

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 146/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 7. 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: Muhammad Karim Abdul-Hussein Al-Baldawi / Parliament candidate - his deputy is lawyer Ali Muhammad Kazem.

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

The Claim:

The plaintiff claimed through his attorney that on 5/11/2020, the Iraqi Council of Representatives issued the Iraqi Council of Representatives Elections Law No. (9) of 2020, which included in Article (46) of it (the winning candidate in the parliamentary elections is obligated to take the constitutional oath within a maximum period of one month from the date of the session The first, and otherwise, the replacement for him who gets the most votes will be among the losing candidates from his list in his electoral district) Since this article was in violation of the provisions of the

Constitution and the principles and paragraphs of the legislation of the law, and in it is a gross injustice that harms the origin of the democratic process and the entitlement of the candidates and voters, he took the initiative to challenge it before this court, because what was mentioned in it in the part related to replacing the candidate who withdrew with another from his list, regardless of the number of votes that was obtained even if it is less than the other candidates it contradicts the provisions of the constitution, which approved the principle of equality without discrimination contained in Article (14) of it, and also contradicts what was stated in Article (5) of it, which stipulates (The law is sovereign. The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions), in addition to its violation of the principle of equal opportunities contained in Article (16) thereof. And that the text in question has robbed the citizens of the right to enjoy the rights stipulated in Article (20) of the Constitution, which stipulated (Iraqi citizens, men, and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office), by neutralizing the people's choice to a candidate. The loser may be at the bottom of the list of contenders. Also, what has stated in it represents political coercion and neutralization of the will of the people by excluding their electoral choice and contrary to Article (37/2nd) of the Constitution, and that the defendant was approved in the Iraqi Parliament Elections Law No. (9) of 2020 in Article (15) of it, which stipulated On (Second - the candidacy shall be individual within the electoral district. Third - The order of the candidates in the electoral district is re-arranged according to the number of votes obtained by each of them, and the one who gets the highest votes is considered the winner according to the system of the first winner, and so on for the remaining candidates) thus, the entry of a candidate on an electoral list or an individual has no effect on whether he wins or not, and the number of votes is the only criterion for that, and that the candidate who gets the most votes is the one who gets the seat. The

defendant also violated the electoral system stipulated in Elections Law No. (9) of 2020 in Article (15/5th) of the law, which stipulated (if any seat in the House of Representatives becomes vacant, the candidate with the highest votes in the electoral district will replace it). The defendant had adopted the highest votes in the vacant seat without referring to the electoral list, and at the same time had to apply this criterion in Article (46) whose unconstitutionality is challenged. For the foregoing reasons, a request was made to invite the defendant to plead and judge the unconstitutionality of the text contained in Article (46) of the Iraqi Parliament Elections Law No. (9) of 2020 in the part related to (the alternative for the candidate who did not take the constitutional oath shall be the candidate with the highest votes from the same list) for violating the provisions of the aforementioned constitution and conflicting with the legal texts and the legislative origin of Law No. (9) of 2020 and charging the defendant with all fees, expenses and attorney fees. The case was registered with this court in No. (146/federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the FSC's internal system No. (1) of 2005. The defendant/ being in his capacity is informed of its petition and documents in accordance with the provisions of the provisions Article (2/1st) of the same system, and his two attorneys replied in the answer statement dated 11/29/2021 that the FSC had previously decided on the subject matter of the case under the judgment issued by it in No. The plaintiff's lawsuit is obligatory and has no basis in the constitution and the law. Therefore requested that the case be dismissed and that the plaintiff be charged judicial fees, expenses, and lawyers' fees. After completing the required procedures in accordance with the provisions of the Bylaw mentioned above, a date was set for the argument in accordance with the provisions of article (2/2nd) of it, and the two parties were informed of it. On the appointed date, the court was formed. The attorney for the plaintiff, Ali Muhammad Kazem, attended, and on behalf of the defendant and his attorneys, the legal advisor Haitham Majed Salem and the legal employee attended. Saman Mohsen

Ibrahim proceeded to conduct the pleading in his presence and public. The plaintiff's attorney repeated the lawsuit's petition and requested the judgment according to what was stated in it. The defendant's attorneys responded, requesting that the lawsuit be dismissed for the reasons stated in their answer list dated 29/11/2021. The parties' agents reiterated their earlier 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 decision publicly.

The Decision:

The plaintiff claimed that the Iraqi Council of Representatives had previously issued on 5/11/2020 the Iraqi Parliament Elections Law No. (9) of 2020, which included in Article (46) of it (the winning candidate in the parliamentary elections is obligated to take the constitutional oath within a maximum period of one month from the date of the session The first, and otherwise, the replacement for him who gets the highest votes will be among the losing candidates from his list in his electoral district. And (13/1st and 2nd), (16), (20), (37/2nd), and (38/1st) of the Constitution of the Republic of Iraq for the year 2005, he requested to invite the defendant to plead and judge the unconstitutionality of the text of Article (46) of the aforementioned Iraqi Parliament Elections Law. A dispute in which the Speaker of the Council of Representatives / being in his capacity, is requesting the ruling of unconstitutionality of Article (46) of the Council of Representatives Elections Law No. (9) for the year 2020, which was settled on 11/14/2021 by a decision that includes the ruling of the unconstitutionality of the phrase ((otherwise, the alternative for it will be the one who obtains the highest votes Of the losing candidates from his list in his constituency and the phrase (individual candidate) from Article (46) of the Iraqi Parliament Elections Law No. (9) of 2020 and its cancellation, and the article remains in the following form (the winning candidate in the parliamentary elections is obligated to take the constitutional oath within a maximum period of one month from the date

In the first session, and in the event that the oath is not taken by the winner, the substitute for him shall be the highest of the losers in his electoral district)). This is due to the violation of the aforementioned texts of the provisions of Articles (5, 16 and 20) of the Constitution of the Republic of Iraq for the year 2005 and the ruling regarding the challenge to the constitutionality of Article (46) of the aforementioned election law by this court. Fees, expenses, and attorney's fees for the defendant's attorney/in addition to his job, an amount of one hundred thousand dinars, distributed according to the law. The decision of the agreement was final and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/2nd) of the FSC Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and the decision had made clear public on 2/Jumada al-Ula/1443 coinciding with 7/December/2021.