

# IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 21unified with 29/  
federal/media/ 2015



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 14.4.2015 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:

1. (ain.beh.ha.)-his agent the attorney (shin.sin. alif).
2. (alif.ha.ain.)- her agent the attorney (shin.sin. alif).

## 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.).

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*Achraa*

## **The claim:**

The agent of the plaintiff claimed in the case No.(21) that the I.C.R. on 11/7/2006 has legislated the law of replacing the I.C.R. members No.(6) for 2006, as the law was legislated by the I.C.R. after it was submitted as law proposal and not (law bill) on 2006 and it was legislated and approved without going through the constitutional procedures of law enacting that is stipulated in article (60/1<sup>st</sup> and 2<sup>nd</sup>) and article (80/1<sup>st</sup> and 2<sup>nd</sup>) of the constitution that the F.S.C. has confirmed it in several decisions, the laws proposal was supposed to be sent to the executive power to make it as laws bill, the agent of the plaintiff requested to call upon the defendant/ being in this post and to rule the unconstitutionality of the law No.(6) for 2006. The defendant was informed with the case petition and he responded with his draft dated on 16/3/2015 stating in it that the subject of replacing the I.C.R. members is concerning the council itself and can't be regulated or enacted by other party than the I.C.R., and the principle of separation of powers make the executive power free in enacting the law of replacing its members without the interfering of other party, as article (49/5<sup>th</sup>) of the constitution stipulated that the Council of Representatives shall promulgate a law dealing with the replacement of its members, and the law enacting didn't cause any financial burden and also its not included within the general policy of the state, and requested to reject the case. The court call upon the parties the agent of the plaintiff and the agents of the defendant attended and continue with the argument in present, the agent of the plaintiff repeated the case petition and what listed in the explanatory draft, the agents of the defendant repeated the answering draft and requested to reject the case. The court found that the plaintiff (alif.

ha.ain.) has filed the lawsuit No.(29/federal/2015) by her agent who is the same agent in the lawsuit (21/federal/2015) and repeated the same requests of the first lawsuit against the same defendant/ being in this post, as the subject of the two lawsuits is the same, the court decided to unified them and to consider the lawsuit No.(21/federal /2015) is the original, the agents of the parties repeated their statements in the original and the unified lawsuit. 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. on it session dated on 14/4/2015 the court found that the plaintiff in the original lawsuit and the plaintiff in the unified lawsuit which was unified according to the provision of article (75) of the civil procedures law No.(83) for 1969 because there subjects is the same, has challenged the constitutionality of (the law of replacing the I.C.R. members) No.(6) for 2006 from the formal aspect as this law was legislated by the I.C.R. directly without going throw the stipulated constitutional mechanism in article (60/1<sup>st</sup>/2<sup>nd</sup>) of the constitution and contradicting article (80/1<sup>st</sup>/2<sup>nd</sup>) of it, and they requested to revoke the mentioned law as it defected by the unconstitutionality of it issuance method, the defendant the speaker of the I.C.R./ being in this post has stated throw the answering drafts to the lawsuits that the challenged law was legislated directly by the I.C.R. according to article (49/5<sup>th</sup>) of the constitution which stated that ((the Council of Representatives shall promulgate a law dealing with the replacement of its members on resignation, dismissal, or death.)),

the F.S.C. found that the Iraqi republic constitution of 2005 has stipulated in article (47) of it the principle that is known in the most constitutions of the world which is (separation of powers) and listed these powers in the same article as the following, the legislative, executive, and judicial powers and stated for each of them it duties and competence thoroughly. In order to implement the provision of this article properly and the principle that it was based on, each of this powers must perform it duties and practice it jurisdictions according to what stipulated in the constitution, the legislative power practice it duties and stipulated jurisdiction in articles (60, 61, 62, 64/1<sup>st</sup>) of the constitution, in the top of these duties list is legislating the federal laws required by the public interest according to the constitutional content, practicing this jurisdiction and authority must be in accordance with the principle of separation of powers, and the laws that are legislated by the I.C.R. directly must not effect this principle, from the laws that effect this principle are the laws that leads to financial burden on the executive power not listed in it financial budget, without consulting with it or obtaining it approval, and also the laws that contradict the ministerial agenda that on it bases the ministry obtained the I.C.R. confidence, and also not to affect the judicial power duties without consulting with it because that contradict the principle of the judicial independency that is stipulated in article (88) of the constitution in addition to it contradicting to the principle of powers separation that is stipulated in article (47) of the constitution. Other than what was mentioned of such laws, the legislation power is practicing it original jurisdiction in enacting the federal laws that achieve the public interest in accordance with the constitution. the F.S.C. found that the

challenged law (the law of replacing the I.C.R. members) No.(6) for 2006 doesn't affect the principle of powers separation as it didn't cause financial burden on the executive power, and don't contradict with the general policy of the state, and don't affect the duties of the judicial power, and it was legislated by the I.C.R. directly as practice of it genuine jurisdiction stipulated in article (61/1<sup>st</sup>) of the constitution and implementing of article (49/5<sup>th</sup>) of it. Accordingly the original and the unified lawsuits has lost it legal substantiation, therefore the court decided to reject them from this aspect, and to burden the plaintiffs the expenses and the advocacy fees for the agents of the defendant/ being in this post amount of (one hundred thousand) Iraqi dinars distributed on them equally. The decision has been issued final according to article (94) of the constitution and article (5/2<sup>nd</sup>) of the F.S.C. law No.(30) for 2005, and unanimously on 14/4/2015.