In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 17/federal/media /2015

Kurdish text

The Federal Supreme Court (F S C) has been convened on 14.4.2015 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 Plaintiffs: 1- (sin. kaf. ha)
2- (kha. ain. mim.) } their agent general (ta. kaf. zin.)

The Defendant: Speaker of House of Representatives/ being in this capacity his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

The Claim:

The plaintiffs' agent claimed that his clients (sin. kaf. ha) and (kha. ain. mim.) have already been nominated for the 2015 House of Representatives elections in the State of Law Alliance and have received a number of votes in the reserve list that qualifies them for a seat in the House of Representatives after the resignation of, and the Law on the Replacement of Members of the House of Representatives (6) of 2006 and under article (2nd) paragraph (2) of it which allows them to be replaced as being from a different entity since the paragraph mentioned is violation to the provisions of the Constitution and the law No. (45) 2013 and the rights of candidates and voters, especially the rights of his clients, especially

since Law No. (6) of 2006 was issued under the closed list and his clients are challenging it for the following reasons: - The fact that the legislator stated in article (14/3rd) of the Iraqi Parliament Elections Law No. (45) of 2013 is a general rule, which is at the same time a constitutional rule refuted by Article (49/1st) of the Constitution of the Republic of Iraq of 2005 concerning the popular representation of a member of parliament, and this rule is that the seats within the list should be distributed by a sequence of sequence. Candidates based on the number of votes received by each of them and the first winner to receive the highest votes, in other words, this rule is a constitutional rule and therefore it cannot be violated in any way because its violation as a result leads to a violation of the Constitution. - The House of Representatives Replacement Law No. (6) of 2006 this constitutional rule has also been confirmed in the issue of article (2nd) of it, which provides for replacement by a candidate from the same list, and therefore the mentioned article applies to the general (constitutional) rule contained in article (14/3rd) of the House of Representatives Elections Law No. (45) of 2013 and the article (49/1st) of the Constitution, the laws governing the electoral process are one unit that complements each other because these laws were issued on the basis of the provisions of the Constitution, and therefore if there is a sense of conflict with their provisions, then in this case the provisions of the new law will prevail over the previous law because the elections may conducted under the Electoral Law No. (45) of 2013. - The above is consistent with the FSC's interpretation when it referred in one of its decisions to the concept of a bloc that can form a government as the majority bloc in parliament and is originally made up of different political entities that have united and formed the larger bloc, this interpretation thus became a supplement to the constitutional rule regarding the concept of bloc. - The advanced defences are reinforced by the reasons for the legislation of the Electoral Law of the House of Representatives (45) of 2013, which stated (for the purpose of representing the will of the voter in real and allowing for legitimate competition away from external influences) it also stated in the reasons for

the passage of the Law on the Replacement of Members of the House of Representatives (6) of 2006 that the law (religious on the basis of article (49) of the Constitution of the Republic of Iraq of 2005) if it is not adopted in the sequence of the electoral list, which was organized on the basis of the number of votes obtained by the candidates, is contrary to The reasons for the above legislation and there's no purpose in their legislation.

- The will of the majority is consistent with the principle that the MP is represented by the people in a group and not just a member of his or her elected session or political party, and therefore the majority votes obtained by the candidate cannot be wasted within the list to which the vote was cast, because the vote may be for the total list without specifying a particular candidate or to list with the candidate, and that's what article (12) of the House Of Representatives Elections Law No. (45) of 2013, has passed. Therefore, one of the recombinant alliance entities cannot be viewed in isolation from the other entities with which they are reunited b because it also leads to the loss of the will of the voter who voted for the list only, which took into account the sequence of candidates, and that the descent of more than one party into a single list has become a constitutional custom, it has the same value as the written constitution, since the principles of the written constitution (mim 49/1st) have a general constitutional rule with regard to popular representation and therefore the constitutional custom must be consistent with the constitutional rule. This is confirmed by the FSC regarding its interpretation of the concept of the larger bloc, which is consistent with article (49/1st) of the Constitution. In the case of the plaintiffs' request for a decision to annul paragraph (2) of article (2nd) of the House of Representatives Replacement law No. (6) of 2006 for unconstitutionality. The agents of the defendant/ being in this capacity answered on the petition that the agent of the plaintiff referring in his draft that the article (14/3rd) of the House Of Representatives Elections Law No. (45) of 2013 is constitutional rule codify by the article (49/1st) of the Constitution, with regard to the distribution of positions missed that the provisions in the electoral law in question are legal and in no way correctly consider them constitutional texts in form and content, the

electoral law was enacted by the House of Representatives in accordance with its legislative powers, which is contrary to the basis of the legislation of the constitutional texts and does not make sense, and the law applicable in the cases of replacement is the law of replacement of members of the House of Representatives No. (6) of 2006 and not the electoral law, since each of the jurists has a job, the plaintiff's reliance on the FSC's interpretation of the larger bloc called the candidate to form a government is contrary to the basis of the subject matter in question, and the FSC's decisions all focus on the candidate's bloc for the vacant seat and not on the electoral coalition in which the bloc is formed one of its ingredients. Just as the prosecutor's reliance on the reasons for the election law legislation is also to continue to depart from the research point, the electoral law has nothing to do with the replacement of members and therefore it is not up to the reasons for a law other than the law challenge. The constitutional custom referred to by the deputy prosecutors, which was established concerning the entry of several parties into a list that does not deny that the House of Representatives was free to organize replacements in the form seen by the Council on the basis of the provisions of article (49/5th) of the Constitution. The Constitution authorized the House of Representatives to organize replacements without regard to the prosecutor's reference to the existence of a constitutional custom with the offer that going into the evidence of the emergence of the constitutional custom and its designation and distinction from the political presentation is outside the jurisdiction of the FSC. - The FSC added a judicial ruling supplementing the ordinary legislation, which consisted of submitting the highest votes in the bloc and not others to fill the vacant seat, and therefore the Court did not rule that article (2/2nd) of the Replacement Law No. (6) was unconstitutional in 2006, but it inflated the spirit in the mentioned law and made it in line with the spirit of the Constitution and the principles of justice without confiscating the right of the electoral bloc to be the candidate for the vacant seat, out of respect for the will of the legislator and out of respect for the orientation of the voters to the destination. The indictment did not include any direct violate

between the Constitution and Replacement Law No. (6) of 2006, and what the prosecutor raised was what he saw as a violate between the above-mentioned laws and that the court was not concerned with removing the conflict between the laws. As a result the defendant's agent requested to reject the case. - After registering the case for this court in accordance with paragraph (3rd) article (1), of its system No.(1) of 2005 and completing the required procedures in accordance with paragraph (2nd), article (2) of the above-mentioned system, a date 14/4/2015was set for consideration of the case, in which the court was formed. Lawyer (ta. kaf. zin.) came in as an agent for the plaintiffs, The defendant's agent attended the Speaker of the House of Representatives/ being in this capacity and began with argument immanence and public, the plaintiffs' agent reiterated the petition and requested the rule, and the defendants' agents replied, we repeat the draft answer, and we ask for the reject of the case. The plaintiffs' attorneys replied that his appeal was contrary to paragraph (2) and article (2nd) of the Law on the Replacement of members of the House of Representatives No. (6) of 2006 because of its conflict with the provisions of the House elections law and with the constitutional texts he referred to, both parties repeated their previous statements and where nothing remains to be said. The end of argument and the decision has been clear public.

The Decision :

After scrutiny and deliberation by the FSC found that the plaintiffs (sin. kaf. ha.), (kha. ain. ha.) claimed They claim that they have already been nominated for the 2014 House of Representatives elections within Alliance of the State of Law and have received a number of votes in the reserve list that qualifies them for a seat in the House of Representatives. After the resignation of one of the members and that the law to replace the members of the House of Representatives No. (6) of 2006 and under paragraph (2) of article (2nd) prevented them were not allowed to solve because they are from a different entity and that the paragraph mentioned

was contrary to the provisions of the Constitution, The Iraqi Parliament Elections Law (45) of 2013 is a matter of rights for candidates and voters, especially since the members of the Parliament No. (6) of 2006 were issued under the closed list and the plaintiffs in question challenged paragraph (2) of the article (2^{nd}) of the above-mentioned law in their list of claims lawsuit filed before this court on 26/5/2015, requesting the ruling to cancel the paragraph referred to. The FSC found that two laws referred to by the plaintiffs in their petition, the Law on the Replacement of Members of the House of Representatives No. (6) of 2006 and the Iraqi House of Representatives Elections Law No. (45) of 2013, each was passed to serve a certain purpose. Because a number of members held one of the political and ministerial positions, for the purpose of solutions in these vacant seats, so that the House of Representatives can carry out its legislative work in full, its legislation is in accordance with article (49), paragraph (5^{th}) of the Constitution. As for the (45) of 2013 House of Representatives Elections Law, its provisions are applied after the electoral process in order to distribute seats to the winning candidates and, according to the reasons for it, has been initiated in order to distribute free and fair elections and conduct with high transparency. For the purpose of truly representing the will of the voter and allowing for legitimate competition, away from special influences, and for the purpose of advancing the democratic process. From the foregoing, it is clear that there is no violate between the provisions of the two laws mentioned above, because each of them has been issued for a specific treatment in the electoral process and the scope of its validity is distinct and different.
The FSC found that the possibility of guiding the provisions of the Law on The Elections of Members of the House of Representatives when applying the provisions of the Replacement of Members of Law if this is a law that's free from handling a situation. Accordingly, paragraph (2) article (2^{nd}), of the Law on the Replacement of Members of the House of Representatives No. 6, does not violate the provisions of the Constitution, Therefore, the court decided to reject the case and charge the plaintiffs

the costs of the lawsuit and the fees of the lawyers of the agents of the defendant's / being in this capacity the two jurists (sin. ta. yeh.) and (heh. mim. sin.) amounted to (100,000 dinars) in half between them and the decision was issued decisively based on the provisions of article (94) of the Constitution and article (5/2nd) of the Law of the FSC No. (30) of 2005 with unanimously, had made clear public 14/4/2015.