

Republic of Iraq
Federal Supreme Court
Ref. 123 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16/12/2019 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: the MP Huda Jar Allah Dawood -her agents the attorneys Ahmed Alabady and Ziad Ahmed Muhamad.

The defendants:

1. The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.
2. The Prime Minister/ being in this post - his agent the legal adviser Haider Alsoffi.

The claim:

The agent of the plaintiff claimed that the I.C.R. in the fourth parliamentary term/ second legislative year/ first legislative course/ ninth session held on 10/10/2019 has voted on the appointment of (Mrs. Suha Khalil Husain) as the Minister of the education, and she

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took the constitutional Oath of the post assignment in the same day, this I.C.R. decision is a violation to the constitution and the I.C.R. Bylaw therefore he initiated a challenge against it before this court for the following reasons:

First: This nomination violated the text of article (78) of the constitution which stipulated the exclusive jurisdiction of the prime minister of nomination and he assigned this constitutional right to the Committee of education and teaching in the I.C.R.

Second: The nomination of Mrs. Suha and voting on her and her performance to the constitutional oath came throw the I.C.R. (the Committee of education and teaching) which violated article (61) of the constitution which stipulated the jurisdictions of the I.C.R. and it didn't included nominating the Ministers.

Third: The method of choosing her as a minister has violated the principle of separation of powers listed in article (47) of the constitution, the violation is represented by that the committee of education and teaching has edited the letter No.(210) on 26/9/2019 directed to the Prime minister stating that (after the interview with your excellency the Committee has granted the subject big attention and a sub-committee was formed that constituent of the members of the education committee who represent Mosul to search for candidates with competence and educational experience from Al-Mosul within the conditions that you requested, and the committee has unanimously choose the

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lady, her curriculum vitae is attached so you would review and assessing it, the committee of education sees that there is possibility to pass her nomination and to vote for her inside the I.C.R. in case that you choose her and sent her name to the Parliament), by that the Committee of education and teaching has violated article (87) of the I.C.R. Bylaw which stipulate the monitoring and legislation jurisdictions of the permanent committees, and by that the mentioned committee has interfere with the work of the executive authority.

For the mentioned reasons the agent of the plaintiff requested the F.S.C. to rule (the invalidity of the I.C.R. voting on the nomination of Mrs. Suha Khalil for the post of the Minister of Education on 10/10/2019). After the informing the defendants with the case petition, the agents of first-defendant (the speaker of the I.C.R./ being in this post) has responded stating that the mention nomination was done according to article (76/4th) of the constitution were she was nominated by the Prime minister in the letter No.(3285) on 10/10/2019 which included a request to vote on granting confidence for five nominee to complement the lack in the ministerial cabinet, among them is Mrs. Suha, the prior coordination between the members of the education and teaching committee with the Prime minister is in order to choose competent, expert, and efficient nominees, the opinion of the committee is for consulting, and the I.C.R. has voted on granting confidence for the nominate to

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the education ministry in its session held on 10/10/2019 according to article (76/4th) of the constitution by the Parliamentary order No.(4) for 2019. Therefore the agents of the defendant requested to reject the case. The agent of second-defendant (the Prime minister/ being in this post) responded requesting to reject the challenge for incompatibility because considering it is not within the stipulated jurisdictions of the F.S.C. in article (93) of the constitution and article (4) of its Law No.(30) for 2005, and its Bylaw No.(1) for 2005, as the subject of challenge is a constitutional procedure that his client is authorized by article (76/2nd) of the constitution to nominate the minister of education as one of his portfolio's members and it is not a law or regulation, and is not considered as a dispute arising from implementing the federal laws so that the estimated court is competent. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 16/12/2019 scheduled for the argument, the court convened, the agent of first-defendant attended the director Salim Taha, and the legal adviser Haider Alsoffi as agent of second-defendant the Prime Minister, none of the plaintiff's agents has attended, the court noted that one of them has submitted a petition which is Ziad Ahmed Muhamad requesting in it to postpone the case due to his traveling for treatment, during scrutiny found that the plaintiff has another attorney Ahmed Muhamad Alabady who didn't attend also or submitting legal excuse for not attending, in addition, there is the

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lawsuit No.(7/federal/2019) they also the agents of the plaintiffs in it and didn't submitted a request to not attend, the court decided to continue with the lawsuit (123/federal/2019) in the absence of one attorney and the linger of the second to attend. As the case is completed for reasons of judgment the court decided to refuse the postpone request for this reason and because there is another attorney who didn't attend, the agents of the defendants commented requesting to reject the case. The argument is closed and the decision is issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff the MP (Huda Jar Allah Dawood) has challenged the authenticity of nominating Mrs.(Suha Khalil Husain) as the Minister of the education and she took the constitutional Oath, in a violation to the text of article (61) of the constitution, because the nomination came from the committee of education and teaching in the I.C.R. and that is out of its jurisdictions, therefore the plaintiff requested to rule the invalidity of the I.C.R. voting on the nomination of Mrs. Suha Khalil for the post of the Minister of Education. The defendant the speaker of the I.C.R./ being in this post responded that the nomination was under the request of the Prime minister who approved and agreed it, as the defendant the Prime minister he responded that considering the plaintiff lawsuit is out of the F.S.C. jurisdictions, and they both requested to reject the case. The F.S.C. found that considering the lawsuit become irrelevant after the

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resignation of the Prime minister and the approval of his resignation by the I.C.R. on 1/12/2019 therefore the entire ministries consider as resigned according to the provisions listed in article (61/2nd/3/c) of the constitution, including the minister of education. Accordingly the court decided to reject the case from this aspect, and to burden both parties the expenses and the advocacy fees because the lawsuit was filed before the resignation of the ministries, and the court didn't consider the lawsuit objectively. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 16/12/2019.