

Republic of Iraq
Federal Supreme Court
Ref. 101 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/9/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Maher Hasan Tami/ the candidate of the Iraqi Council of Representatives elections for 2021 – his agent the Barrister Ahmed Fakhri Abdulla.

The Defendant: the Speaker of the Iraqi Council of Representatives/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his agent that the Iraqi Parliament passed Law No. (9) of 2020 the Law on Elections of the Council of Representatives, published in the Iraqi Gazette in number (4603) on 9/11/2020 and stated the reasons for its legislation (to hold free and fair elections conducted with high transparency, and to genuinely represent the will of the voter, allowing for legitimate competition, equal opportunities and upgrading the democratic process, this law was enacted). The two articles (15) and (46) of it involve contradiction and confusion in the law. On the one hand, the legislator indicates that the reasons for the legislation are for a genuine representation of the voter, which is stated in article (15) of it in terms of districting, individual

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nomination, and rearranging the sequence of candidates (generally within the electoral district) according to the first winner's system and who comes after him for all candidates and from all sides (individually or on the list that the candidate himself has submitted as part within its electoral project). This was the result of the demand sought by the public and a wide and large spectrum of the Iraqi people for demonstrations that swept the country, which led the Council of Representatives at the time to legislate this law and other laws to keep up with the requirements of the citizens. However, when article 46 is scrutinized at the end of the law, which stipulates that (the winning candidate in the parliamentary elections must be sworn in within a maximum of one month of the date of the first session, otherwise the alternative to the highest votes will be from the losing candidates in his constituency if the individual candidate is not sworn in, the alternative will be the highest loser in his constituency). Therefore, article 46, by relying on the replacement of the winning candidate who did not take the oath of office, the next candidate on his list and the waste of winning candidates within one constituency on the other electoral lists or independent candidates is a waste of the votes of voters and contrary to the article (2/1st/Beh) of the Constitution of the Republic of Iraq for 2005, which stipulates that (no law may be enacted contrary to the principles of democracy) and this is a clear and explicit violation of the failure to count the votes of the elected majority and article (5) of the Constitution, which indicated that sovereignty of the law and the people are the source and legitimacy of the authorities (it is the votes of the voters and the majority represented that determine the right democratic path) and article (13/1st) that has passed this constitution the supreme and higher law and may not be violated, and article (14) which stipulates the principle of equality among Iraqis and that the adoption of

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this formula makes the will of the voter captive to the electoral law and leads to the loss of a candidate who may have more votes than the alternative candidate for the winning representative who was not sworn in at the time. Article (16) of the Constitution (equal opportunities). Article (46) in question gave preference to one candidate at the expense of another candidate, although it might have fewer votes, and it also maintained the loss of voter votes as in previous laws when it limited the alternative to being from the same electoral list, where there was no difference from the closed list system as in previous elections. Within this equation, the alternative to a winner who has not been sworn in and from the same electoral list may have votes of no more than one hand fingers). The error in counting and representing the votes of the voters has been reproduced. The legislator should have hedged all directions in such a subject on which the will of the voter and the representatives of the people were built and the production of a government truly representative of them that does not accept confusion and doubt, so the legislator makes sure that article (46) is as follows: (If the winning candidate does not take the oath of office within 30 days of the first session, the alternative will be the candidate who follows in the number of votes within the same constituency in general) and then the Council of Representatives is represented by the largest part of the voters participating on election day and a real parliament is formed representing the will of the Iraqi voter, especially since the Iraqi people have given blood, precious and the best of their sons, while he struggling to deliver his voice and produce an elected government that is representative of the largest number of fundamentalist voters. Therefore, for all the above and for other reasons that the justice of the court considers to be unconstitutional, the plaintiff requested that article (46) of Law No. (9) of 2020 be annulled for violating constitutional

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articles (2/1st/Beh), (5), (13/1st), (14) and (16) of the Constitution of the Republic of Iraq for 2005 and to burden with all fees, expenses, and advocacy fees. Based on the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005, the case was registered with this court in the number (101/federal/ 2021), the fee was collected, and the defendant/ being in this capacity was notified with its petition and documents according to the article (2/1st) of the aforementioned Bylaw, his agents, Legal Counsel Haitham Majid Salem and official jurist Saman Mohsen Ibrahim, replied with their answering draft dated 15 August 2021 that the law in question was initiated under the provisions of article (49/4th) of the Constitution to regulate the provisions of the elections to the Council of Representatives, and the text in question was a legislative option that regulates the mechanism for selecting an alternative to the winner who refrains from taking the oath of office and does not violate any of the constitutional texts as described by the plaintiff, for these reasons and reasons that the court considers they requested to reject the case of the plaintiff and to burden him with all the judicial fees, expenses, and the advocacy fees. After completing all the proceedings, a date was set for the case, and the parties were notified by this date, based on the provisions of article (2/2nd) of the aforementioned Bylaw, and on the day of the argument, the court was formed and the plaintiff was attended by his attorney Ahmed Fakhri Abdullah and attended by the defendant and his agents, legal counsel Haitham Majid Salem and human rights officer Saman Mohsen Ibrahim and the public in presence argument proceeded. The plaintiff repeated what was listed in the petition and requested to reject the case in accordance with the statement, as stated by the defendant/ being in this capacity agents, in addition to their answering draft of 15 August 2021, requesting to reject the case, and repeating both parties

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previous statements and requests, and where there is nothing left to say. Understand the conclusion of the case and set on 28 September 2021 as the date for the issuance of the decision and to coincide with the day mentioned official holiday, the court was formed the following day based on the provisions of article (24) of the Civil Arguments Law No. (83) of 1969 amended. The Court has been issued the following decision publicly.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, the plaintiff was found to have claimed that the Iraqi Parliament had already enacted the Iraqi Parliament Elections Law No. (9) of 2020 and stated the reasons for it (to hold free and fair elections conducted with high transparency, to genuinely represent the will of the voter, allowing for legitimate competition, equal opportunities and upgrading the democratic process, this law was enacted). The two articles (15) and (46) of it are contradictory and confusing in the law. On the one hand, the legislator indicates that the reasons for the legislation are for a genuine representation of the voter, which is stated in article (15) in terms of districting, individual nomination, and rearrangement of candidates (generally and within the electoral district) in accordance with the first winner's system and beyond, and all candidates and all parties, but when the article (46) is scrutinized at the end of the law, which stipulates (the winning candidate shall comply) Parliamentary elections to be sworn in within a maximum of

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one month of the date of the first session, otherwise, his replacement, who receives the highest votes from the losing candidates from his constituency, and if he is not sworn in from the individual candidate, the alternative is the highest loser in his constituency). Thus, the above-mentioned article, by relying on the replacement of the winning candidate who did not take the oath of office, the next candidate from his list and the waste of winning candidates within one constituency of other electoral lists or independent candidates, is a waste of the votes of voters, so the article (46) mentioned violates articles (2/1st/Beh), (5), (13/1st), (14) and (16) of the Constitution of the Republic of Iraq 2005 and he requested to judge by unconstitutionality of which. This court finds that the plaintiff, on the basis of Article 6 of the Bylaw of the Federal Supreme Court No. (1) of 2005, must have a case, direct and influential interest in his legal, financial or social status, provide evidence that factual damage was caused by the legislation to be abolished, that the damage is direct and independent of its elements and can be removed if the legislation to be abolished is ruled illegal and that the damage is not theoretical, future or unknown and that the damage is direct and independent He has also benefited from the text to be repealed, and the text to be repealed has already been applied to the plaintiff or is intended to be applied to it and means in the interest, the practical benefit that the plaintiff aims to achieve when judging according to his requests, and the personal interest clause is considered a condition of acceptance of the constitutional case before the Supreme Federal Court, as there is

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no case without interest and it is not sufficient that the challenged legislative text is contrary to the Constitution in itself, but its application to the plaintiff must have violated anyone or he has benefited from his advantages or the breach of the rights he claims does not belong to him. For example, the plaintiff's interest in the proceedings is not in the interest of the plaintiff, as the plaintiff must establish evidence that factual damage has been inflicted on him and that the damage is due to the contested text and not to fictitious or presumptive harm, although the absence of the interest clause strips the plaintiff's requests for legal protection since it is inconceivable that the constitutional proceedings should be a tool through which the dilapidated cross. for personal opinions. The plaintiff's lack of interest in the case means that he cannot be an adversary with the defendant and the court may not rule on the constitutionality of a legislative text without litigation. All this has not been achieved in the plaintiff's case, which must be dismissed. The Federal Supreme Court decided to dismiss the case of plaintiff Maher Hassan Tami and to burden him with the fees and expenses and advocacy fees for the agents of the defendant/ being in this capacity legal counsel Haitham Majid Salem and official jurist Saman Mohsen Ibrahim amount of 100 thousand dinars distributed between them following the law. The decision has been issued final and binding for all powers, and unanimously according to the provisions of the article (94) of the Constitution of the Republic of Iraq for the year (2005) and Two articles (4 and 5/2nd) of the Federal Supreme Court Law No.

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(30) Of 2005 amended by the law (25) for 202. The decision has been made clear on 21/Sufur/1442 Hijri, 29/September/2021 AD.

Signature of The president	Signature of The member	Signature of The member
Jasem Mohammad Abbood	Sameer Abbas Mohammed	Haidar Jaber Abed
Signature of The member	Signature of The member	Signature of The member
Haider Ali Noory	Khalaf Ahmad Rajab	Abdul Rahman Suleiman Ali
Signature of The member	Signature of The member	Signature of The member
Diyar Muhammad Ali	Ghalib Amir Shunayen	Ayoob Abbas Salah

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