

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 139/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Attorney Firas Sami Rashid.

The Defendants: Speaker of the Iraqi Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and jurist Saman Mohsen Ibrahim.

The Claim:

The plaintiff claimed that Article (45) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 stipulates that “Any deputy, party, or bloc registered within an open electoral winning list has the right to move to a coalition, party, bloc, or another list only after the formation of the government after the elections.” directly, without prejudice to the right of the open or individual lists registered before the elections are held from the coalition with other lists after the elections). And since Article (76/1st) of the constitution stipulates (the President of the Republic assigns the candidate of the most numerous parliamentary bloc, to form the Council of Ministers, within fifteen days from the date of

the election of the President of the Republic) and concerning the interpretation of the FSC according to its decision issued on March 25, 2010, in the number (25/federal/2010), which was confirmed by its decision issued on 11/8/2014 No. (45/teh.qaf./2014). Their content is that the expression (the most numerous parliamentary bloc) mentioned in Article (76) of the Constitution means either the bloc that was formed after the elections through a single electoral list or the bloc that was formed after the elections from two or more electoral lists and entered the Council of Representatives and became its seats after its entry The Council and its members took the constitutional oath in the first session, which is more numerous than the rest of the blocs. The President of the Republic assigns its candidate to form the Council of Ministers in accordance with the provisions of Article (76) of the Constitution and during the period specified in it, and since Article (45) of the Iraqi Parliament Elections Law No. (9) For the year 2020 it has violated the Constitution in the text of Article (76/1st) of it and its interpretation above, as it has practically disrupted the second option or condition set by the aforementioned interpretation of the FSC in forming a parliamentary bloc after the first session was held under the dome of Parliament, and since the article (the subject of appeal) undermines and weakens the democratic system by giving the right to form a government only to the bloc that obtained the highest votes, even if the number of its representatives is much less than the quorum required to vote on the government under the dome of Parliament according to Article (76/4th), and that any prejudice to the provisions of the constitution or the democratic parliamentary system that came with it is a violation of his rights as a citizen, and that the article in question may be a basis for establishing an undemocratic approach that would endanger the country and its supreme interests at any time through the control of one bloc on an important issue, which is the mandate to form the government, which will negatively affect the Iraqi political and social reality. Therefore, the plaintiff asked the FSC to invite the defendant /being in his capacity to plead and rule that Article (45) of the

Iraqi Parliament Elections Law No. (9) for the year 2020 is in violation of the provisions of Article (76/1st) of the effective constitution of the Republic of Iraq and obligating the defendant /being in his capacity by canceling it and charging all expenses and fees, the case was registered with this court in the number (139/federal/2021) and the legal fee was collected for it, according to the provisions of Article (1/3rd) of the bylaw of the FSC No. (1) of 2005, and the defendant /being in his capacity is informed by its petition and its documents in accordance with what was stated in Article (2/1st) of the same aforementioned bylaw, and his attorneys answered in the answer draft dated 29/10/2021 that the plaintiff did not indicate the current, direct and influential interest in his legal, financial or social position, nor did he provide evidence that a realistic, direct and independent damage to its elements had been inflicted on him by the contested legislation and it can be removed if a judgment is issued that it is not the constitutionality of the legislation required to be repealed, or that the text to be repealed has actually been applied to it or is intended to be applied to it based on the text of Article (6/1st, 2nd, 3rd, 4th and 6th) of the court's FSC and he did not indicate whether he was a winning candidate, a current deputy, or the head of a bloc or party, in order to achieve his interest in filing this case, the meaning of the text of the article subject to challenge is that it has prevented the deputy, party, or bloc from merging into a coalition, bloc or list so that its legal existence ends and becomes part of it, because this will affect the entitlements to replace members because it is related to the legal existence of the party and bloc, as for the formation of the bloc The largest parliamentary bloc is an available matter, and the second part of Article (45) clearly referred to it, as it stipulated (without prejudice to the right of open or individual lists before elections from the coalition with other lists after the elections), meaning that the law allowed (the coalition) to form blocs Parliament, and the transition was not possible, which would result in the dissolution of blocs and parties into one another. Therefore, the defendant's attorney requested that the plaintiff's case be dismissed in form and substance and

that he be charged with all judicial fees, expenses, and attorney's fees. The court, so the plaintiff himself, the lawyer (Firas Sami Rashid), attended on behalf of the defendant/being in his capacity as his agent, the legal advisor, Haitham Majed Salem. Initiating it and repeating what was stated in the lawsuit petition and requesting a judgment according to it. The defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons mentioned in the answer draft dated 27/10/2021. Each of the parties repeated their previous statements and requests, and where there was nothing left to say, the end of pleading has been made clear, and the court issued the following judgment decision:

The Decision:

After scrutiny and deliberation by the FSC it was found that the plaintiff's lawsuit included a request to rule the unconstitutionality of Article (45) of the Iraqi Parliament Elections Law No. (9) for the year (2020) for the reasons stated in the lawsuit petition, and then the ruling obligating the defendant/ being in their capacity, to cancel the text of the aforementioned article and charge him all judicial expenses. After reviewing his statements, the pleas of the two parties and the regulations submitted by both the plaintiff and the defendant's attorneys, and upon further consideration of the case, the court finds that the plaintiff's request focused on the unconstitutionality of Article (45) of the Iraqi Parliament Elections Law, and since it is one of the recognized principles for filing and accepting the case The court must have an interest in establishing it, as there is no suit without interest, and the interest is required to be personal and direct, and the condition of interest is one of the conditions established for accepting the constitutional case, according to what was stipulated in Article (6) of the bylaw of the FSC No. (1) of 2005, where The aforementioned article stipulated that the case must meet the following conditions: **(First:** That the plaintiff in the subject matter of the case has a direct, immediate and influential interest in his legal, financial or social position. **Second:** That the plaintiff submits evidence that actual

harm has been inflicted on him as a result of the legislation required to be repealed. **Third:** That the damage is direct and independent in its elements and can be removed If a ruling is issued that the legislation required to be repealed is illegal. **Fourth:** The damage is not theoretical, future, or unknown. **Fifth:** The plaintiff has not benefited from part of the text required to be repealed. **Sixth:** The text required to be repealed has been applied to the plaintiff or is intended applied to it). The lack of the aforementioned conditions is a reason to dismiss the case, as it is not sufficient for the contested text to be contrary to the constitution. Rather, its application to the plaintiff must have harmed one of his constitutional rights in a way that caused direct harm to him, and since the plaintiff did not provide evidence that actual harm had been inflicted on him. Therefore, the interest, according to the aforementioned concept, is not realized in his case, and therefore his claim is free to respond. According to the foregoing, the FSC decided to dismiss the claim of the plaintiff, Firas Sami Rashid, and charge him with all judicial expenses, including attorney fees for the defendant's attorney, an amount of one hundred thousand dinars distributed according to the law. Conclusively and issued in accordance with the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5/2nd) of Law of the FSC No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public on 9/Jumada Al-Ula/1443 coinciding with 14/December/2021.