

(Translated from Arabic)

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 14/federal/media/2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 22/6/2016 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamsion 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 Plaintiffs:

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|---------------------------|---|--|
| 1- (Alif. Yeh. Alif. Yeh) | } | Their agent the attorney
(Sin. Sad. Beh. Heh) |
| 2- (Kaf. Shin. Jim) | | |

The Defendants:

1. Speaker of the parliament /being in this post.
2. Chairman of the Board of Commissioners of the Independent High Electoral Commission /being in this post.
3. (Lam. Kaf. Beh)/ member of the parliament.

The Claim

The agent of the Plaintiffs claimed that his clients has already objected before the Iraqi Council of Representative (I.C.R.) against the membership validity of the third defendant (Louis Caro Bender),

however, the first defendant rejected their objection during the session held on (5/2/2016), as a confirmation to the decision of the second defendant to replace the third defendant (Lam. Kaf. Beh) instead of (Kha. Alif.) (president of the Assyrian Chaldean Syriac People's Council list) the winner in the elections of the I.C.R., who was excluded because he was included by the procedures of the Accountability and Justice Committee, as mentioned defendant belongs to the same list. And because that decision is contrary to the Constitution and the law, and unfair to the right of his clients, he has appealed it before the F.S.C., knowing that Mr.(Kha. Alif. Alif.) had been appealed the decision of excluding him before the Federal Cassation Court and his appeal was rejected by the decision No.(535/ Cassation Committee/2014) on 30/9/2014. According to that the Independent High Electoral Commission (I.H.E.C.) decided to exclude him while keeping his votes within his list contrary to the law and procedures of accountability and justice committee and the decisions of the F.S.C. and the precedents in this subject, the plaintiffs' agent commented that the list of Chaldean Syriac Assyrian People's Council had obtained (23781) votes and after removing the votes that had been obtained by the president of the mentioned list (Kha. Alif. Alif.) as he is included by the de-Bathification procedures, which are (6119) votes, after that the list vote become (17662) votes, according to that the list of his clients (Abnaa Al-Nahrain) which obtained (11226) votes become qualified to the seat reserved for the Christians quota in Arbil governorate by the implementation of (Saint Lego) which was adopted by (the I.C.R. election law No.(45) for 2013) given that Iraq is considered as one electoral circle for the Christian quota, the agent of the plaintiffs has also claimed that his clients (Abnaa Al-Nahrain) has taken the necessary action including:

◆ Submitting appeal to the electoral judicial committee on (28/5/2014) to inform the judicial committee about excluding the candidate (Kha. Alif. Alif.) as he was included by the de-Bathification procedures, and that his votes was not excluded from the votes of his list, as happened to some candidates in the elections of the former I.C.R.

• Submitting appeal to board of Commissioners of the I.H.E.C. No.(31) on 1/6/2014 in the same content above, the plaintiffs' agent infer by some of the judicial decisions of the previous electoral cycles. For all that the agent of the plaintiffs requested the following:

- 1- Repeal the I.C.R. decision issued on (5/3/2016) about the membership validity of the third defendant (Lam. Kaf. Beh).
- 2- Repeal the related decisions of the I.H.E.C.
- 3- Give order to re-distribute the seats of the (Christians Quota), so it will belong to the (entity of Abnaa Al-Nahrain) and to assign this seat specifically to the first plaintiff (Alif. Yeh. Alif. Yeh), for the availability of the constitutional and legal conditions.

The agent of the first defendant replied to the case petition by stating that the decision of the I.H.E.C. that is under appeal, had been issued according to the provisions of the I.C.R. election law No.(45) for 2013, such decisions could be appealed before the judicial committee specialize with the election, therefore the request of the plaintiffs is out of the F.S.C. jurisdictions stipulated in article (93) of the constitution. For the aforementioned the agent of the first defendant requested to reject the case. the agent of the second defendant replied to the case petition by his draft dated (11/4/2016) linked to the case files stating that the third defendant (Lam. Kaf. Beh) was not a candidate for the governorate of Dohuk, but from the governorate of Kirkuk and was not a substitute for the de-Bathi

candidate (Kha. Alif. Alif.) instead of the head of the entity Abnaa al-Nahrain (Kha. Shin.), after the announcement of the I.C.R. elections results for 2014 it submitted appeal challenge before the electoral judicial committee with the same content of the case, the mentioned committee rejected the submitted appeal by its decision No.(970/appeal/2014), as the decisions of the electoral judicial committee are decisive and cannot be challenged by any form according to paragraph (7th) of article (8) of the I.H.E.C. law No.(11) for 2007, accordingly the agent of the second defendant requested to reject the case. the agent of the third defendant replied to the case petition stating that the I.H.E.C. law No.(11) for 2007, and the I.C.R. elections law No.(45) for 2013 has been determined according to the seats distribution system, including the distribution of candidates within the objected list, after ordering the names of candidates according to the number of votes obtained by each of them, from the highest to the lowest, As for the challenging list (Abnaa Al-Nahraein) its total votes did not qualify it to win any seat because the votes are for the list and not for the candidate. The plaintiffs has gone throw all the challenges ways and all of them has been rejected. Also the F.S.C. has ratified all the winning lists, and the case of the plaintiffs is not supported by the law and must be rejected. Accordingly the agent of the third defendant requested to reject the case. after registering the case according to the provisions of paragraph (3rd) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2nd) of article (2) of the mentioned Bylaw, the date 22/6/2016 was set to proceed with the case, the court convened, the agent of the plaintiffs (Sad. Beh. Heh) has attended according to the power of attorney linked to the case files, Mr (Heh. Mim. Sin.) attended as the agent for the first defendant the speaker of the I.C.R./ being in this post,

attended for the second defendant his agent the legal official (Alif. Ha. Ain.), the agents of the third defendant the attorneys (mim. Jim. Jim.) and (alif. feh. ain) by their power of attorneys linked to the case files. The agent of the plaintiffs repeated what listed in the case petition and requested to judge according to it. the agents of the defendants repeated what listed in their answering drafts and requested to reject the case. where nothing left to be said the argument has been closed and the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the F.S.C., the court found that the plaintiffs challenged the decision of the I.C.R. that was issued in the session held on (5/3/2016) that included the validity of the membership of the MP who is under challenge (the third defendant) (Lam. Kaf. Beh), and order to re-distributing the seats of the Christians quota so that the seat of (Abnaa AlNahrain 298) entity which its validity is under challenge, is granted to the first plaintiff (Alif. Yeh. Alif. Yeh) in specific, for the availability of the constitutional and legal conditions in him. As the aforementioned decision of the I.C.R. that is under challenge the validity of the membership of the MP under challenge (Louis Caro Bender) has based in its issuance on the mechanism adopted by the I.H.E.C. (the second defendant) in the distribution of I.C.R. seats on the winning candidates. The F.S.C. jurisdiction stipulated in article (93) of constitution and article (4) of its law No.(30) for 2005, which does not include considering the appeals against the mechanism of the I.C.R. seats distribution. But it's the jurisdiction of (the electoral Judiciary commission in the federal court of cassation) according to the provisions of paragraphs (3rd and 4th) of the I.H.E.C. law No.(11) for 2007. The Court found that the plaintiffs The plaintiffs

has gone through all the ways of challenge stipulated in the I.H.E.C. law No.(7) for 2005, where they had already filed an appeal to the electoral judiciary commission included an appeal against the decision of the Board of Commissioners (which included rejecting their request) by granting their list the seat of the de-Bathi candidate (kha. Alif. Alif.), the mentioned commission issued its decision No. (970/appeal/2014) on 9/6/2014 to reject their appeal. For all that the court decided to reject the case from the point of jurisdiction, and to burden the plaintiffs the expenses and the advocacy fees for the agents of the defendants amount of (one hundred thousand Iraqi dinars). The decision has been issued decisively according to the provisions of article (94) of the republic of Iraq constitution for 2005, and article (5/2nd) of the F.S.C. law No.(30) for 2005, and unanimously and issued publicly on 22/6/2016.