

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 17/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24.6.2014 headed by 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 AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff : (sad. sin. ain.) / Member of the Baghdad Provincial Council / being in this capacity his agent the lawyer (dal. ain. shin)

The Defendants : 1- (ra. nun. ain.) Chairman of the Baghdad Provincial Council/ being in this capacity.

2- (ain. mim. ain.)- Governor of Baghdad/ being in this capacity.

The Claim:

The prosecutor claimed that on 15/6/2013, the chairman of the Baghdad Provincial Council, his deputy, the governor and his deputies were elected by members of the Baghdad District Council (winners of the provincial council elections for the provinces that are not regular in the provinces) without applying the provisions of Article (7/1st and 7th) of the Law of The Irregular Provinces in Province No. (21) of 2008, the fact that the members of the Council (The Baghdad Provincial Council)

and before the start of their work did not take the legal oath in accordance with the law and in front of the party referred to in article (29) of the mentioned law, which requires that he be sworn in before the highest judicial authority in the governorship before starting their work and the highest judicial authority in Baghdad province is the Supreme Judicial Council represented by the President of the Council. Although the members of the Baghdad Provincial Council were illegal in conducting their work, they took the initiative to vote on the speaker of the council, his deputy, the deputy, the governor and his two deputies in the first session, which is contrary to the provisions of article (7/1st and 7th) of the law mentioned above. After the FSC's decision of No. (36/federal/2013) on 26/8/2013, which included the blood of the constitutionality of paragraph (dal. heh) of the System of the Independent High Electoral Commission No. (12) of 2013 and the decision of the Council of the Commission, which followed the implementation of the FSC's decision above, to replace some of the council members who won the elections with others, The quorum had been violated and become illegal for not achieving the number required to be provided to the absolute majority of members for the first session as well as the legal implications of it in the process of electing the president of the provincial council and his deputy and the governor and his two deputies, since after the replacement they lost the candidates for the above positions, The absolute majority to be provided during the first session of the Council is (half+ one) on 15/6/2013, which is the date of the first session of the Baghdad Provincial Council when the request of the deputy prosecutor to rule that the decision of the Baghdad Provincial Council dated 15/6/2013 to vote on the selection of the chairman of the Baghdad Provincial Council, his deputy, the governor and his deputies. The first defendant's attorney/ being in this capacity answered the petition that the plaintiff had already prosecute (in the same matter) before the First Instance Court of Al-Rasafa and requested its annulment in the second session, and prosecute with the

same subject before the Administrative Court and refused to have the complaint outside the legal period, this case he prosecute before the FSC is groundless because the elections held by the winning candidates for the Baghdad Provincial Council to elect the speaker of the Council, his deputy, the governor and his two deputies, it was done correctly as the two meetings were sworn in before the highest judicial authority in the province (president of the Court of Appeal of Al-Karkh) to request the reject of the case. The second defendant's attorneys also answered the petition that the court should turn a blind eye to the case, so that the court should be dismissed and its conditions verified by the subject matter and the litigants, and that the plaintiff is not considered a member of the current Baghdad Provincial Council because he did not take the oath of office and has already refrained from taking the oath of office according to the election transcript, and that the replacement of one or more candidates in the provincial council was based on the decision of the Court when the Supreme Court recommended to change the system of distribution of seats and to recalculate the quota of women in accordance with the electoral law, for the above request to reject the case. After registering the case with this court in accordance with paragraph (3rd) article (1) of the FSC's Bylaw No. (1) of 2005, after completing the required procedures in accordance with paragraph (2nd) article (2) of the court's bylaw referred to above, the date of the hearing of the case was set on 27/4/2014, in which the court could not be formed to coincide with the mentioned day and the following official holiday on the occasion of the elections of the House of Representatives until 3/5/2014, the date of the hearing of the case is 4/5/2014. According to the provisions of article (24) of Civil Procedure Law No. (83) of 1969 (amended), the agents of the parties attended and the prosecutor repeated the petition and requested a verdict. The first defendant's agent answered I repeat what was stated in the answering draft, the second defendant's agent replied that he was also repeating what was stated in his answering draft to the petition and for the

purpose of studying what was presented in this hearing by the agents of the second defendant postponed the case until 2/6/2014, in which the court was formed, the plaintiff's agent and the defendant's agents were present and the public hearing was started. It was noted that the prosecutor had submitted a list on 27/5/ 2014, stating that the first and second defendants' agents had not been informed of the list and they waited to study the list mentioned, the case has been adjourned until 24/6/2014. In which the court was formed, the prosecutor and the plaintiffs of the first and second defendants and the public hearing was started, answered that they had nothing to add to their previous statements and where there is nothing left to say, the decision had made clear public 24/6/2014.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff (sad. sin. ain.) a member of the Baghdad Provincial Council/ being in this capacity challenges the procedures of the election of the president of the Baghdad Provincial Council, the first defendant (ra. nun. ain.), his deputy, and the governor of Baghdad, the second defendant (ain. mim. ain.) and his two deputies, who claimed that the two men were elected to the positions assigned to them contrary to the provisions of Article (7/1st and 7th) of the Law on The Irregular Provinces in Province No. (21) of 2008. For the imbalance of quorum and the failure to achieve the absolute majority of the attendees after replacing two members of the Council with others in accordance with the change made by the Council of Commissioners to the rules of procedure for the distribution of electoral seats No. (12) of 2013, in accordance with FSC's Decision No. (36/federal/2013) on 26/8/2013, this is a violation of the provisions of articles (5, 16 and 20) of the Constitution, requested that the measures taken at the first session of the Aforementioned Council, dated 15/6/2013, be unconstitutional. Whereas, the FSC's jurisdiction

sits in relation to the application of the provisions of the Irregular Provinces Law in Province No. (21) of 2008 are stipulated in article (31/11th and 20/3rd /2) of it and the mentioned law does not provide for the FSC's authority. (Considering the validity of the voting procedures for the election of the president of the provincial council, his deputy, the governor and his deputies) so the mentioned law has given the state the power to consider it for the public of the judiciary and has not been entrusted to the FSC, the incompetence of the mentioned court are limited by article (4) of its Law No. (30) of 2005 and article (93) of the Constitution of the Republic of Iraq in 2005 and it did not have the authority to consider the validity of the ongoing vote to elect the speaker of the provincial council, his deputy, the governor and his two deputies,

Therefore, the FSC is not competent to hear this case and for the reasons of the advanced the case of the plaintiff and the answer from the point of non-jurisdiction on him decided to dismiss the case and hold the plaintiff/ being in their capacity the lawyers of the defendants lawyers (ain. ain. lam.) and (ain. waw. mim.) and jurists (waw. mim. sad.) a sum of one hundred thousand dinars equal between them and the decision was issued based on the provisions of Article (5/2nd) of the Law of The FSC No. (30) of 2005 and Article (94) of the Constitution of the Republic of Iraq 2005 and unanimously on 24/6/2014