

In The Name Of God, Most Gracious, Most Merciful

**Republic of Iraq
Federal Supreme Court
Ref: 122/Federal/Media/2014**



Kurdish text

The Federal Supreme Court has been convened on 4/5/2015, 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: (Ha. Mem. Non.) Her agent the attorney (Jeem. Jeem. Ha.)

The Defendant:

1) ICR speaker- being in this capacity- his agents the legal officials (Sen. Ta. Yeh.) And (Ha. Mem. Sen.)

The Claim:

The agent of the plaintiff claimed before the FSC in the lawsuit numbered (122 / Federal / 2014) that on 10/28/2014, the ICR decided to replace the membership of (Ain. Ain. Ha.) Instead of the membership of President of the Free Iraqi Bloc (Dal. Qaf. Alf. Jem.) as he assumed the position of Minister of Environment. His agent made a challenge on 29/10/2014 and the Council made a decision about the challenge on its session dated 30/10/2014 according to article 52/1 of the Constitution, as it is permissible to appeal the council's decision according to article 52/2 of the Constitution, so he is appealing the decision before the Federal Supreme Court for the following reasons:

1. His client is a candidate for the Salah al-Din governorate for her entity (Free Iraqi Bloc) and that she entered the parliamentary elections for

- the year 2014 for the (Free Iraqi Bloc) which is in association with the other entities that make up the coalition (the destruction of Iraq).
2. After the formation of the government, the head of the Free Iraqi Bloc was nominated for the position of Minister of Environment, and the parliamentary seat became vacant within the seats in Salah al-Din governorate specified by the electoral law.
 3. Based on the provisions of the Iraqi Council of Representatives Replacement Law No. ٦ of year 2006, Article (2/3) thereof (If the representative seat is vacant within the governorate seats specified by the electoral law, then it shall be replaced by the bloc to which the member included in the replacement within the governorate list belongs). so the representative seat is the right of his client because she is the owner of the highest votes within the Free Iraqi Bloc, as well as for her nomination to occupy the vacant parliamentary seat by the head of the bloc, but the Iraqi Council of Representatives violated this article and tended to replace him in place of the deputy (Dal. Qaf. Jem.) , and this is considered a constitutional and legal violation and in a roundabout way that is ambiguous.
 4. The replaced member is the Secretary General of the (People's Rights Movement) and he is not among the candidates for the (Free Iraqi Bloc) which has the privilege to occupy the vacant electoral seat in accordance with the provisions of the Entity and Political Elections Certification System No. 5 of year 2009 this is what was confirmed by the letters of the Independent High Electoral Commission No. (Kha./14/790) on 23/9/2014, (Kha./14/891) on 5/11/2014 and that no member of the Free Iraqi Bloc's candidates has relinquished to the aforementioned Mr., who is one of the candidates of the (People's Rights Movement) and its secretary general, his replacement and granting him membership in the Iraqi Council of Representatives would be contrary to the constitution and law.
 5. The contested decision did not discuss the objection submitted by his client regarding the validity of the membership of the aforementioned Mr (Ain. Ain. Ha.) being a candidate for the (People's Rights Move-

ment), but rather it was limited to voting on the validity of the members' membership objected. Therefore, after carrying out the necessary procedures, he requested a ruling to lift the unfairness of his client, to revoke the contested decision, to return the representative seat to her according to the electoral and constitutional entitlement, and to charge the defendant with all expenses and attorney fees.

And after registering the case before this court in accordance with Paragraph 3rd of Article (1) of the Rules of Procedure of the Federal Supreme Court No. (1) Of 2005 and after completing the required procedures in accordance with Paragraph 2nd of Article (2) of the Court's Bylaws referred to above. A day was set for the pleading and the court was formed, so the attorney of the plaintiff and the attorney of the defendant came under the agencies attached with the case file, and the public appearance was initiated. The third person's representative of the High Electoral Commission also attended the session, from an audit of the lawsuit, it was found that the subject matter of the lawsuit filed by the plaintiff (Ha. Mem.) Who has included it in the lawsuit petition it found that the plaintiff in the case No. (128/federal/2014) which the Mr. (Mem. Sad. Ain.) challenging with the same appeal filed by the plaintiff for the reasons stated in his request in the lawsuit numbered (128/federal/2014) and due to the unity of the request and the unity of the defendant and the third person in the two lawsuits and in order to avoid issuing different judgments between them, it decided to unite them and consider the case 122/federal/2014 as the original as it was submitted previously and the public in presence hearing were started, the plaintiff's attorney repeated what was mentioned in the case's petition and requested a judgment accordingly, with the defendant being charged with all expenses. The plaintiff's attorney in the unified lawsuit also repeated what was stated in the suit's petition and requested the ruling accordingly.

The attorney (Alf. Mem.) attended as a proxy for the objected deputy and the public in presence hearing were started the third-person agent of the Independent High Electoral Commission repeated what was stated in the commission's letter No.(Kha./15/163) in 4/2/2015 the agent of the ob-

jected deputy answered that his client had asked the commission to change his electoral affiliation and that his request included his transfer to the (Free Iraqi Bloc) In addition, there are efforts for reconciliation with the plaintiff, The third-person agent in the Independent High Commission for Elections supported the information contained in the letter above-mentioned and did not get any change to it. The attorney of the plaintiff denied the existence of any conciliation between the plaintiff and the third person, the deputy who's his membership being objected. Noted in the hearing session 24/2/2015. The attorney of the third person submitted to the court a request dated 23/5/2015 requesting to postpone the hearing on the grounds that there is a lot of evidence produced in the case hearing including updating information with the Independent High Electoral Commission and its department in Salah al-Din That changed his legal position the plaintiff agent explained that the postponement request includes procrastination and it is not permissible to change the decision of the Board of Commissioners, and the defendant's attorney supported the request for the postponement. And the attorney of the third person gave a final deadline to answer the lawsuit and submit the documents he had in support of his claim.

At the session 4/21/2015, the plaintiff's attorney (Jeem. Jeem. Ha.) attended the rest of the attorneys of the parties to the case attended, and the third person and his attorney did not attend, but he sent two requests to postpone the case, the first request is to give him the opportunity to prove that he has turned into the Free Iraqi Bloc and to bring the required documents during the postponement period And the second request relates to the illness of his agent according to the report attached to the request the plaintiff's attorney submitted a list he read out in court, and the third-person's attorney replied that he has nothing to add to his previous statements.

And in order to enable the attorney of the third person to attend and due to the illness of the agent of the third person, the hearing was postponed. The Federal Supreme Court reviewed the letter of the Independent High Electoral Commission/Board of Commissioners (No.(Kha/15/163) on

4/2/2015 to clarified the information on the parties to the case is clarified about the political entity, the governorate, and the number of votes they obtained in the elections. It included that the plaintiff (H.M.) belongs to the Free Iraqi Bloc from Salah al-Din governorate and obtained (1706) votes and that (Ha. Mem.) belongs to the Free Iraqi Bloc from Salah al-Din Governorate and obtained (1507) votes and that (Ain. Ain. Ha.) Belongs to the People's Rights Movement from Salah al-Din Governorate and holds (3,976) votes, and (Qaf. Alf. Ta.) Belongs to the Free Iraqi Bloc from Salah al-Din Governorate and holds (8,693) votes.

The attorneys of the plaintiff repeated what was mentioned in the response list of the lawsuit petition dated 25/11/2014 and requested to reject the lawsuit with the plaintiff charging all expenses. The plaintiff's attorney in the lawsuit numbered (128/federal/2014) submitted a request to this court and a request to annul the lawsuit's petition because the need for its establishment no longer exists and reconciliation takes place between the two parties and he supported his requests before the court on the same date.

Therefore, the Federal Supreme Court decided on (22/12/2014) to nullify the lawsuit petition numbered (128/Federal/2014) based on Article (88/1) of the amended Civil Procedure Law No. (69) Of 1983, And on 4/30/2015, the attorney of the third person submitted a petition to the court in which he explained that the situation that occurred in the case numbered (117/131/Federal/2014), where the Federal Supreme Court issued a decision on 21/4/2015, is similar to that of his client And he requested that this be applied to the case under consideration for the reasons that he indicated, and the court reviewed the request of the third person's attorney and found that the situation in that case is different from the case in question, Whereas, this lawsuit was related to Maysan Governorate, where the quota for women was not assigned to a woman from Dhi Qar Governorate despite the completion of the quorum for women in the Iraqi Council Of Representatives of one-quarter.

As the number of women in the parliament when the position was assigned to it reached (83) deputies, and the position was withheld from the

candidate Haider Star, despite the quorum in the council, so the court responded to the decision of the Iraqi Council of Representatives for violating the law.

Therefore, the aforementioned case does not match the case presented in this lawsuit.

In the last session, the attorney of the plaintiff repeated his statements and previous requests and requested the verdict accordingly.

The attorneys of the defendant repeated their previous statements and requests and requested to reject the case.

The third person's attorney also repeated his previous statements and requested to dismiss the case as charging the plaintiff all the expenses and each party repeated its statements and its previous requests and request for judgment accordingly.

Whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

The Decision:

After scrutiny and deliberation by the FSC, the court found that the prosecutor's attorney is challenging the decision of the Iraqi Council of Representatives dated 10/30/2014 to dismiss the plaintiff's objection to assigning the vacant seat in the House of Representatives to Mr. (Ain Ain Ha.) by replacing him with Deputy (Dal. Qaf. Alf.) Whom the position of Minister of Environment was assigned to him and his seat became vacant because of that.

He claims that his client has the right to occupy this seat in the House of Representatives instead of Mr. (Ain Ain Ha.) for the reasons stated in his petition and in the pleading sessions, during scrutiny It turned out that the plaintiff had been nominated in the 2014 elections to the House of Representatives from the Free Iraqi Bloc formed with other entities and formed a coalition in the name of (Iraq Coalition) and that she obtained (1706) votes from the votes of the electorate and she is a candidate from Salah al-Din governorate, and after the formation of the government, one of the seats in the Iraqi parliament became vacant, as a result of assigning

the position of the Minister of Environment to Mr. (Dal. Qaf. Alf.) he is from the Free Iraqi Bloc formed within the (Iraq Coalition) and he is also from Salah al-Din Governorate, and the House of Representatives has assigned the vacant seat to Mr. (Ain Ain Ha.) in the elections, he is from the same Governorate, but from the (People's Rights Movement) bloc formed with the (Iraq Coalition) which he obtained (3,976) votes.

And as it is clear to the court from the letter of the Independent High Electoral Commission No. (Kha /15/163) on 4/2/2015 that the plaintiff is a candidate from Salah al-Din Governorate and from the Iraqi Free Bloc formed with (Iraq Coalition) and Deputy (Dal. Qaf. Alf.) he is candidate from Salah al-Din Governorate but from the (People's Rights Movement) bloc formed with the (Iraq Coalition), Whereas, Article (two), paragraph (two) of Law No. (6) of 2006 amending (the law on replacing members of the House of Representatives) stipulated (if the vacant seat is within the seats of the governorate specified by the electoral law, then he shall be compensated from the bloc to which the included member belongs By substitution within the governorate list ... etc).

Whereas the deputy objecting to Mr. (Ain. Ain. Ha.) membership was not from the same bloc to which the (Qaf. Alf.) belongs, whose representative seat in the House of Representatives became vacant to assign the position of Minister of Environment to him upon forming the government, even if he is a candidate from the same governorate to which the appointed deputy belongs whose the position of minister assigned to him, Therefore, the conditions stipulated in Article (2/3) of Law No. (6) of 2006 amending the replacement are not available in Mr.(Ain. Ain. Ha.). And the continuation of the Iraqi Council of Representatives in its contested decision of 10/30/2014 regarding the validity of Mr. (Ain. Ain. Ha.) membership in the Council of Representatives is contrary to the provisions of Article (2/2) of Law No. (6) of 2006 amended.

Therefore, the Federal Supreme Court decided to annul the decision of the Iraqi Council of Representatives ruling on the validity of the membership of the Deputy (Ain. Ain. Ha.) dated 10/30/2014 and notify the same to the House of Representatives with charging the defendant being in this

capacity all the case expenses and attorney fees for the plaintiff's attorney (Jeem. Jeem. Ha.) an amount of one hundred thousand dinars, and the decision was issued decisively and unanimously and made clear publicly on 4/5/2015.