

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.31 /federal/media/2015



Kurdish text

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The Federal Supreme Court has been convened on 14/4/2015, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Jaafar Nasir Hussein , Akram Taha Mohammed ,Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, 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 Plaintiff: (Ra.Heh.Shin.Sin)- his agent the barrister (Heh.Jim.Sin)

The Defendant: ICR speaker/ being in this capacity- his two legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin).

The Claim:

The plaintiff's agent claimed that ICR in its session on 14/10/2014 decided to accept the membership of the alternative representative (Ain.Ra) as an alternative representative for the representative (Ha.Kaf.Ha.Ain) who became a minister of communications. Because of ICR acceptance for the representative (Ain.Ra) violated the provisions of Law No.(45) for 2013 which grants the representative who gets the highest vote the unoccupied parliamentary seat and from the same list and the same mass of the replaced representative. my client initiated a complaint before ICR and he recorded his complaint by No.(203) on 24/1/2015, no answer was received from ICR on this challenge so he initiated his challenge to the FSC and requested: ICR violated the provisions of the article 14/3<sup>rd</sup> from the law No.(45) for 2013 by distributing the seat according to sant-ligo system

(amended) by giving the vacant seat to who got the highest number of votes within (Daolat AL-Qanon) coalition in AL-Basra, because his client got 7888 votes while the representative (Ain.Ra) got 3666 votes with a difference of 4222 votes this makes his client the owner of the seat instead of the representative (Ha.Kaf.Ha). also, the article second the clause (2) from the law of replacing ICR members No.(6) for 2006 applies to his client. The clause (3<sup>rd</sup>) from the article (14) from the law of ICR election No.(45) for 2013, its text is clear. The limitation of the nomination for the replacing member by the head of the mass contrary to the mentioned article as well as there is a vacant seat was for the martyr (Alif.Ain.Ha.Kha) and been occupied by the representative (Mm.Alif.Feh) who got 2925 votes.this is another violation because his client is the first reserve who got the highest votes. Whereas ICR is obliged to apply the laws and decisions in way that doesn't contradict to the provisions of the Constitution, so he requested to call the defendant/ being in this capacity- to the argument and to decide the annulment of ICR decision of ratifying on the membership of the two representatives (Ain.Ra) and (Mim.Alif) and to decide the acceptance of his client membership (Ra.Heh.Shin) for the seat. The defendant/ being in this capacity had been notified by the case petition so he answered on it by a draft dated on 28/3/2015 which included that the plaintiff didn't challenge the decision of ICR to decide on the validity of the replaced representative membership (Ha.Kaf.Ha) and the replaced martyr representative (Alif.Ain.Kha) by the representative (Ain.Ra) but he returns to the FSc directly violating the article (52/1<sup>st</sup>) which obliged to challenge the validity of a representative membership before ICR which has to decide on the validity of its members membership.

The clause (2<sup>nd</sup>) from the same article allowed to challenge the decision of the council before the FSC for 30 days. Because the plaintiff initiated his case before the issuance of ICR decision which violated the text of the article (52/2<sup>nd</sup>), so he requested to reject the case. The FSC called upon both parties so the plaintiff agent attended and the two agents of the defendant attended and the argument started publicly. The plaintiff's agent repeated what was listed in the case petition and requested to decide according to it.

The two agents of the defendant answered we repeated what was listed in the answering draft. The court made the end of the argument and issued the decision publicly.

#### The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff (Ra.Heh.Shin) challenges the decision of ICR dated on 14/10/2014 of accepting the membership of the representative (Ain.Ra) as an alternative representative for the representative (Ha.Kaf.Ha) who became the minister of communications. While he got the highest number of votes and he is from the same list and the mass of the replaced representative. Also, he challenges the granting of the seat that the martyr (Alif.Ain.Ha.Kha) which granted to the representative (Mim.Alif.Feh). he complained at ICR and recorded his complaint by No.(2013) dated on 24/1/2015 and ICR didn't decide on his challenge so he initiated the case at FSC requesting to annul ICR DECISION OF RATIFYING ON THE MEMBERSHIP OF THE TWO REPRESENTATIVES (Ain.Ra) and (Mim.Alif) and to decide the acceptance of the plaintiff membership (Ra.Heh.Shin) for the alternative seat. Whereas the clause (1<sup>st</sup>) from the article (52) from the Constitution which stipulated ((The Council of Representatives shall decide, by a two-thirds majority, the authenticity of membership of its member within thirty days from the date of filing an objection.)). The decision of ICR that was issued according to this clause is what he challenges before the FSC for 30 days from the date of its issuance (the article 52/2<sup>nd</sup>). The plaintiff initiated the case before the FSC before ICR deciding the validity of the membership of the member who is objected on, and this is what the plaintiff made clear in his case petition and confirmed by the agent of the defendant who requested to reject the case. So, the case of the plaintiff (Ra.Heeh.Shin) must be rejected and the court decided to reject the plaintiff case and to burden him the expenses and fees of the advocacy of the two agents of the defendant amount of hundred thousand Iraq dinars divided between them equally. The decision was issued unanimously on 14/4/2015.