

Republic of Iraq  
Federal Supreme Court  
Ref. 128 /federal/2019



Kurdish text

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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: Smco Asaad Adham -his agents the attorneys Yasin Kadhem Juad Alsaady.

The defendant: 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.

**The claim:**

The agent of the plaintiff claimed that the defendant/ being in this post in his presidency of the I.C.R. in the session held on 28/10/2019 decided the forming of a committee according to article (142) of the Iraqi republic constitution to initiate and start the constitutional amendments procedures, this decision came as violation to the provisions of article (142) of the constitution, and violation to the F.S.C. decision No.(54/federal/2017 on 21/5/2017) which in content obliged the I.C.R. in any cycle to enforcing article



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(142) of the constitution at the beginning of it work, he initiate a challenge against the mentioned decision before this court for the following reasons:

1. The defendant/ being in this post exceed the proper implement of the article (142) text of the constitution when start reading its text in preparation for consider it a base for voting, whereas he had fragmented and cut the chapeau of the constitutional article when he recite the text of the article on the Council members to vote on it ((first: the Council of Representatives shall establish a committee of its members to represent the main components of the Iraqi society, its mission is submitting a report to the council of representatives throw period of time not to exceed four months, to include a recommendation of the necessary amendments that could be tack place on the constitution and the committee will be dissolved after deciding its proposals)) which means that the defendant has removed an important constitutional phrase related to the scheduled date that is binding to be followed to enforcement the constitutional article that concern amending the constitution which is ((at the beginning of it work)) by that a wrong foundation was established for the vote, which violated the clear meaning and indication of the legislator intention in forming such committee at the beginning of the work of the parliamentary cycle, therefore the voting on the committee took place after the scheduled timeframe.

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2. The defendant has formed the mentioned committee with what extend beyond the true meaning intended by the Iraqi legislator when he stated ((the Council of Representatives at the beginning of it work shall establish a committee of its members to represent the main components of the Iraqi society...)) but the currently established committee under the decision of the defendant has summarizes the meaning of (components of the Iraqi society) to whom represent the parties that formed of one component which is the politics component, while the meaning is broader and more comprehensive, as the intended of it includes (cultural and economic components and the components representing the general interests of society). For the above mentioned reasons the agent of the plaintiff requested the F.S.C. to rule to revoke the decision with the voting procedures regard the establishment of the committee which is approved by the I.C.R. in the session dated on 28/10/2019 to enforce article (142) of the constitution, for violating the constitutional provisions and the issued legal decisions.

The agents of the defendant responded with the answering draft dated 19/11/2019 which included that (failure to fulfill all duties does not negate fulfill some of it), as what the constitution has stipulated of obligations must be fulfilled soon or later in case the circumstances that allow to implement the duties are available, the circumstances of enforcing the duty are now available and

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performing the duties is better than missing on doing it without controversy, maybe (at the beginning of it work) as a constitutional control must not obstruct the origin of the commitment, in referring to the decision of the F.S.C. No.(54/federal/2017) which didn't stipulate specific time therefore there is enough time, noting that the I.C.R. is still in its first quarter of its second year, and that correcting the issue and enforcing the provision of the constitution more proper then not, the members of the committee represent the entire Iraqi people and all its components as article (49/1<sup>st</sup>) of the constitution stipulate 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...), for the mentioned reasons the agents of the defendant requested to reject the lawsuit and to burden the plaintiff all the judicial expenses. After completing the required procedures according to the F.S.C. Bylaw the date 16/12/2019 was scheduled for the argument, the court convened, the agent of the plaintiff and the plaintiff himself has attended, the director Salim Taha has attended as agent of the defendant the speaker of the I.C.R. being in this post and start the argument in presence and public, the agent of the plaintiff repeated the case petition and requested to judge according to it, the plaintiff commented on what listed in the case petition and his answer to the answering draft and requested to consider the reason listed in the lawsuit and explain it as substantiation for his claim, the agent of

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the defendant repeated the answering draft requesting to reject the case for the reasons listed in it and he had no comment on what the plaintiff stated in this session. During scrutiny the court found that the case is completed for reasons of judgment and 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. the court found that the plaintiff has challenged the issued decision of the I.C.R. on 28/10/2019 which include establishing a committee to perform the constitutional amendments as enforcing to article (142) of the constitution, he claimed that the issued decision is defected by drawbacks which is the defendant the speaker of the I.C.R. when reads the text of article (142) of the constitution when presented before the I.C.R. the defendant had fragmented the chapeau of the constitutional article and didn't mentioned it during the reciting, and that he has establish the constitutional amendments committee in what contradict the true meaning meant by the legislator from the aspect of the time of establishing the committee and it representation to the main components of the Iraqi society, the plaintiff wind up with requesting to rule the revocation of the decision, the defendant answered that what the constitution has stipulated of commitments that must be fulfilled soon or later in case the circumstances that allow to implement that commitment are available, and the formation of the constitutional amendments committee members represents the components of the Iraqi people,

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and he wind up with requesting to reject the case. the F.S.C. finds that the failure of the defendant to recite the text of the article (142) of the constitution does not negate the existence of this article and the obligations that it has mentioned, and that the members of the Council are aware of them, whether before they carry out the tasks or through it, regarding this claim that the text requires that the formation of the committee be at the beginning of the work of the council, this does not preclude the formation of the committee later, as long as its provision is still in force and didn't annulled or amended, on the other hand, the formation of the committee that is assigned to present constitution amendment bill came in accordance with the provisions of article (142/1<sup>st</sup>) of the constitution. According to the aforementioned the plaintiff lawsuit is not based on a reason of the Law or the constitution, therefore the court decided to reject it and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. 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.