

Republic of Iraq  
Federal Supreme Court  
Ref. 109/federal/media/2014



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 16.12.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

**The plaintiff:** (alif.theh.ain.shin.) his agent the attorney (ta.kaf.ain.).

**The defendant:** the Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

**The claim:**

The agent of the plaintiff claimed before the F.S.C. that the I.C.R. in its session dated on 18.9.2014 has voted with the membership authenticity of (ain.ain.kha) and dismissed the objection of the plaintiff on that voting on 20.8.2014 according to article (52/1<sup>st</sup>) of the constitution, the challenge stated that article (52/1<sup>st</sup>) of the constitution stipulated that (the Council of Representatives shall decide, by a two-thirds majority, the authenticity of membership of its member within thirty days from



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the date of filing an objection), which didn't happened for the MP (ain.zin) as he didn't obtained two thirds majority. in addition, the I.C.R. violated the text of article (14/3<sup>rd</sup>) of the I.C.R. elections' law No.(45) of 2013 that distribute the seats according to Sant-Lego system as the mentioned article stipulated (the seats shall be distributed within the list by re-arranging the sequence of candidates based on the number of votes obtained by each of them, the first winner will be the one who gets the highest number of votes, and so on for the rest candidates), as the plaintiff has the sequence (1) in the reserve list by obtaining (5255) votes will the MP who his membership authenticity is being challenged has obtained the sequence (4) as he obtained (2788) votes, by that the plaintiff is more entitled for the parliamentary seat of the resigned MP (zin.ain), as clear in the attached list with the lawsuit. In addition to that the text of article (2/2<sup>nd</sup>) of the I.C.R. Replacement law No.(6) of 2006 is applicable on the plaintiff because the vacant seat is within the governorate of the plaintiff and the same bloc of the resigned MP. After the case was registered in the court the date 16.12.2014 was scheduled for the argument, on it the parties attended, the agent of the plaintiff repeated his statements and requests, the agents of the defendant repeated the answering draft, the court heard the statements of the third party the Independent High Electoral Committee which confirm that the plaintiff and the MP (ain. ain. kha.zin) and the resigned MP are from one bloc

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(Alwafaa Iraqi movement) from Najaf governorate, the differentiation when replacing is stated in the Law of the Iraqi Council of Representatives elections No.(45) for 2013, where the one who gets the highest number of votes shall replace the replaced member. during scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

### **The decision:**

During scrutiny and deliberation by the F.S.C. found that the plaintiff claimed that the I.C.R. in its session dated on 18.9.2014 has decided to replace the membership of (ain.ain.kha.zin) with his brother (ain.ain.kha.zin) as he occupies the post of the Najaf governor, the plaintiff has objected this replacement before the I.C.R. and was rejected, therefore he initiated this lawsuit on 28.9.2014 so that the objection and initiating the lawsuit is within the stipulated legal term in article (52) of the constitution, the plaintiff requested the unauthenticity of the membership of the MP (ain.ain.kha.zin), and to repeal the membership so that the plaintiff occupies the vacant seat. During scrutiny and deliberation the court found that the plaintiff and the MP being challenged belong to the same list of the resigned MP and from the same governorate, but the plaintiff has obtained more votes than the MP being challenged and both are on the reserve list the plaintiff sequence (1), the MP



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sequence (4). The F.S.C. found that the I.C.R. Members Replacement Law No.(6) for 2006 didn't stated who to replace the replaced MP but two standers are to be from the same entity and same governorate, as the law didn't stated more in this aspect therefore the provision of the I.C.R. elections law No.(45 of 2013 regard the replacement is more compatible with the constitution in article (38/1<sup>st</sup>) which bind to respect (the freedom of expression using all means) and that is in accordance with freedom of the elector to choose his representative, and that to be considered in such cases as the law No.(45) of 2013 stated in article (14/3<sup>rd</sup>) of it (the seats shall be distributed within the list by re-arranging the sequence of candidates based on the number of votes obtained by each of them, the first winner will be the one who gets the highest number of votes, and so on for the rest candidates), as the MP (ain.ain.kha.zin) didn't obtained the higher votes to be the replacement for the resigned MP, therefore the I.C.R. decision is not authentic from this aspect as it didn't consider the electors will, it is obligated to choose a replacement of whom has obtained highest votes to occupy the vacant seat. Accordingly the court decided that the I.C.R. decision of approving the nomination of the MP (ain.ain.kha.zin) in not authentic, and to burden the defendant the expenses and the advocacy fees for the agent of the plaintiff amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, publicly on 16.12.2014 .

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