

Republic of Iraq
Federal Supreme Court
Ref. 114/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 21.4.2015 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 and they made the following decision:

The plaintiff: (feh.ha.zin.) –his agent the attorney (dha.ain.ain.).

The defendant: 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 defendant being in this post has issued the law of replacing the I.C.R. members No.(6) for 2006, amended by the law No.(49) for 2007, second paragraph of article (2) stipulate that (if the vacant seat is within the governorate' seats allocated by the electoral law, it shall be replaced from the bloc of the replaced member within the governorate' list, in case of depleting the candidates in a governorate, the concerned entity shall present the name of other

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candidate but to be part of the entity' candidates within the electoral list in other governorate, from the candidate that the Commission has already approved their nomination), the text of this paragraph contradicts the constitution' provision, the law of electing the council of representatives, and other laws. It authorized that the concerned entity nominate another candidate from different governorate, this consider exceeding to the electoral rights of the governorate of the replacement member, and pillage to the electoral votes who voted to the member included by the replacement to represent them in the council, therefore he challenged with the constitutionality of second paragraph of article (2) of the amended replacement law No.(6) for 2006, requesting it of the F.S.C. for the following reasons:

First: paragraph (2nd) of article (2) of the replacement law violates the provision of article (49/1st) of the constitution which stipulates that (the Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. they shall be elected through a direct secret general ballot. the representation of all components of the people shall be upheld in it), as paragraph (2nd) of article (2) of the replacement law when authorized granting the seat of the member included by the replacement in case that the entity has no more candidates within the governorate of the member, and to grant it to candidate of different governorate



is injustice to the right of the replaced member' governorate. When the law of replacement No.(6) for 2006 was enacted, according to the Commission system there was only one entity represent all, but now we find that number of parties and entities are aligned in one bloc within one electoral list. The vacant seat could be covered from other entity of the same bloc, therefore implementing paragraph (2nd) of article (2) of the replacement law is violation to the rights of the governorate' electors specially that in some cases the governorate of the replacement candidate could be achieved it representation in the council, and granting it another seat is more than it stipulated share in the constitution and related laws.

Second: Paragraph (2nd) of article (2) of the replacement law violates the provisions of article (11/1st) of the I.C.R. elections law No.(45) for 2013 which stated the seats number of each governorate according to the attached table to the mentioned law, implementing the challenged article leads to the exceeding of one governorate to other, it may obtain more seats than what is stipulated in the I.C.R. elections law.

Third: Paragraph (2nd) of article (2) of the replacement law violates the provisions of article (15/2nd) of the I.C.R. elections law No.(45) for 2013 which stated (if the vacant seat pertains to a political entity or a list that has exhausted



the candidates, then the seat is allocated to another candidate for a political entity that has obtained the minimum number of votes set for obtaining the seat), this article didn't grant the vacant seat to different governorate, but to different political entity, which is practically of the same governorate. The legislator has consider justice and fair of the electors rights. According to article (48) of the mentioned law no legal text may be implemented that contradicts the provisions of this law, therefore the replacement law paragraph (2nd) of article (2) contradicts the provision of article (15/2nd) of the I.C.R. elections law.

Fourth: Paragraph (2nd) of article (2) of the replacement law violates the provisions of article (14/1st) of the elections law No.(16) for 2007 the amended, which stated (if the council member loses his seat for any reason, the next candidate in his list will replace him according to the order in the list which they are presented), paragraph (3rd) of the same article (if the vacant seat is related to a political entity consisting of one person or a list that has exhausted the candidates, the seat shall be allocated to another candidate from another political entity that has obtained the minimum number of votes set for a seat, otherwise the seat remains vacant), therefore the legislator in this article didn't authorizes granting the vacant seat to candidate of different governorate because it is exceeding on the shares and the

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electoral rights. For all that he stated the unconstitutionality of (second paragraph) of (article 2) of the replacement law No.(6) for 2006, he requested the F.S.C. to rule the unconstitutionality of it, and to rule to repeal this paragraph, to burden the defendant the expenses and advocacy fees.

The court call upon the parties of the lawsuit, the agent of the plaintiff and the agents of the defendant has attended and continue with the argument in present and public, the defendant agent repeated the answering dated on 27.10.2014 requesting to reject the lawsuit. draft 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' agent challenged in his case petition the unconstitutionality of paragraph (2nd) of article (2) of the law No.(6) for 2006 (the law of replacing the I.C.R. members) for violating article (49/1st) of the constitution, and violating the law of electing the I.C.R. No.(45) for 2013 of article (11/1st) and article (15/2nd) of it. When referring to article (2/2nd) of the law No.(6) of 2006 the amended, we found that it stipulates that ((if the vacant seat is within the governorate' seats allocated by the electoral law, it shall be replaced from the bloc of the replaced member within the

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governorate' list, in case of depleting the candidates in a governorate, the concerned entity shall present the name of other candidate but to be part of the entity' candidates within the electoral list in other governorate, from the candidate that the Commission has already approved their nomination)), article (49/1st) of the constitution stipulates that (the Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. they shall be elected through a direct secret general ballot. the representation of all components of the people shall be upheld in it), during reviewing the above constitutional text we found that it consider the I.C.R. member even if he was elected in one governorate but he represent the entire Iraqi people and not just the electors who elected him, but we found that the law of replacing the I.C.R. members, including paragraph (2nd) of article (2) of it was legislated to fulfill the vacant seats in the I.C.R. as result that the member occupy political or ministerial post, in order that the I.C.R. performs it legislation functions fully. It was enacted under the provision of article (49/5th) of the constitution. as for the law of the I.C.R. elections No.(45) for 2013, its provisions shall be implemented after the electoral process in order to distribute the seats on the winner candidates in the elections, according to it obliged reasons was enacted to conduct free elections in high transparency, so that the elector would be represented truly. For the aforementioned, there is no contradiction between the provisions of the mentioned laws, because each of them

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was enacted for specific case in the electoral process, and its provision implemented differently, in the time that it could consider the provision of the I.C.R. elections law No.(45) for 2013 when implementing the law of replacing the I.C.R. members if this law didn't includes a solution for specific case. therefore paragraph (2nd) of article (2) of the law No.(6) for 2006 doesn't violates article (49/1st) of the constitution or the provision of the elections law No.(45) for 2013 (the I.C.R. members elections law), accordingly the lawsuit lack its legal or constitutional substantiation which require to reject it. Accordingly the court decided to reject the plaintiff' lawsuit and to burden him the expenses and the advocacy fees for the defendant' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, issued publicly on 21/4/2015.