

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 49/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 29.6.2015 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:

(ha.shin.alif.) -his agent the attorney (ha.heh.kha.).

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 third-party: the Independent High Electoral Committee - it agent the legal official (alif.ha.ain.).

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Athraa

The claim:

The agents of the plaintiff claimed before the F.S.C. in the lawsuit No.(49/federal/2015) that his client has submitted his objection to the speaker of the I.C.R. on (1/10/2014) challenging in it the membership authenticity of the MP (mim.ra.dad.) after the MP (alif.ain.ain.) was assigned to the ministry of governorates affair, after the challenge was presented and voted on in the I.C.R. in the session No.(34) on (2/5/2015) whereas his client is candidate of Salah Aldin governorate and obtained (8227) votes, and he is the first reserve candidate and belong to the same bloc that is part of Al-Arabia alliance, while the objected against (mim.ra.dad.) is candidate of Salah Aldin governorate and he is the head of another bloc is part of Al-Arabia alliance, the mentioned replacement violated the amended law of replacement No.(6) for 2006 which required the replacement to be from the same bloc and governorate, in addition, the judicial precedents issued by the F.S.C. in many of it decisions stipulated in it content that the replacement shall be from the same bloc and list, therefore he requested the F.S.C. to judge the unconstitutionality of the membership of the MP (mim.ra.dad) and to repeal it, and to assign his client for the mentioned seat. After the defendant/ being in this post was informed by the case petition he respond with the answering draft dated on (7/6/2015) discussed in it the request of the plaintiff listed in the case petition, and clarify that the seat that is demand by the plaintiff was belong to the MP (alif.ain.ain.) and after he was assigned to the ministry of governorates affair, as he is part of the National mass bloc of Salah Aldin governorate which is part of Al-Arabia alliance, he was replaced with the MP (mim.ra.dad.) and he is from Salah Aldin

governorate according to article (2/2) of the law of replacing the I.C.R. members No.(6) for 2006 and he performed the constitutional oath of the I.C.R. membership on (20/9/2014) as a replacement for Mr.(alif.ain.ain.), the submitted challenge by the plaintiff was presented to be voted on in the session No.(34) on (2/5/2015) under the provision of article (52) of the constitution and article (2/2) of the law of replacing the I.C.R. members, accordingly the decision of the I.C.R. of approving the membership authenticity of the MP (mim.ra.dad.) is in accordance with the law, and the plaintiff request has no legal substantiation, he also cleared that the I.C.R. in its decision No.(11) for 2015 has decided to terminate the membership of the mentioned MP by that the case has no substantiation, as his membership was terminated for lacking the condition of obtaining a certificate of secondary education minimally, and requested to reject the case and to burden the plaintiff all the expenses and advocacy fees. The independent high electoral committee (the board of commissioners) under its letter No.(kha/15/468) on (27/5/2015) stating that the candidate (ha.shin.alif.) belongs to the National mass bloc from Salah Aldin governorate and he obtained (8227) votes, and also the candidate (mim.ra.dad.) who belongs to the National mass bloc and obtained (8429) votes who is from Salah Aldin governorate, and also the candidate (alif.ain.ain.) belongs to the same bloc and from Salah Aldin governorate and obtained (14415) votes. The court called upon the parties, the agent of the plaintiff and the agents of the defendant attended and continued with the argument in present, the agent of the plaintiff repeated the case petition and requested to judge according to it, the agents of the defendant repeated the answering 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 MP (alif.ain.ain.) was assigned as minister of the governorates affair and he belong to the bloc of (national mass) from Salah Aldin governorate which is part of (Al-Arabia alliance), his seat become vacant then was assigned to the MP Mr.(mim.ra.dad.) who is candidate from Salah Aldin governorate and also from the bloc of the (national mass) which is part of (Al-Arabia alliance) and he had performed the constitutional oath on (20/9/2014) as a replacement MP for Mr.(alif.ain.ain.) and become a member in the I.C.R., the plaintiff (ha.shin.alif.) has challenged the assignment of the seat to Mr.(mim.ra.) before the I.C.R. claiming that he is more entitle to occupy this seat requesting to be replaced with the MP of the vacant seat, the (I.C.R.) has decided the presented challenge in it session No.(34) on (2/5/2015) and the council voted on the membership authenticity of Mr.(mim.ra.) as a representative in the council, also the council decided to reject the plaintiff challenge, on (20/5/2015) the plaintiff challenged the I.C.R. decision before this court therefore the challenged has been submitted to the F.S.C. within the legal term stipulated in article (52/2nd) of the constitution. by reviewing the parties statements and the letter of the board of commissioners in the Independent High Electoral Committee No.(kha/15/468) dated on (27/5/2015) the court found that the plaintiff is a candidate belong to the national mass bloc from Salah Aldin governorate and has obtained (8227) votes and also the

candidate (mim.ra.dad.) who belong to the national mass bloc from Salah Aldin governorate and has obtained (8429) votes, the resign MP who become a minister is belong to the national mass bloc from Salah Aldin governorate and has obtained (14415) votes, as the MP (mim.ra.) has obtained (8429) votes therefore he is in the lead of the plaintiff who obtained (8227) votes, article (14/3rd) of the I.C.R. election' law No.(45) for 2013 stipulated that (distribution of seats within the list by rearranging the sequence of candidates based on the number of votes obtained by each of them and the first winner is who gets the highest votes and so on the rest of the candidates) therefore for the aforementioned the I.C.R. decision that is dated on (2/5/2015) issued on it session No.(34) of approving the membership authenticity of the MP (mim.ra.dad.), and rejecting the challenge of the plaintiff in the I.C.R., is authentic and in accordance with the provision of article (2) paragraph (2) of the amended law No.(6) for 2006 and article (14/3rd) of the electoral law of the I.C.R. No.(45) for 2013 and article (52/2nd) of the constitution, the court decided to ratify it and 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. The decision has been issued final and unanimously on 29/6/2015.