

Republic of Iraq
Federal Supreme Court
Ref. 123/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 17.2.2015 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 it issued the following decision:

The Plaintiff:

(Ain. Ain. Ha'.) – his agent the attorney (Ya'. Kaf. Seen.).

The Defendant:

The ICR Speaker/being in this post _ his agents the legal officials (Seen. Ta'. Ya'.) and (Ha'. Meem. Seen.) .

The Third Person (The Objected Against): (Zay. Ain. Kaf. Seen.) _ his agents the attorneys (Ta'. Meem.) and (Sheen. Alf.).

The Third Person For Inquiry: Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this post _ his agents the legal official (Alf. Ha'. Ain.).

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The Claim:

The agent of the plaintiff claimed that his client had previously objected to the ICR by his objection No.(Meem./1314) due to that Mr. (Zay. Ain. Kaf. Seen.) took the membership of the ICR instead of (a substitute for) the deputy (Sad. Meem. Meem. Ain.) who is a candidate within the (Iraqi Front for National Dialogue) for Baghdad governorate, which is part of the (Al Arabiya coalition) list, after Mr. (Sad. Meem.) Assumed the position of (Deputy Prime Minister).

In the ICR session No.(25) Ref.(138) dated 11/1/2014, the validity of (Zay. Ain. Kaf. Seen.) membership in the ICR was voted on, and because of the lack of conviction of his client (the plaintiff) with the decision that were issued by the ICR, he appealed it for the following reasons:

1. The list (Al-Arabiya coalition) is made up of several entities under the name of this list. And that (Zay. Ain. Kaf.) belongs to (the Iraqi Resurrection Party) which is part of the (Al-Arabiya coalition), and as compensation for the vacant seat is from the bloc to which the member included in the replacement belongs within the governorate list. Accordingly, the provisions of Paragraph (2) of Article (2) of the Iraqi Council of Representatives Replacement Law No. (6) for the year



2006 shall be fulfilled in his client's request to occupy the vacant seat after Mr. (Sad. Meem.) has taken up the position of Deputy Prime Minister.

2. The plaintiff's attorney also stated that his client has received the sequence (1) in the reserve list (the biggest loser) within the (Iraqi Front for National Dialogue) bloc, which is part of the (Arab coalition) list, and has obtained (3174) votes, and this makes him entitled to the alternative position (Sad. Meem.) based on the provisions of Article (14/Third) of the Iraqi Parliament Elections Law No. (45) for the year 2013 which stipulated (the distribution of seats by rearranging the sequence of candidates based on the number of votes obtained by each of them and that the first winner is the one who gets the highest the votes, and so for the rest of the candidates).
3. And the plaintiff's attorney claims that the text of Article (2) Paragraph (3) of the Iraqi Council of Representatives Replacement Law No. (6) of 2006 applies, and this case applies to his client as he belongs to the same governorate and the same bloc to which the member included in the replacement belongs and that the objected against (Zay. Ain. Kaf.) does not



belong to the same bloc to which the member included in the replacement belongs, for the above reasons the agent of the plaintiff request the following:

- a) Ruling that the ICR decision to validate the membership of the deputy (Zay. Ain. Kaf.) is invalid and cancel his membership from the ICR.
- b) The ruling that his client assumes the vacant seat in place of the deputy (Ain. Ain. Ha'.) based on and in accordance with the provisions of Article (52) of the Constitution and Article (14/Third) of the Iraqi Parliament Elections Law No. 45 of 2013 and the Parliamentary Replacement Law No. (6) of 2006, this is in addition to a lot of precedents issued by the Federal Supreme Court in many of its decisions regarding the replacement of members of the ICR.

The defendant's attorney responded to the lawsuit petition that Mr. (Zay. Ain. Kaf.) is a member of the (Iraqi Front for National Dialogue) based on the letter of the Independent High Electoral Commission/Board of Commissioners No. (Kha./14/777) on 9/21/2014 and that his name was mentioned by mistake among the candidates of the (Iraqi Resurrection Party) bloc from the

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lists sent to the ICR in the nominations, and that the aforementioned commission letter is based on the book of (Iraqi Front for National Dialogue) No. (90) on 9/19/2014 which was signed by Mr. (Sad. Meem.) Head of the (Iraqi Front for National Dialogue) and the Coalition to which the plaintiff belongs, in addition to the fact that the book of commissioners is based on the (The Iraqi Resurrection Party) letter No. (Ha'./35) on 9/29/2014 which confirms the existence of the name of Mr. (Zay. Ain. Kaf.) by mistake. There are documents indicating Mr. (Zay. Ain. Kaf.) affiliation, including his personal pledge and pledge that there is no criminal record, and both documents indicate that he is part of the Iraqi Front for National Dialogue bloc. And that the plaintiff attorney's relied on Article (14/Third) of the Council of Representatives Elections Law No. (45) of 2013 because his client was entitled to the representative seat that was occupied by Mr. (Sad. Meem.) on the basis that he occupies sequence (1) in the reserve list (the biggest loser) And that this inference is not included because the aforementioned law regulates the initial distribution of seats, while the case - in question - is to replace a member of the House of Representatives, and this matter is governed by the Parliamentary Replacement Law No. (6) of 2006. Because of the aforementioned reasons, the defendant's attorney requested to

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dismiss the lawsuit and retain his right to submit additional regulations in the future, and to charge the plaintiff with all judicial expenses. The plaintiff's attorney responded with an explanatory list to the defendant agent respondent's list dated 12/1/2014 and as follows: that he confirms what was stated in the lawsuit petition and requests the verdict accordingly, as there is no legal basis for the claim that the objected against name from the (Iraqi Front for National Dialogue) bloc came as a mistake as he was registered within the bloc (Iraqi Resurrection Party) at the Electoral Commission upon entering and running for the elections of the 2014 Parliamentary elections for the 2014 session. Providing him with a post-nomination history book by changing his political affiliation from one bloc to another does not give him the right to tack the parliamentary seat, as this is considered a circumvention of the law in the name of the law, in addition to the fact that this behavior is contrary to the Constitution, which was done because of the social and political relations between the above-mentioned persons.

This will lead to the loss of the votes of the melted voters, whose will to elect their candidate (the plaintiff) has been lost. This act, which took place after the announcement of the results, is part of political bargaining and is considered a violation of the will of the voter, and the Commission is the only official body

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authorized to indicate the affiliation of the candidates and their reference to the political blocs, and it is not possible to rely on an earlier or subsequent book issued by the head of an entity or any person, therefore, the defendant's reliance on the book issued by the president of the Iraqi Front for National Dialogue that the candidate's name has been mentioned as a mistake or that his non-political affiliation is deemed contrary to the provisions of the constitution and law. The prosecutor reiterated the above also mentioned in his list dated 18/12/2014, noting that the system of authenticating the lists of candidates does not allow to change the affiliation of the candidate from another entity after the approval of the lists of candidates and for the reasons above he repeated his request to judge what is mentioned in the petition The third person's The Objected Against (Zay. Ain. Kaf. Seen.) agents indicated in their explanatory list that there is no validity in the petition and in the explanatory regulations submitted by the prosecutor to the court and that our client belongs to the Iraqi Front for National Dialogue and not to (Iraqi Resurrection Party) as it is fixed from the documents linked to the case file and requested the dismissal of the case.

After registering the case with the Federal Supreme Court based on the provisions of Paragraph (third) of Article (1) of the Federal Supreme Court Bylaw and after completing the required



procedures based on the provisions of Paragraph (Second) of Article (2) of the aforementioned system, appointed on 18/12/2014 is the date for hearing the lawsuit and the court was formed in which the attorney for the plaintiff repeated what was mentioned in the case petition. He stressed that his client was entitled to take the vacant seat for the reasons he mentioned earlier.

The third person's agent replied that there is no truth to the statements of the prosecutor because his client is from the Iraqi Resurrection Party, but he is from the Iraqi Front for National Dialogue, and the head of the front, Mr. (Sad. Meem.) did not change his affiliation with the said party after the announcement of the election results.

The attorney of the third person (for clarification/ the Independent High Electoral Commission) replied that he had examined the reasons for the lawsuit filed by the plaintiff and the arguments of the defendant's agents and the third person, and he will present his answer to that before the next session.

Therefore, in order to empower the representative of the third person (the Independent High Electoral Commission); he decided to postpone the pleading until 17/2/2015.

And before the pleading session above, the attorney of the third person (for clarification - the Independent High Commission for

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Elections) presented an explanatory list to the court in the number (Kha/15/196) dated 2/5/2015 in which he repeated what was stated in his previous regulations and attached a table in which he indicated that the plaintiff (Ain. Ain. Ha'.) is a candidate for the governorate of Baghdad, and he got (3174) votes, and the (objected against) deputy (Zay. Ain. Kaf. Seen.) is also a candidate for the governorate of Baghdad, and he got (5312) votes, and Mr. (Sad. Meem.) is also a candidate for the governorate of Baghdad, and he got (9927) votes.

The representative of the Independent High Electoral Commission indicated in his above list that the nomination of Mr. (Zay. Ain. Kaf.) to replace Deputy (Sad. Meem.) was based on two letters addressed to the commission. One of them is from (Iraqi Resurrection Party) No. (Ha'./35) on 9/19/2014 and the other from (Al Arabiya Coalition) No. (90) on 9/19/2014 includes that Mr. (Zay. Ain. Kaf.) is a member of (Iraqi Front for National Dialogue) and One of its candidates, whose name was inadvertently mentioned in the lists of candidates, and based on the two aforementioned books, the Iraqi Council of Representatives decided to replace Mr. (Zay. Ain. Kaf.) the place of Deputy (Sad. Meem.) who holds the position of Deputy Prime Minister.

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On the day appointed for the pleading 2/17/2015, the court was convened and the parties to the lawsuit were called upon, so the attorneys of the plaintiff, the attorneys of the defendant, the attorney of the third person, and the attorney of the Third Person (The Objected Against), and the public hearing began.

The plaintiff attorney repeated the lawsuit's petition and requested the verdict of what was stated in it. The defendant's attorneys replied that they would repeat what was stated in their list of response and request a dismissal of the case. The third person's attorney also repeated what was stated in the letter of the Independent High Electoral Commission No. (Kha'./15/169) On 5/2/2015 that the Prosecutor (Ain. Ain. Ha'.) is a candidate for the Baghdad governorate and for (the Iraqi Front for National Dialogue), and Mr. (Zay. Ain. Kaf.) is a candidate for the Baghdad governorate and for (the Iraqi Resurrection Party), and that Mr. (Sad. Meem.) Is a candidate for the Baghdad governorate. For the Iraqi Front for National Dialogue.

The agent of the attorney who was challenged with the validity of his membership replied that her client had filed a lawsuit before the Investigation Court challenging the invalidation of his signature in Form No. (6) and the case is pending before the Investigation Court, and each of the parties repeated their

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previous statements. Whereas nothing left to be seed, the argument is closed, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that Mr. (Sad. Meem.) he ran for the Iraqi Council of Representatives elections for the third session of 2014 for the (Iraqi Front for National Dialogue) bloc, which is part of the list of (Al Arabiya Coalition) that he heads for the Baghdad governorate and according to the nomination form No. (6) for the list of (Al Arabiya Coalition) approved by the commission The Independent High Electoral Commission on 1/12/2014 which is linked to the case file. And the Plaintiff (Ain. Ain. Ha'.) ran for the aforementioned elections, also for the (Iraqi Front for National Dialogue) bloc and for the Baghdad governorate. The third person (The Objected Against) (Zay. Ain. Kaf.) ran for the aforementioned elections for the Iraqi Resurrection Party bloc, which is also included in the list (Al Arabiya Coalition) and for the Baghdad governorate as well, and according to the nomination form referred to above.

And after the election results were announced, Mr. (Sad. Meem.) sent a letter to the receiving high commission for the elections under the number 90 dated 9/19/2014 stating that Mr. (Zay. Ain.

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Kaf.) is a member of the (Iraqi Front for National Dialogue) and one of its candidates, and that his name is mentioned were inadvertently in the lists of candidates, and this is also confirmed by (the Iraqi Resurrection Party) in its letter No. (Ha'./25) on 9/19/2014 and directed to the above commission. Based on the two books mentioned above that were transferred by the Elections Commission to the House of Representatives through its letter No. (Kha/14/777) dated 9/21/2014, the House of Representatives replaced Mr. (Sad. Meem.) with Mr. (Zay. Ain. Kaf.) due to Mr. (Sad. Meem.) assuming the position of Deputy Prime Minister.

According to the letter of the High Electoral Commission No. (Kha/15/165) on 5/2/2015 linked to the case file, Mr. (Sad. Meem.) obtained (9927) votes.

And the plaintiff obtained (the objector_ Ain. Ain. Ha'.) (3174) votes ,and the (objected against) deputy (Zay. Ain. Kaf. Seen.), obtained (5312) votes. Whereas the (objected against) deputy (Zay. Ain. Kaf. Seen.) has entered the elections for the House of Representatives for its third session of 2014, as a candidate for the (Iraqi Resurrection Party) bloc, which is part of the (Arab Coalition) list for the Baghdad governorate and headed by Mr. (Sad. Meem.) according to the aforementioned and approved by

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the Independent High Electoral Commission nomination form No. (6) on 01/12/2014.

Whereas Paragraph (4) of Article (4) of the System for Approving Candidate Lists No. (11) for the year 2013 does not allow political entities or coalitions to withdraw or change the candidate list or submit a different list after the expiration of the specified period for approving candidate lists unless The Commission request it for the purpose of making the list meet the conditions of the above system. In this case, the required list in which the change took place must be submitted before the end of the specified period from the Commission for approval.

Whereas, the books addressed by the head of (Al-Arabiya Coalition) and (Iraqi Resurrection Party) to the Independent High Commission for Elections and referred to above regarding the fact that the (objected against) deputy (Zay. Ain. Kaf. Seen.) Within the Iraqi Front for National Dialogue was issued on a later date for the election process on 9/19 / 2014 .And that the elections took place on (04/30/2014).

Whereas the claim that the name of candidate (Zay. Ain. Kaf. Seen.) from the (Iraqi Front for National Dialogue) bloc has fallen inadvertently, it cannot be relied upon, since the name of the objected is above it is affixed to the list of candidates mentioned above, and that his signature is affixed to his name, so it is not

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conceivable that he has fallen by mistake or Inadvertently included in that list. And since the aforementioned change took place after the election process was conducted and its results were announced, and as the will of the voter is directed towards electing its candidate, any change in the manner described above is considered to be an infringement and confiscation of the votes of the voters, and therefore it is considered a violation of Article (38 / Third) of the Constitution which is binding The state guarantees (freedom of expression of opinion by all means). And where it has been proven to the court that the plaintiff (Ain. Ain. Ha'.) is from the same bloc (the Iraqi Front for National Dialogue) that is part of the (Al-Arabiya coalition) list for the Baghdad governorate, to which he belongs and headed by Mr. (Sad. Meem.)

And that the the (objected against) deputy (Zay. Ain. Kaf. Seen.) ran for the elections for another bloc, which is the (Iraqi Resurrection Party) bloc within the (Al Arabiya coalition) list and for the Baghdad governorate, and for which he contested the general elections. And according to the foregoing and based on the provisions of Paragraph (2) of Article (2) of the Law on Replacing Members of the Iraqi Council of Representatives No. (6) of 2006 and Paragraph (4) of Article (4) of the System for Approving Candidate Lists No. (11) of 2013 The impugned

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decision issued by the Iraqi Council of Representatives is incorrect for the reasons mentioned above. The court decided to rule that the ICR decision on 10/30/2014 issued in the session numbered (25) was invalid to approve the nomination of Representative (Zay. Ain. Kaf. Seen.) Instead of Representative (Sad. Meem.) And to burden The Defendant

The ICR Speaker/being in this post her expenses with the advocacy fees for the plaintiff agent (Ya'. Kaf. Seen.) Amount of (one hundred thousand) IQ.D. This decision has been issued decisively based on the provisions of Article (5/Second) of the Federal Supreme Court Law No. 30 of 2005 and Article (94) of the Constitution of the Republic of Iraq for the year 2005 and by agreement and was publicly understood on 17/2/2015.