

In The Name Of God, Most Gracious, Most Merciful

**Republic of Iraq
Federal Supreme Court
Ref.129/125
/Federal/Media/2014**



Kurdish text

The Federal Supreme Court has been convened on 17/2/2015, 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 Plaintiffs:

- 1) (Ain.Dhal.Ghain.) his agent the barrister (Jim.Kaf.Heh.)
- 2) (ALif.Nun.Jim) his agent the barrister (Mim.Ha.Shin.)

The Defendant:

ICR speaker/ being in this capacity- his two agents the legal officials (Sin.Ta.Yeh.) and (Heh.Mim.Sin.)

The Third Party:

- 1) IHEC, its legal official (ALif.Ha.Ain.)
- 2) (Mim.Ra.Dhad.)/ the representative his membership is under questioning

The Claim:

The plaintiff agent claimed in the federal case No.(125/fed/2014) before the FSC that his client is a candidate from Salah Al-Dien governorate for his entity (AL-Jamaheer AL-Samiya bloc). He entered the legislative elections in 2014 associated with the other entities forming Etilaf AL-Arabiya. After the formation of the government, the minister of the state for governorates and ICR affairs post was given to the plaintiff and his parliament seat became

vacant which belongs to salah aldeen governorate as determined in the electoral law on 20/9/2014. ICR decided to be replaced (Mim.Ra.Dhad.) instead of (Alif.Ain.Beh.) who is a candidate within Etilaf AlJamaheer AlWataniya for being the minister of the state for governorates and ICR affairs. The plaintiff submitted a challenge against this decision on 23/9/2014 during the legal period and the council decided on the challenge in its session on 30/10/2014 No.(25) according to the provisions of the article (52/1st) of the Constitution. So he challenges this decision based on the article (52/2nd) from the Constitution because the replaced member (Mim.Ra.) is a candidate from the block (Muqtaderon for peace and construction) and he is not within the candidates of Etilaf Al_Jamaheer AL-Wataniya which have the right to occupy the vacant seat according to the provisions of the resolution of entities and political elections ratification No.(5) in 2009. Because there is no member from Etilaf Al_Jamaheer AL-Wataniya assigns his right to (Mim.Ra.) so his replacing and giving him the ICR membership violated the Constitution and law. According to the provisions of the law of ICR members replacing No.(6) for 2006 item (2) from the article (2), the plaintiff has the right to occupy the seat. He nominated by Etilaf Al_Jamaheer AL-Wataniya president (Feh.Alif.Mim.) based on the coalition letter No.(131) on 10/9/2014 and the replaced member is covered by the article (7/1st) from the Constitution and he is convicted and escaped and many judicial decisions issued against hi. Also, the plaintiff challenged the educational certificate. Also, the challenged decision didn't discuss the presented objection by the plaintiff about the membership validity of (Mim.Ra.) for being a candidate from the movement (people rights). It was only for the voting on the validity of the membership for the members under objection. Because the client got moral damage by looting his right to have the seat, he requests from the Federal Supreme Court to remove this injustice and to apply the law No.(6) for 2006 (amended) and to revoke the challenged decision and return the seat to the plaintiff according to the electoral and constitutional right. Also, he requests to burden the defendant with all the expenses and fees of the advocacy. On 17/11/2014 the plaintiff agent claimed before the FSC in the case No.(129/Fed/2014) that his client was a candidate from Salah AL-Den in the electoral election of 2014 within the bloc (AlJamaheer AL-

Wataniya coalition) which got engaged with the other political components that formed (AL-Arabiya coalition) as it approved at IHEC. After (Alif.Ain.Jim) became a minister who belongs to the same bloc, the seat became vacant and the client is the only candidate to occupy according to the item (2) from the article (2) of the law for ICR members replacing No.(6) in 2006. Both cases were registered by the FSC based on the item (3rd) from the article (1) of the FSC bylaw and the requested procedures are completed according to the item (2nd) from the article (1) of the same law. Then, a day for the argument was selected and both the plaintiff agent and the two legal officials of the defendant attended. Also, the agent of the third party(IHEC) attended and the argument had been started publicly and in present. The plaintiff agent repeated what was listed in the case file and requested from the court to decide based on it. During scrutiny, the court found that the plaintiff (Ain.Dhal.Ghian.) in the case (125/Fed/2014) objects to give the chair to the resigned representative (Alif.Ain.Beh.) after becoming a minister for the reasons he listed on the case petition. The court found from reviewing case No.(129/Fed/2014) initiated by (Alif.Nun.Jim.) and he objects to the same reason. Also, he thinks that he has the right to occupy the seat. Considering the similarity of the two cases, the FSC decided to unify the case(129/Fed/2014) with the case (125/Fed/2014) and to consider the last as the origin based on the submission date. The plaintiff agent repeated the case petition (125/Fed/2014) and clarify that his client belongs to the bloc (AL-Jamaheer AL-Samiya) and (ALif.Ain.Jim) belong to the bloc (AL-Jamaheer AL-Wataniya) and both of them belong to Salah AL-Deen. The representative (Mim.Jim.) belongs to the bloc (Muqtadiron for peace and construction). the plaintiff agent repeated what was listed in the case No.(129/Fed/2014) and requested from the court to decide based on it. Also, he added that his client belongs to the bloc (AL-Jamahher AL-Wataniya) the same bloc of the resigned representative (Alif.Ain.Jim.), and the same governorate and this is why he demands to occupy the seat. The defendant agents repeated the answering lists of the two cases. They clarified that the resigned representative and the representative who occupied the seat are from the same bloc and the same governorate. The third-party clarified that he is from the same bloc and governorate of the resigned representative and he got the highest

votes after the resigned and this is proved by IHEC. IHEC agent answered that he reviewed the cases and the claims of the plaintiffs and he answered according to the letter sent by the court o commissioners council at IHEC No.(Kha/15/112) on (5/2/2015) ((during the submission of the candidates' lists, the representative of AL-Arabiya coalition submitted the names of coalition's candidates based on the application form No.(6) which referred to (Mim.Ra.Dhad.) from the bloc (Muqtadiron for peace and construction)). Also, it contained (it has been listed to the commissioners' council the letter of AL-Arabiya coalition No.(16) on (6/2/2014) and before the ratification on the candidates' lists that included the request to transfer the candidate (Mim.Ra.Dhad) from the entity (Muqtadiron for peace and construction) to AL-Jamahher AL-Wataniya coalition. The commission did the transfer and the candidate (Ain.Dhal.Ghain.) from the politician entity (AL-Jamaheer AL-Samiya) from Salah AL-Deen and he got 7093 votes. The plaintiff (Alif.Nun.) from the entity AL-Jamahher AL-Wataniya from Salah AL-Deen and he got (7456) votes. (Mim.Ra.Dhad) from the entity, AL-Jamahher AL-Wataniya from Salah AL-Deen got (14415) votes. The letter got attached to the application form of candidates No.(6). Also the letter of the AL-Arabiya coalition. The two agents of both plaintiffs represented a draft dated 16/2/2015. They requested to provide them with an official letter referred to AL-Karkh court for investigations so they can get a ratified copy from the investigational papers or to address the court for reviewing all the investigational procedures about the charges against the representative (Mim.Ra.Dhad) for forgery of the letter No.(6) on 6/2/2014. According to it, the entity was changed from (Muqtadiron for peace and construction) to AL-Jamahher AL-Wataniya. The content of the letter is the basis of the case submitted to the FSC. In the last session of the argument, all the case parties attended and they repeated their sayings and previous requests and they requested to decide based on it. The plaintiff agent cleared that there is a forgery in the letter sent to the commission by (Sad.Mim.). the representative Mim.Jim) said that the subject of the letter forgery was not submitted by him and has no relation to the case. The defendant agents said that the lesson from this is what IHEC presents and if there is something to prove the forgery, it is left to the competent court to decide. The third-party agents backed the IHEC

agent and what listed in the commission's letter and it was not changed and he repeated his saying and previous requests. He requested to decide according to it. Whereas nothing left to say, the court made the end of the argument understood. And the decision was understood publicly.

The Decision:

During the scrutiny and deliberation by the FSC, it found that the representative (Alif.Ain.Beh.) was appointed as the minister of the government for governorates affairs. He belongs to (AL-Jamaheer AL-Wataniya) bloc within AL-Arabiya coalition, a candidate from Salah Al-Dien governorate. The vacant seat occupied by the representative (Mim.Ra.Dhad.), a candidate from Salah Al-Dien governorate, who nominated by the head of AL-Jamaheer AL-Wataniya within AL-Arabiya coalition. He did the constitutional oath on 20/9/2014 as a representative instead of (Alif.Ain.Beh.) and he became a member of ICR. The plaintiff (Ain.Dhal.Ghain) objected on giving the seat to (Mim.Jim.). he claimed that he has the right to occupy the seat. Also, the plaintiff objected in case No.(129/Fed/2014) at ICR demanding to give him the seat instead of the representative who became a minister. The ICR decide on this objection from the two plaintiffs on 30/10/2014 session No.(25) and the council voted on the validity of the representative (Mim.Ra) membership with attendance of (219) representatives the council decided to reject their objection. on 12/11/2014 the plaintiff challenged, in case No.(125/Fed/2014) before the FSC, the decision of ICR. Also, the plaintiff challenged it in case No.(129/Fed/2014) on 17/11/2014. So, the two challenges were submitted during the legal period that stipulated in the article (52/2nd) from the Constitution. The FSC heard the sayings of case's parties. Based on the letter of the IHEC Commission No.(Kha.15/162) on 5/2/2015), it became clear that the representative (ALif.Ain.Beh.) belonged to the bloc (AL-Jamaheer AL-Wataniya) from Salah AL-Deen. He became a minister and his seat became vacant in ICR. The person who got his seat is (Mim.Ra.Dhad) from the entity (AL-Jamaheer A-Wataniya) the same bloc and the same governorate that the resigned representative belongs to. He got (8429) votes in the final elections, while the plaintiff of the case No.125/Fed/2014 from the bloc (Al-Jamaheer AL-Samiya) which is not the same bloc for the

resigned representative (Alif.Ain.Beh.) but from the same governorate. He got (7093) votes. So, the conditions, that decided by the item(2) from the article two of the law No.(6) fin 2006, is not achieved and the plaintiff Adnan Dhiab can not be a representative instead of (Alif.Ain.Beh.) even if his bloc combined with (Al-Arabiya coalition). The plaintiff (Alif.Nun.Jim), in case No.(129/Fed/2014), belonged to AL-Jamaheer Al-Wataniya and from Salah AL-Deen but he got only 7456 votes. The article (14/3rd) from the law of ICR elections N.(45) in 2013 stipulated ((the seats shall be distributed inside the electoral list by rearranging the serial number of the candidates based on the votes each one got. The first winner is the one who got the highest votes and so on for the rest.). whereas the replaced representative got 8429 votes, he steps on (Alif.Nun.Jim.) for getting higher votes than him. To achieve the will of the votes and to not wast the voices that got together, the decision of ICR on 30/10/2014 in the session No.(25) for the validity of the (Mim.Ra.Dhad) membership is a right decision based on the provisions of the article (2) item (2) from the law No.(6) for 2006 (amended) and the article (14/3rd) from the law of ICR elections No.(45) in 2013 and the two articles (38/1st) (52/2nd) from the Constitution. The FSC decided to ratify the decision and to reject the two cases of the plaintiffs and to burden them with the expenses and fees of the advocacy for the two agents of the defendant amount of one hundred thousand Iraq dinar. The decision was issued in attendance and unanimously on 17/2/2014.