a case within its original jurisdiction could be legally challenged or disputed, therefore it was decided the objection of the state could not be accepted.
2. In determining criminal actions and subsequent punishments, the ultimate guarantee to individual rights is to take action within the Criminal Justice System and in line with the principles governing the Penal Code and the Criminal Procedures.
3. No person suspected of a crime may be punished for the crime except under a sentence passed by a Judge in a court of law and that the right for the accused to

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establish his innocence with dignity and honor unless proven guilty, is constitutionally guaranteed.

4. When a case on a suspected crime is being processed through the Criminal Justice system, investigating the same crime against the accused through a disciplinary system or any other system for that matter and establishing standards to prove the crime, contravenes the principles governing criminal investigations and criminal trials enshrined in the Constitution and the constitutional rights guaranteed to a person accused of the crime.
5. Until a case on a suspected crime has been concluded, even a disciplinary action based on the type and nature of the crime and relating to public interest may be taken in a manner in which the state does not lose the right to take action for a criminal offense through the Criminal Justice System due to double jeopardy.

• **Judgment:**

For the reasons stated above, as the charge brought against Mohamed Fahmy Hassan/G. Kokkiri is criminal, the case should be processed through the Criminal Justice System under the principles of “due process”, pursuant to Articles 50, 51, 52 and 53 of

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the Constitution and in line with the guarantees and the criminal procedures provided by the Criminal Justice System and because it is not valid to establish, for the same offense, a procedure which contravenes the constitutional guarantee for the accused to have a fair trial and the protection of individual rights and freedom as well as it would be an infringement on the right of a person who may need to file a civil case following the completion of the criminal procedures and for the reason that when a committee at the People's Majlis established Mohamed Fahmy Hassan of being guilty after using different standards to assess the same crime and take action against him, due to the guarantee of double jeopardy, the State would lose the right to prosecute him through the Criminal Justice System should such a circumstance arise and because Mohamed Fahmy Hassan would lose the right to declare his innocence with respect and dignity should the Criminal Justice System find him not guilty for the alleged crime, and as there is no basis to interpret as an absolute power, the discretion to dismiss a person who has been officially assigned with constitutional and state responsibilities because "as found by a committee of the People's Majlis" such a circumstance as specified in the Constitution has transpired,

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and because to interpret it as such would be in contravention to the fundamental rights specified in the Constitution and the rule of law, the procedures for a committee of the People's Majlis to decide that a circumstance has transpired in which a person holding such a position may be dismissed should be established by law, that while such procedures should be fair, objective and reasonable and in line with due process and the rule of law under every circumstance, the procedures followed by the Independent Institutions Committee of the People's Majlis prior to the vote to dismiss Mohamed Fahmy Hassan did not conform to the principles of the aforementioned due process, and pertaining to Articles 8, 16, 17, 20, 21, 42, 43, 51, 52, 53, 54, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 144, 268 and 299 of the Constitution, the procedures followed by the People's Majlis in the vote to remove Mohamed Fahmy Hassan of G. Kokkiri as member of the Civil Service Commission, did not conform to the Constitution and the removal of Mohamed Fahmy Hassan as member of the Civil Service Commission based on these procedures is nullified in a unanimous ruling of 6 Justices of the Supreme Court of the Maldives.

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