

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 32/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 5.3.2018 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-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff: deputy (ain. mim. mim. ain.) member of parliament his agent (sin.ain. ain.).

Defendant: President of the House of Representation/ being in this capacity his assistant is the director general of the legal D. (feh. kaf. shin.) and human rights officers director (sin. ta. yeh.) and assistant legal counsel (heh. mim. sin.).

Claim

The plaintiff's agent claimed that the defendant issued in the case No. (11) third parliamentary session for the forth legislative year second legislative team second amendment law of the elections law of the Iraqi council No. (45) of 2013 it become used up from the date of vote on it according to the article (5) of it . This law is violent to provisions of the constitution specifically the article (77/2nd) of it , which required the nominate for the membership of the House of Representation have a bachelor's degree and this according to the explanation of your honorable court in the decision No. (15/ federal/2018) and where this decision is explainer for the provisions of the constitution it is considered with binding legal value for the provisions of the constitution lake of the quorum for the session of the House of Representation date (11/2/2018) which vote on this law , Presidency of the Council of Minister violation the article (59/2nd) of the

constitution ((decision shall be taken at the sessions of the House of Representation by majority after the quorum achieved)) we emphasize to your honorable court that the quorum is not achieved through voting on proposed law as installed in the disk attached , as well as the course certification (ain. yeh.) there is no quorum he is responsible for that . Also violation for the provision of the bylaw in the article (132) where the law was not put to a vote in principle although there was an objection at Thursday's session date (1/2/2018) as well as the session No. (10) date (3/2/2018) according to the article (133) of bylaw ((the council remove after agreement on the project to the discussion)) and this is not happened despite an objection and rule point on agreement as a principle which is explicit violation from President of the House of Representation and also difference in the text in the first and second reading on the texts voted on and ignored other proposed texts which had been drafted by the same legal committee . therefore the plaintiff's agent requested from FSC to judgment on unconstitutionality of the law for violating article (77) and judgment of the honorable FSC , and also requested to judgment on unconstitutionality of law formally for violating the provision of article (59) of constitution . The defendant's agent replied to the petition by pleading dated (27/2/2018) with the following :

first : Plaintiff refers to the existence of constitutional violations in the law replacement of challenge claiming that the House of Representatives has initiated the law to appeal and that there is a clear conflict of law with article (77) of the constitution and claims that the latter required that the nominate to the membership of House of Representatives holds a bachelor's degree we answer that there is no contradiction between the constitutional article mentioned by the plaintiff and the requirement of the House of Representatives in the nominate membership to have a certificate of preparatory or equivalent because the House of Representatives enact this legislation on the basis of article (49/3rd) of the constitution and provided ((organized by law conditions of the elect and the voter and everything related to the election)) with this text, the constitution allowed the House of Representatives the freedom to determine the elect without making it subject to certain determinants, which allows the House of Representatives to put whatever conditions it wants and see fit in

accordance with the time and place of the membership candidate in the House of Representatives to ensure the right of all categories of the Iraqi people to nominate for membership of the House of Representatives because the right to nomination is one of the most important images and pillars of political participation, which constitute an important part of the human rights, and therefore It was incumbent on the House of Representatives to establish the necessary conditions to ensure its protection and enjoyment, and this is a positive step and serious towards achieving and enshrine the principle of democracy on the one hand and take them with actual guarantees, there is no truth to the plaintiff's claim in what claimed about and is not supported by a constitutional authorization. Second: The plaintiff claimed that there is no quorum for the session and this speech lacks accuracy as the calculation of the quorum is at the opening of the session in accordance with Article 44 of the bylaw and attach to the court the honorable letter of the Department of Public Relations and the judiciary No. (ain.teh/170) date 20/2/2018 the attachment No.(1) which confirms in paragraph (2) of the completion of the quorum at the session of the council No. (12) on 11/2/2018, a procedure followed in the House of Representatives to document the attendance at the sessions of the disruption of the system of electronic voting, confirming the court that those in the council chamber exceeded the number necessary for the session the council is the absolute majority of the members of the council. Therefore the House of Representatives session No. (12) which was held on 11/2/2018 in accordance with the conditions stipulated in the constitution and the bylaw and all the decisions of the session considering and the availability of what the constitution and the law of formality .. In addition, the House of Representatives believes that the enactment of this law is a legislative option that does not conflict with the provisions of the constitution and comes in proper application to him based on the provisions of article (61/1st) of it and this option untouchable the principle of separation of powers there is no financial obligation added to the government and does not conflict with its policy and does not affect the independence of the judiciary. This is what was settled by the constitutional judiciary in Iraq as a basis in the legislation of the laws represented by the FSC in many of its judgments for example the case

No. (21/federal/2018) unified issued on 14/4/2015 and the case (85/federal/2017) date 10/10/2017 . For these reason and what the honorable court see , the defendant's agent request from the FSC judgment to reject the case with the plaintiff charging the cost and legal fees . The court called parties of the case to the hearing , on the appointed day of the hearing the plaintiff's agent is attended under his public agency attached to the case file also the agents of the defendant attended under official private agencies attached to the case file and started with the pleading immanence and public . The agent of the plaintiff repeated what in the petition of the case and he request to judgment under it , and the defendant charges the fees and legal fees . The agents of the defendant repeat what in the pleading have and requested the judgment under it and then reject the case with the plaintiff charges the fees and legal fees . Accordingly , where nothing has been said , the conclusion of the pleading has been understood and the decision was publicly understood .

The decision

When checking and deliberation by FSC fond that the plaintiff's agent challenged the petition of his case unconstitutionality the second amendment of the electoral law of the House of Representatives of Iraq No. (45) of 2013 under the pretext of non- quorum for the session of the House of Representatives date 11/2/2018 without a vote for the principle violation the article (132) of the council's bylaw also violation the article (77/2nd) of the constitution of Republic of Iraq 2005 and for these reason requested from the FSC the judgment of unconstitutionality law of the second amendment of the electoral law of the House of Representatives for violation of two articles (77 & 59) of constitution with charge the defendant / being in this capacity the fees of the case and the agent . The court check about the claims of the plaintiff about pretext of quorum in the session of the House of Representatives for the day 11/2/2018 when vote on the challenged law about unconstitutionality . It is clear to the court in the letter of Department of Public Relations and the judiciary in the Iraqi House of Representatives No. (ain. teh ./170) date 20/2/2018 this letter issued from official side and official editors it is argument for people what including it . Cannot be challenge only by forgery according to the article (22/1st) of The Law of Evidence No. (107) of 1979 . The

court has established a quorum in session of the second amendment of the electoral law of the House of Representatives No. (45) of 2013 if the session No. (12) in 11/2/2018 opened , showing the number of attendance reached (165) deputies according to the details provided with the letter above if the number of voting in the right side of hall No. (4) (46 deputies) , (56 deputies) in the middle , (58 deputies) in the left side and (5) on the stage the totally (165 deputies) number of the members who vote . Support the court from the of emptying the disk presented to the court by the plaintiff , the audience was more than (165) member of the House of Representatives when voting on the challenged law unconstitutionality , the claim of the plaintiff not to achieve quorum for to hold a session of the House of Representatives No. (12) date 11/2/2018 full quorum according to the provision of article (59/1st) of constitution this is by one side , the other side claiming the plaintiff in his challenge of the provision of article (77/2nd) of constitution it was based on the FSC measurement of a previous judgment about privileges of Minister and measure of the privileges member of House of Representatives so it's not a reason to make the status of member of House of Representatives with the Minister's degree to apply the condition provided university certification in it , and it was improbable as an inference when the FSC supported the House of Representatives option in raising the quorum of the required certification in the elect to the member of the House of Representatives to the university certification or what's equivalent and this is the was legislative option for the council when issued the first amendment of the electoral law of the House of Representatives based on the article (49) of constitution . The FSC found that the House of Representatives for the constitutional reason saw amend the first amendment of the electoral law by legislation a new law which is the second amendment of the electoral law of the House of Representatives by giving a certain quorum for the holders of the preparatory certificate as electorates for membership , this new option was based on the council to the provision of article (49/3rd) of constitution to give the opportunity to exercise the right to nomination citizens who don't have a university degree but they hold a preparatory school based on to the provision of article (20) of constitution accordance to the provision (2/jim) of it . Accordance to above , the FSC found the plaintiff's case lack of constitution authority both in term of the quorum of the session where it

was the second amendment of the electoral law of the House of Representatives which the availability of quorum and from the other side the second amendment of the electoral law of the House of Representatives based on constitutional authorization as new legislative option according to the provision of article (49/3rd) of constitution . The FSC decided to reject the case of the plaintiff for the reason above charging the costs of the case and the legal fees of the defendant's agent amount of one hundred thousand dinars distributed according to the law and issued the ruling according to the provisions of articles (94) of constitution and (4) of the FSC law No. (30) of 2005 and by agreement except violation from one of member of the court and understand publicly on 5/3/2018 .