

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 20/federal/media/2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 10/10/2016 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: (Ain. Jim. Ha.)- his agent the attorney (Ta. Kaf. Zin.).

The defendant: the speaker of the parliament/ being in this post – his agents the legal official (Heh. Mim. Sin.) and (Sin. Ta. Yeh.).

The third party: (kaf. Nun. Sin.) his agent the attorney (Ain. Shin.).

The claim

The agent of the plaintiff claimed that the defendant/ being in this post in the session No.(15) that dated on 5/3/2016 has decided to reject the objection of his client against the membership validity of the MP (kaf. Nun. Sin.) which replaced the MP who occupied a minister post (mim. Shin. Sad.), As this decision of the defendant is

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contrary to the constitution, and the law No.(45) for 2013, and the replacement law No.(6) for 2006, therefore the agent of the plaintiff challenged that decision of rejecting the objection, and the validity of the MP (kaf. Nun. Sin.) for the reasons he listed which is that his client is member of Islamic Dawa Party- branch of Iraq- for the governorate of Baghdad and that the objected against is also from the Islamic Dawa Party- branch of Iraq- for the governorate of Baghdad, his client the plaintiff has obtained (2438) votes and the objected against obtained (1804) votes, so his client more entitled in occupying the replacement seat for the resigning MP (mim. Shin. Sad.), the decision under challenge violated article 14/3rd) of the law of Iraqi council of representative I.C.R. No.(45) for 2013, as this law has based its provisions on the constitution. his client is more entitled according to article (49/1st) of the constitution because his client obtained (2438) votes, while the MP under objection has been obtained (1804) votes accordingly popular representation of his client is the higher so it cannot exceed the law No.(45) for 2013. The agent of the plaintiff clear that the law of replacing the members of the I.C.R. No.(6) for 2006 has set general cases for the replacement of members of the I.C.R. and it was enough that the MP is from the same bloc and governorate, and this law cannot be implemented in way that violated law No.(45) for 2013. His client is candidate for Islamic Dawa Party- branch of Iraq and not candidate for Islamic Dawa Party. Also the MP under challenge did not obtained the higher votes in the reserve list but there are who obtained higher votes than his. The agent of the plaintiff requested to repeal the decision of the I.C.R. that was issued in the session No.(15) dated on 5/3/2016 of the validity of the membership of the

MP under challenge (kaf. Nun. Sin.) and to grant the seat to his client (Ain. Jim. Ha.). the defendant/ being in this post was informed by the case petition and he replied to it with his answering draft dated 10/4/2016whici mentioned that Mr.(mim. Shin. Sad.) who occupied the seat initially was member of (State of Law Coalition- Islamic Dawa Party- branch of Iraq) also the MP under objection (kaf. Nun. Sin.) is a member of the same entity, while the plaintiff (Ain. Jim. Ha.) contrary to what was stated in the case petition is a member of the State of Law Coalition- Islamic Dawa Party, this entity is not related to Islamic Dawa Party- branch of Iraq, therefore the plaintiff is not right in his claim, and there is no meaning in the number of votes as long as the plaintiff is belongs to another entity, as the law of replacement require that the substitute is from the same entity and governorate, also the independent high electoral committee (I.H.E.C.) had rejected the plaintiff request to change his electoral entity. The agent of the defendant requested to reject the case. the court call upon the parties for the proceeding, the date 16/8/2016 was set to that, the agent of the plaintiff and he agents of the defendant/ being in this post has attended, the agent of the plaintiff requested to introduce the (I.H.E.C.) as third party in the case to clarify from it. The attorney (Ain. shin.) has step forward requesting to introduce his client (kaf. Nun. Sin.) as third party in the case beside the defendant and it was accepted. On the session that held on 10/10/2016 the agent of the plaintiff, the agents of the defendant, the agent of the third party the I.H.E.C., and the agent of the third party (kaf. Nun. Sin.) all has attended. The agent of the third party the I.H.E.C. confirm that the plaintiff is from entity differ from the entity of the MP who occupied a minister post (mim.

Shin. Sad.) which is the same entity of the MP under challenge (kaf. Nun. Sin.). the agents of the parties and the agents of the third parties repeated their statement. The argument is closed and the following decision was issued publicly.

The Decision:

During scrutiny and deliberation by the F.S.C., the court found that the agent of the plaintiff challenged the decision of the I.C.R. that was issued in the session No.(15) on 5/3/2016, that included the plaintiff's (Ain. Jim. Ha.) objection rejection against the membership validity of the MP (kaf. Nun. Sin.) which replaced the MP who occupied a minister post (mim. Shin. Sad.), claiming that the mentioned decision violate the constitution, the I.C.R. election law No.(45) for 2013, and the I.C.R. members' replacement law No.(6) for 2006. The plaintiff claimed that he is member of the Islamic Dawa Party- branch of Iraq- for the governorate of Baghdad and has obtained (2438) votes, while the MP under objection is member of the Islamic Dawa Party- branch of Iraq and has obtained (1804) votes. By reviewing the case petition the court has found that the vacant parliamentary seat was originally belong to the MP (mim. Shin. Sad.) and after he was assigned for a minister post, the seat was granted to his substitute the MP (kaf. Nun. Sin.), and both of them are members of the State of Law Coalition- entity of Islamic Dawa Party- branch of Iraq - for the governorate of Baghdad. While the objected plaintiff is member of the State of Law Coalition- entity of Islamic Dawa Party as listed in the letter No.(Dal. Qaf.-138) that dated on 6/7/2015, of Islamic Dawa bloc which is part of State of Law Coalition, as the plaintiff has try to

change his belonging so that he would become part of the entity of Islamic Dawa Party- branch of Iraq, and his request was rejected, therefore the challenged decision of the I.C.R. which rejected the objection of the plaintiff, and ratified the membership of the MP (kaf. Nun. Sin.) was right and it's in accordance with the provision of paragraph (1st) of article (52) of the constitution, the claims of the plaintiff are not based on the constitution or the law. According to that the court decided to reject the plaintiff case, and to burden him the expenses and the advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars distributed between them equally. The decision has been issued unanimously on 10/10/2016.