

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.102 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 16/12/2015, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Jaafar Nasir Hussein , Akram Taha Mohammed ,Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: (Mim.Kaf.Ha.Alif.Mim)/ his agent the barrister (Ha.Jim.Sin).

The Defendant: ICR speaker/ being in this capacity- his two legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin)

The Claim:

The plaintiff's agent claimed that "ICR, in the convened session on (7/1/2015), decided to accept the membership of the representative (Mim.Alif.Feh.Mim.) as an alternative representative instead of the martyr representative (Alif.Ain.Ha.Kha), and the decision violated provisions of the ICR's law of elections No.(45) for 2013. Based on the law, the candidate, who got the highest votes, are supposed to be granted the vacant parliamentary seat from the same electoral list, the same bloc, and the same governorate of the replaced representative. His client submitted the challenged and the complaint to ICR and registered his complaint by No.(209) on 24/1/2015, but the ICR's answer didn't receive yet. Also, he presented the warning sent by the notary of the morning shift in AL-Karkh No.(16754) and the record (84) on (23/4/2015) and the defendant notified by the warning on (1/7/2015)

which has the request of the challenge and the complaint based on provision of the article (52/1st) from the Constitution, although the ICR didn't respond to this warning too. So, the plaintiff's agent presented a challenge to the FSC explaining that ICR violated provisions of the article (14/3rd) " (the seats must be distributed inside the electoral list by the rearrangement of the candidates' order based on the number of votes each one will be getting. Therefore, the first winner is who gets the highest votes, and so on for the rest of the candidates)." from ICR's law of elections No.(45) for 2013, for distributing the seats according to the Sainte-Laguë system, and his client got the highest votes within the electoral list (Dawlat AL-Qanon coalition) in AL-Basra governorate the list (277). the plaintiff is the one who deserves the seat as an alternative to the martyr representative (Alif.Ain.Ha.Kha.) since he got (7673) votes and the representative (Mim.Alif.Feh.Mim) whose membership challenged by the plaintiff had (2925) votes- by a difference of (4748) votes-. also, the clause (2) -from the article (2) from the law of ICR's members' replacement No.(6) for 2006 fits with the case of the plaintiff for being from the same electoral list, same bloc, and same governorate of the martyr representative (Alif.Ain.Ha.Kha), and the clause (3rd) from the article (14) from ICR's law of elections No.(45) for 2013 made clear that limitation of the nomination for the alternative member by the head of the bloc violates provisions of the above article. The decision of ICR violated provisions of the article (52/1st) from the constitution which obliged ICR to decide on the validity of the membership for one of its members during 30 days from the date of the objection's registration and by a two-thirds majority. ICR's decision can be challenged before the FSC for 30 days from the date of its issuance (Mim. 52/2nd) and the ICR's non-answer on the presented objection by his client may add legitimacy to the membership of the challenged membership which violated the Constitution in text and core, Furthermore this is what the FSC emphasized in its two decisions No.(58 and 7 for 2015) on 22/6/2015 and 2/2/2015. Based on the reasons above, the plaintiff's agent requested:

1) the judgment of obliging the defendant presents the objection challenge- which presented by his client- to the council to decide on it and under

the law and to issue the required decision according to provisions of the law and Constitution.

2) He requested from the FSC to annul the council's decision on ratifying the validity of the challenged representative (Mim.Alif.Mim) and to annul its membership in ICR for violating the Constitution and the law.

3) He requested from the FSC to accept the membership of his client (Mim.Kaf.Ha.Alif.Mim) for the alternative seat.

4) He requested from the FSC to link attach No.(30/federal/2015) and to consider it as a piece of evidence.

The two agents of the defendant answered on the case petition by their draft which dated on (11/10/2015) and attached to the case file that the plaintiff directly challenged before the FSC the decision of ICR that about the validity of the membership of its members and replacing (Mim.Alif.Feh.Mim) instead of the martyr representative (Alif.Ain.Ha.Kha). the article (52/2nd) from the Constitution stipulated that the issued decision by ICR due to objection is the decisions that can be challenged at the mentioned court for 30 days from the date of its issuance because it is a competence that relates to the mechanism of challenging the ICR's decision and because the plaintiff initiated the above case before the issuance of ICR decision which contrary to what formulated by the article (52/2nd) from the Constitution and the article (2) from the bylaw of the FSC No.(1) for 2005, the two agents of the defendant requested to reject the case. After the registration of the case based on provisions of the article (1/2nd) from the FSC bylaw No.(1) for 2005 and the completion of the required according to the article (2/2nd) from the aforementioned bylaw, the day 16/12/2015 was selected as the date of the argument. The court had been convened and the two parties were called upon so the plaintiff (Mim.Kaf.Ha.Alif) attended with his agent the barrister (Ha.Jim.Sin). also, the two agents of the defendant (Sin. Ta.) and (Heh. Mim) attended. the argument started publicly and presently. The plaintiff's agent repeated what was listed in the case petition and requested to decide according to it. The two agents of the defendant answered that they repeated what was listed in the answering draft and requested to reject the case. The

court made the end of the argument understood and the decision was recited publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff (Mim.Kaf.Ha.Alif.Kha) challenges on the decision of the ICR dated on 7/1/2015 of acceptance the membership of the representative (Mim.Alif.Feh) as an alternative representative for the martyr representative (Alif.Ain.Ha.Kha) while he got the highest votes and he belongs to the same electoral list and the same bloc of the replaced representative and he complained at the council and registered his complaint by No.(209) on 24/1/2015 and the council didn't decide on his challenge. Also, he presented to the council the warning that sent from the notary of the morning shift in AL-Karkh By No.(16754) and the record (84) on 23/4/2015 which has the request of the challenge and the objection according to provisions of the article (52/1st) from the Constitution, but the council didn't respond to this warning too, despite the notification. So, he initiated a case at the FSC requesting to oblige the defendant to present the objection challenge to the council to decide on it according to the law and to annul the decision of ICR about ratifying the membership of the representative under challenge (Mim.Alif.Feh.Mim) and to accept the membership of the plaintiff for the alternative seat. Whereas the competences of the FSC are determined by the article (52) from the Constitution which stipulated ((The Council of Representatives shall decide, by a two-thirds majority, the authenticity of membership of its member within thirty days from the date of filing an objection.)). The ICR's decision can be challenged before the FSC within thirty days from the date of its issuance (the clause 2nd from the above article). Whereas the plaintiff initiated the case before this court before the ICR decides on the validity of the membership of the member under challenge and this is what the plaintiff explained in his case and confirmed by the two agents of the defendant/ being in this capacity who requested to reject the case, so the plaintiff case must be rejected and the court decided to reject the case and to burden the plaintiff all the expenses and fees of the advoca-

cy for the two agents of the defendant amount of hundred thousand Iraqi dinars divided between them equally. The decision had been issued unanimously decisive according to the provisions of the article (94) from the Constitution and the article (5/2nd) from the FSC law no.(30) for 2005 and was understood publicly on 16/12/2015.