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The Federal Supreme Court (F S C) 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-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (kaf.nun.ain)/ his agent the barrister (qaf.sin.mim).

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the official jurists (sin.ta.yeh) and (heh.mim.sin).

The third party (for inquiry): the Independent High Electoral Commission in Iraq/ being in this capacity/ his agent the official jurist (alif.ha.ain).

### The Claim

The agent of the plaintiff claimed that the ICR previously decided in its session convened on (30.10.2014) in the session No. (25) the authenticity of the representative's membership (ain.mim.ha.sin) who occupied the parliamentary seat as a replacement of the representative (alif.heh.ain) after the aforementioned representative assumed the post of (vice of the Republic President). His agent presented an objection to the ICR on 29.10.2014, he challenged the authenticity of the representative's membership (ain.mim.ha.sin) and because his objection had been rejected, he proposed to challenge the decisions of the ICR token in the session No. (25) above-mentioned before the FSC. He claimed that the decision had violated the provisions of the article (14/3<sup>rd</sup>) of the ICR election law No. (45) for 2013, this law had took in consideration the distribution of the seats according to (Sainte-Laguë method) amended. The law listed (distributing the seats in the list by rearranging the candidates sequence according to the number of

the votes which gained by each one of them, and the first winner is the one who gains the highest number of votes, as well as for the rest of the candidates). Whereas his client gained the highest number of the votes within the list of (AL-Wataniyah alliance/ Al-Wifaq Al-Watani movement), and he gained (2593) two-thousand and five-hundred and ninety-three votes for the governorate of Baghdad (the first reserve) after Mr. (alif.heh.ain) while the representative who objected the authenticity of his membership gained (1150) one-thousand and one-hundred fifty votes. This matter will make his client (the plaintiff) (kaf.nun.ain) is the owner of the replacement seat of the former representative (alif.heh.ain) according to the text of article (14/3<sup>rd</sup>) of the ICR election law No. (45) For 2013 above-mentioned, and the clause (2) of article (2<sup>nd</sup>) of the ICR member's replacement law No. (6) For 2006. The nomination shouldn't be restricted by the Head of the bloc because this matter will violates the provisions of the Constitution and all the laws that struggles to achieve the right and reaching the principles of eminent justice which wished by all. According to the aforementioned reasons, the agent of the plaintiff requested:

1. To judge by annulling the decision of the ICR and ratifying the authenticity of the representative membership (ain.mim.ha.sin), as well as to cancel his membership from the ICR.
2. To judge by assuming his client the plaintiff (kaf.nun.ain) the replacement seat of the representative (alif.heh.ain) with burdening the defendant/ being in this capacity all the case's expenses.

The agent of the defendant/ being in this capacity answered the petition of the case that the seat which demanded by the plaintiff had been occupied by Mr. (alif.ain) and after the last mentioned assumed the post of Vice of the Republic President, (ain.mim.ha.sin) had been chosen by the (Al-Wataniyah alliance/ Al-Wifaq Al-Watani movement) which headed by (alif.ain) and they are from the same bloc and governorate. Therefore, the replacement took place according to the provisions of clause (2) of article (2<sup>nd</sup>) of the ICR members replacement law No. (6) For 2006, and this law didn't stipulates on the necessity of gaining the highest votes by the replaced member. Moreover, the authenticity of the replaced member had been ratified by the ICR, and this matter had been objected by the plaintiff before the aforementioned Council. His request had been rejected. For the aforementioned reasons, the agent of the defendant/ being in this capacity requested to reject the case.

The third party (for inquiry) the Independent High Electoral Commission answered the petition of the case with his illustrative draft No. (kha/15/165) on 4.2.2015 and according to a request from the FSC that both candidates (kaf.nun.ain) and (ain.mim.sin) and (alif.heh.ain) are belongs to the political entity (Al-Wataniyah alliance) for the governorate of Baghdad, and the number of votes of the candidate (kaf.nun.ain) was (2593) votes and the number of votes of the candidate (ain.mim.sin) was (1856) votes and the votes of the candidate (alif.heh.ain) was (229709) votes. After registering this case at the FSC according to the caluse (3<sup>rd</sup>) of article (1) of its bylaw No. (1) For 2005, and completing the required procedures according to the clause (2<sup>nd</sup>) of the aforementioned bylaw. The day (17.2.2015) has been scheduled as a date to try the case, on this day the Court has been convened and all parties attended. The parties of the case repeated their previous drafts, as well as the representative whose membership authenticity challenged has attended too. The Court listened to his sayings which weren't out of the case's subject. Therefore, the Court decision to end the pleading and the decision has been made clear.

### The decision

After the scrutiny and deliberation by the FSC, the court found that the plaintiff (kaf.nun.ain) claims in the petition of his case that the ICR had decided to replace the membership of the representative (alif.heh.ain) who assumed the post of (vice of the Republic President) with the candidate (ain.mim.ha) and he objected the replacement decision, his objection had been rejected. The ICR issued on (30.10.2014) a decision about the authenticity of the objected (against) (ain.mim.ha), and because the plaintiff wasn't satisfied by the aforementioned decision, he initiated the case before this Court on (23.11.2014) and he requested to annul the decision of the ICR dated on (30.10.2014) of ratifying the authenticity of the representative (ain.mim.ha.sin) membership and to cancel his membership from the ICR and to judge for him to assume the seat which owned by the representative (alif.heh.ain). The objection and the initiating of the case had been presented within the legal period stipulated in article (52) of the Constitution. By reviewing the letter of the Independent High Electoral Commission No. (kha/15/165) on 4.2.2015 herewith the case's dossier that the plaintiff (kaf.nun.ain) and the representative whose membership authenticity had been challenged (ain.mim.ha.sin) are from the same bloc

(Al-Wifaq Al-Watani movement) which involved to the list of (Al-Wataniyah alliance) headed by Mr. (alif.heh.ain) from the governorate of Baghdad according to the letter of the Independent High Electoral Commission abovementioned. Moreover, the plaintiff had gained a number of votes more than the number of votes gained by the member whose membership authenticity is challenged (ain.mim.ha) whereas the plaintiff gained (2593) votes, meanwhile the aforementioned objected (against) gained a (1856) votes, and both were on the auxiliary list. The FSC finds that the law of replacing the ICR members No. (6) For 2006 which issued in the existence of (the closed list) in the elections, this law wasn't contains any text that determines who takes the place of the replaced member, except its listing for two criteria that they should be (from the same bloc and governorate). As long as the law didn't mention this part, the texts of the ICR's election law No. (45) For 2013 which had been issued according to the order of the open list of elections in what related to the preference of solutions is the closest to the core of the Constitution and the text of article (38/1<sup>st</sup>) of it. This article obliges the State to guarantees (the freedom of expression with all means). This matter corresponds to the freedom of the elector in choosing his candidate for the membership of the ICR, also who takes its place when the post becomes vacant for who gained the highest votes of the voters. This matter should be token in consideration in a case like this. Whereas the law No. (45) For 2013 the law of the ICR elections had stipulated in article (14/3<sup>rd</sup>) of it ((the seats of one list shall be distributed by re-arranging the sequence of the candidates according to the number of votes gained by each one of them, and the first winner is the one who gained the highest votes, as well as for the rest of the candidates...)). Whereas the representative (ain.mim.ha) didn't gain the highest votes after the winner of the first place to enable him from being the replacement of the representative (alif.heh.ain). Therefore, the challenged decision of the ICR is incorrect from this aspect because it didn't take in consideration the will of the electors, the replacement should be chosen from those whom gained the highest votes to occupy the vacant seat of the representative (alif.heh.ain) because he assumed the post of (the vice President). Accordingly, the Court decided to judge by invalidity of the ICR decision dated on (30.10.2014) by ratifying the nomination of the representative (ain.mim.ha) and to burden the defendant (the Speaker of the ICR/ being in this capacity) the expenses of the case and the advocacy fees for the agent

of the plaintiff the barrister (qaf.sin.mim) amount of one-hundred thousand Iraqi dinars. The decision has been issued decisively and unanimously according to the provisions of article (94) of the Constitution and article (5/2<sup>nd</sup>) of the FSC law No. (30) For 2005, and has been made clear on 17.2.2015.