

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 20/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 6.7.2015 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:

(feh.sad.ain.) -his agents the attorneys (sad.feh.alif.),
(feh.ain.qaf.) and (mim.ain.jim.).

The defendant:

the speaker of the Iraqi council of representative (I.C.R.)/ being
in this post – his agents the legal officials (Sin.Ta. Yeh.) and
(Heh.Mim.Sin.).

The claim:

The agents of the plaintiff claimed that their client has submitted a challenge against the membership authenticity of the representative (shin.ha.feh.) of the Patriotic Union of Kurdistan on 4/1/2015 who

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replaced the resigned MP (nun.ain.kaf.) but the I.C.R. didn't take a decision in the challenge during the legal term and didn't list the request within the schedule of the council although (30) days have passed from the date of registering the challenge before it, as the representative who his membership authenticity is under challenge and the plaintiff are from the list of the resigned MP (nun.ain.kaf.) and from the same governorate, and the plaintiff obtained (3758) votes while the representative who his membership authenticity is under challenge obtained (2724) votes therefore their client more entitled of the parliamentary seat, as the law of replacing the I.C.R. members No.(6) for 2006 didn't stated who replace the replaced MP just mentioned two conditions which is to be from the same entity and the same governorate, the plaintiff deserve to occupy the seat in accordance with the elector will, article (14/3rd) of the law of electing the I.C.R. No.(45) for 2013 stated the distributing of the seats between the candidates according to their order, first winner is who obtain the highest number of votes, as the plaintiff is the one who obtained the highest number of votes and not Mr.(shin.ha.feh.) therefore the I.C.R. decision of assigning Mr.(shin.) as representative in the council consider as violation to the constitution and justice and not considering the will of the electors after the seat vacant of the resigned MP, and their client more entitled of the I.C.R. membership, and he requested the defendant/ being in this post to repeal the decision of the I.C.R. of considering (shin.ha.feh.) as MP in the council and to consider the plaintiff as a replacement for the resigned MP, and to burden him the expenses and advocacy fees. The defendant was informed by the case petition with its documents, he respond to it with it draft dated on 22/3/2015 stating

in it that the parliamentary seat requested by the plaintiff was occupied by the MP (nun.mim.kaf.) and after his resignation while he is member of the Patriotic Union of Kurdistan of Karkok governorate he was replaced with Mr.(shin.ha.feh.) who is from the same governorate and the same bloc according to the law of replacement No.(6) for 2006 article (2/2), and performed the constitutional Oath on 18/10/2014 as a replacement of Mr.(nun.ain.kaf.), the challenge of the plaintiff against the membership authenticity of the MP (shin.ha.feh.) was listed in the schedule of the I.C.R. in the session No.(25) on 30/10/2014, and they voted on his membership authenticity and the challenge was rejected, as the plaintiff holding to article (14/3rd) of the law No.(45) for 2013 is inappropriate and requested to reject the case, the agent of the defendant submitted explanatory draft dated on 30/3/2015 stating in it that the plaintiff has challenged the membership authenticity of the MP (shin.ha.feh.) and was presented on the schedule of the council on the session No.(25) on 30/10/2014 and the challenge was rejected, the plaintiff has filed the lawsuit on 4/3/2015 contradicting the text of article (52/2nd) of the constitution and requested to reject the lawsuit formally as it was submitted after the legal term which 30 days. The agent of the plaintiff has answered with the draft dated on 4/5/2015 stating that what the plaintiff submitted on 27/9/2014 wasn't challenge in the concept stated in article (52) of the constitution but it is a clarification to the council that his client is more entitled of the membership, and the clarification that the legal advisor stated on the note of the speaker of the I.C.R. that the mentioned request is an ordinary request, the agent of the plaintiff cleared that the challenge require stipulated procedure and objective

issue that are not available in the request dated on 27/9/2014, the legal mistake of the I.C.R. when presented the request on the session dated on 30/10/2014 is not the plaintiff fault, the challenge that fulfill the required formal and objective conditions is the one was submitted on 4/1/2015 after Mr.(shin) has become member in the council. The court call upon the parties and continue with the argument in presence, the agent of the plaintiff repeated the case petition and what stated in the explanatory draft, the agent of the defendant repeated his defense and the answering draft and the explanatory draft and requested to reject the case. Whereas nothing left to be said the argument is closed and the decision is issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff (feh.sad.ain.) challenged the membership authenticity of the MP (shin.ha.feh.) which replaced the resign MP (nun.ain.kaf.), the agent of the plaintiff claimed that his client submitted his challenge on 4/1/2015 and the I.C.R. didn't decide the challenge and it wasn't listed in its schedule, therefore he filed this lawsuit requesting to repeal the membership of the challenged MP, the agent of the defendant/ being in this post stated that the I.C.R. has voted on accepting the MP (shin.ha.feh.) and he performed the constitutional oath on 18/10/2014 as a replacement to the resign MP (nun.ain.kaf.), the plaintiff has challenged the membership authenticity of the MP(shin.ha.feh.) on 27/9/2014 by the request submitted to the speaker of the I.C.R. and his deputies included that the resigned MP (nun.ain.kaf.) has nominated the MP (shin.ha.feh.),

this nomination includes number of legal violations, and he is more entitled in occupying the vacant seat and requested the I.C.R. to refuse this replacement and to assign him instead of the resign MP and to assign him to perform the constitutional oath. This challenge was presented in the I.C.R. session No.(25) on 30/10/2014 and the council has voted on the membership authenticity of the MP (shin.ha.feh.). then the plaintiff filed this lawsuit claiming that he challenged the membership authenticity of the mentioned MP on 4/1/2015 and the council didn't decided the challenge, and he pay this case fees on 4/3/2015. The court found that lesson of counting the challenge period before the F.S.C. according to what stipulated in article (52/2) of the constitution ((the decision of the Council of Representatives may be appealed before the Federal Supreme Court within thirty days from the date of its issuance.)) as the decision of the I.C.R. rejected the challenge of the plaintiff that was submitted on 27/9/2014 whatever is the form of the challenge, was issued in the session No.(25) on 30/10/2014, therefore his case of objecting and challenging the I.C.R. decision was submitted to this court out of the stipulated term of time in article (52/2nd) of the constitution. as the stipulated terms of time of reviewing the challenge methods against the final decisions, not considering it or exceeding it leads to losing the right of challenge, by that the court shall judge by itself to reject the case petition if it was submitted after the end of the legal term (article 171 civil procedures). For all that the court decided to reject the case formally and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued final and unanimously on 6/7/2015.