

(Translated from Arabic)

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 194/federal/media/2018



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 23.12.2018 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon 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 Plaintiff: (Ta. Kha. Ain. Zin.) /his agent the attorney (Mim. Alif. Ain).

The Defendants:

1. Head of the Parliament / being in this capacity
2. (Mim. Ain. Zin.) (Senior Head of the Parliament / being in this capacity)

} their agents the legal officials the director (Sin. Ta. Yeh.) and the assistant legal advisor (Heh. Mim. Sin.).

The Claim:

The agent of the Plaintiff claims before the F.S.C. that his client is a Parliament representative and has been nominated himself to the presidency of the Parliament and on the trail of the session that held on (16/9/2018) headed and managed by the oldest member (Senior president/ being in this capacity) (Mohammed Ali Zaini), where declared the winning of the Parliament Representative (Mohammed Reakan al-Halbousi) as the president of the Parliament, and because his client is not convinced with that election by reason of it violation to the provisions of Constitution of the Republic of Iraq for 2005 and the code, and the Parliament Bylaw, therefore he initiated a challenge that the election of the Parliament president is unconstitutional and illegal for the following reasons: The second defendant (Senior president/ being in this capacity) consider the session of the election the Parliament President and his deputies which held on 3/9/2018 an open session without presence of constitutional or legal text, which cause disruption to the election of the Parliament President and his deputies as required by the article (55) of the Constitution, and also disruption the political process by nominating and electing a President according to the provision of article (72/Beh) of the Constitution and pass over the article (76) of the Constitution, by forming the Council of Ministers and allowing some representatives to perform the constitutional oath, he also did not adhere to the provisions of the article (55) of the Constitution where the president and the first deputy were elected without the election of the second deputy which confiscates the concept of the first session and violate the meaning of the aforementioned article. In addition the process of direct secret election required by the article (55) has been disclaimed through the unconstitutional procedures that accompanied the electoral process of electing the

Parliament president through the involvement of some representatives to intervene and pressure on others and to influence their will in the selection, and photographing the election papers, and voting more than once, and some representatives fill the elections papers by pulling them from the voting representative, also some representatives participate in the elections and voted without performing the constitutional oath, and the happening of verbal arguments between the rejectionists representatives as it appears through the media coverage inside the Parliament, in addition to that the article (138/3rd/Alif) of the Constitution stipulated that its required in the representatives of the Presidency Council what require in the Representative of the Parliament that he must be completed forty years old, and since the Iraqi constitution is the grandest and highest in Iraq as stipulated in article (13/1st) of it, therefore the first defendant is lacking this condition. For these reasons the agent of the Plaintiff requested the F.S.C. to judge by the unconstitutional legality and legitimate of the election of the first defendant as President of the Parliament, and to cancel all the constitutional and legal traces that was based on the Parliament session, and to re-elect the Parliament president according to the mechanism provided by the Constitution, and to burden the defendants the expenses and advocacy fees. The agent of the first defendant head of the Parliament/ being in this capacity replied with his answering draft dated on 16/10/2018 that included the following:

1. The quorum of the Parliament first session that held on 3/9/2018 was existing, then become deficient and the number of attendance has decreased, which forced the (senior head of the parliament) to make the first session (continuous) according to the provisions of article (59/1st), however to be resume on 4/9/2018 and for the failure of the quorum which is the presence of the absolute majority of the

number of the Parliament representatives, the Senior President announced it to be resumed on 15/9/2018 which did happen, and his decision was in accordance with the provisions of the constitution and it was not possible for him to continue with the session without the quorum because that will make the session unconstitutional. Also the Parliament has adhered literally to the constitutional terms for the election of the President of the Republic which occur on 2/10/2018 which is within thirty days from the date of its first session that convened in 3/9/2018, as obligated by article (72/2nd/Beh) of the constitution, and in the same time the candidate of the most numerous mass was assigned to form the Cabinet of Council of Ministers as required by the article (76) of the constitution. Also the process of electing the Parliament President and his deputies, and the President of the Republic, and the assignment of the Prime Minister were all held on tight dates with the constitution terms, and the return of the Plaintiff's agent back in time don't guarantee the convening of the session at the schedules that he sees, assuming that the F.S.C decision is to do so.

2. The Parliament session that held on 15/9/2018 resulted in the election of the Parliament President and his first deputy, and the election of the second deputy did happen but none of the candidate obtained the absolute majority for the number of representatives, which force the Senior President at nine o'clock at night to announced that the session is (continuous) for the purpose of electing the second deputy on the second day and the matter was actually done at the time.
3. The election process of the Parliament President and his deputies were held secretly and directly before the media and the actions that accompanied that process which the agent of the Plaintiff described as (unconstitutional) it is considered as a personal acts that does not affect the confidentiality of the election process, and represent only

a waste of the right of the representatives in the secrecy of what they elected, and that the heavy presence of the representatives around the voting representatives due to the narrow space of the hall where the electoral process took place.

4. The text of article (138/2nd/Alif) define the Presidency Council by the President of state and his Deputies, and this article clarified the methods of electing them were they represent the Presidency Council for a single electoral cycle, after which the provisions of the President of the Republic shall be applied and all the provisions of the State Council shall expire, and the constitutional text that was submitted by the Plaintiff's agent it is irrelevance to the president or his deputies.
5. All those who participated in the process of electing the President of the Parliament have performed the constitutional oath according to the list sent to this court which include the Parliament representatives who participated in the election process and perform the constitutional oath until the President's election session dated on 15/9/2018. For all the reasons above the agent of the defendant/ being in this capacity requested to reject the plaintiff's case and to burden him the fees and expenses. After the case has been registered for this court and the required procedure has been completed according to what required in the F.S.C. Bylaw No(1) for 2005, the date 23/12/2018 has been scheduled for the argument, the agent of the plaintiff has attend, and the agents of the first defendant also attend, and attend for the first defendant and the second defendant the legal officials (the director (Sin.Ta.Yeh.) and the assistant legal advisor (Heh. Mim. Sin.)) under the agencies that linked to the case petition, the agent of the plaintiff repeated what listed in the case petition and requested to judge for what listed in it, the agents of the defendants repeated what stated in the answering draft and requested to reject the case for the reasons listed in it, the agent of

the plaintiff commented that his client challenge is the violation of the principle of confidentiality that stipulated in article (55) of constitution. During scrutiny the court found that the case was completed for the judgment, so the argument is closed and the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the (F.S.C.), it found that the plaintiff has litigate in his case petition the current head of the Parliament/ being in this capacity, and the senior head of the Parliament for the electoral cycle of 2018, requesting a judgment that the election of the current head of the parliament is unconstitutional for five reasons he mentioned in his case petition, in addition to what the second defendant/ being in this capacity committed of violations will being the senior head of the Parliament. And therefore to cancel the consequences of the Parliament's session, which concerns the election of the current parliament president, and he request to elect new parliament president according to the mechanism provided in the constitution, and to burden the defendants/ being in there capacity the expenses and advocacy fees. The F.S.C. put the reasons and the violations claimed by the Plaintiff under scrutiny, and also the answers of the first defendant. and after the deliberation it reached the following: about the first reason of the challenge, that the second defendant the president of the parliament according to age, make the first parliament session that held on 3/9/2018 an (open) in contrary to the provisions of the article (76) of constitution and the consequent of that which is delaying the election of the President of the Republic and the Prime Minister. For this reason, the F.S.C. finds that the decision of the second defendant the senior head of the Parliament did not make the session (open) but made it extended and decided to continue with it on the following day which was actually held later on time, and what the constitution obligate was held in the extended

session, therefore, the decision to consider the session extended for the aforementioned reasons in agreement with the direction of the F.S.C in the judgment that it issued on 24/10/2010 by No 55/federal/2010 as long as the senior president has set a date for the extended session and did not made it open without term. And about the second reason for challenge of the plaintiff against the second defendant the senior president which is his violation for article (55) of constitution were the election of the second deputy of the parliament's president didn't happened on the same day which the president and his first deputy were elected. The court found that the senior president decided to made the session extended for the following day, after the president and his first deputy was elected and for the delay of time till late hour at night and the disruption of the quorum of attendance, and the session was actually held later on time and the second deputy was elected within the concept of the extended first session according to what stipulated in article (55) of constitution. As for the third reasons of challenge which focus on the claiming that the procedures of the election of the current parliament president was defected because the parliament representatives watch each other during the direct secret election, and arguments and interventions to influence and force some representatives to vote for the first defendant the current president of parliament. After the scrutiny the court found that the direct secret election has already happened, as for what the plaintiff claimed that the parliament representatives watch each other, and arguments, and force some representatives to vote for the first defendant, the court has no evidence on that where no one claimed before the court to be forced to vote or someone saw his vote without his approval, in addition to the statements made by the agent of the plaintiff in the session dated 23/12/2018 that the election process of the first defendant the current president of parliament happened by the direct secret election according to article (55), however some violations from some representatives have occurred. As for the fourth reason of the challenge it is focused on that the first defendant the current parliament president did not complete forty years old the plaintiff based his challenge on the

article (138/3rd/ Alif) of constitution. when the court returned to the mentioned article and found that its specialize to the former (Presidency Council), and the article that the plaintiff based on which is (138/3rd/Alif) of constitution was placed within the transitional provisions of the constitution that concern the nullified (Presidency Council), and is not related to the parliament president which the provisions of article (49) of constitution is specialized with. As for the fifth reason of the challenge the plaintiff claimed that the participants in the election of the first defendant the current parliament president they wasn't from the representatives who perform the constitutional oath. The F.S.C. reviewed the lists of participants in the election process, and the lists of those who perform the constitutional oath and found that it is compatible and only those who perform the constitutional oath participated in the election. For the above the F.S.C. found that the reasons listed by the plaintiff in his challenge do not serve as a reliable basis to judge by what he requested in his case petition. Therefore the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars. and the decision has been issued unanimously and decisively according to provisions of article (94) of the constitution, and article (4) of the F.S.C. Bylaw No (30) for 2005 and issued publicly.