

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.56 /federal/media/2015



Kurdish text

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The Federal Supreme Court has been convened on 22/6/2015, 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:** (Shin.Kha.Mim)- his agent the barrister (Ta.Kaf.Za)

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

**The Claim:**

The plaintiff agent claimed that the defendant/ being in this capacity- decided in the session No.(33), which was convened on 30/4/2015, to reject the objection of his client the plaintiff (Shin.Kha.Mim), which was presented to ICR on 7/1/2015, about the validity of the membership of the representative the objection against him (Feh.Beh.Shin).

The Defendant/ being in this capacity didn't decide on the objection's request Objectively, claiming that the objection was presented after the end of the determined period in the article (52/1<sup>st</sup>) from the Constitution.

the plaintiff challenges the decision of the objection's rejection, for being violated the Constitution, the Law No.(45) for 2013, and the law of replacement No.(6) for 2006.

The plaintiff has the right to occupy the seat which was for the representative who became a minister (Mim.Alif) because he is from united for reforming bloc got (2145) votes, and the objected against (Feh.Beh.Shin) got (586) votes.

The challenged decision clearly violated the text of the article (14/3<sup>rd</sup>) from the law of ICR elections No.(45) for 2013, because the plaintiff got a bigger number of votes than the objected against, and the aforementioned article enacted according to the article (49/1<sup>st</sup>) from the Constitution and the articles (20) and (46). Also, the law of ICR members replacing No.(6) for 2006 put a general case for the replacing and didn't determine the member who replaces the representative who left the council.

Choosing the replacement representative by the head of the bloc which contrary to what stipulated by Law No.(45) for 2013 is a violation of the law.

The plaintiff requested from the court to annul the decision of ICR of remaining the member who objected against (Feh.Beh.Shin) for the availability of the legal requirements of his client the plaintiff.

Also, to burden him all the expenses and fees.

The defendant was notified by the case petition so his legal representative answered on it by his draft dated 7/6/2015, included what was listed in session No.(33) convened on 30/4/2015 about this objection and the others. It included that the head of the council recited the decision of the ICR presidency of rejection the presented objections about the membership of some members of ICR after more than one month from taking the Constitutional oath by the representative who objected against.

The objection of the objector was rejected for this reason.

The plaintiff agent presented an answering draft on dated 18/6/2015 listed in it that the Iraqi Constitution didn't determine the period of presenting the objection on the validity of the membership of one of its members.

The plaintiff agent repeated in his explaining draft what was listed in the case petition and requested from the court to revoke the decision of ICR presidency.

The court called upon the two parties, so the plaintiff agent attended as well as the two agents of the defendant.

The argument has proceeded in present and the plaintiff agent repeated the case petition and requested to decide according to it. The two agents of the defendant repeated the answering draft and requested to reject the case. Both agents of the two parties repeated their sayings, and whereas nothing left to say the court made the end of the argument understood and issued the following decision.

### **The Decision:**

During the scrutiny and deliberation by the FSC in its session convened on 22/6/2015, the court found that the plaintiff objected on the ICR decision for the validity of the membership of (Feh.Beh.Shin) and registered his objection at the council on 7/1/2015, but the council didn't decide on his objection according to what stipulated by the article (52/1<sup>st</sup>) from the Constitution ((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.)) instead of applying this text, ICR presidency decided in the session No.(33) convened on 30/4/2015 the following (( challenges which were presented after 30 days from the oath-taking is rejected, the ICR presidency will write what indicates to this meaning to FSC...)) the legal official of ICR supported the above and what was listed in the session report where the decision was taken. The ICR representative said that the rejection of the plaintiff objection was from the formal point because it was presented after 30 days from the oath-taking for the objected against. He didn't broach whether the plaintiff has a right or not of what was listed in his objection.

The FSC finds from reading the text of the article (52/1<sup>st</sup>) from the Constitution that it allowed who objects on the validity of the membership of one of ICR members to challenge that before ICR and no period was determined by this article or others for the objection or to challenge the invalidity of a membership, but it obliges ICR to decide on the objection challenge during 30 days from the date of the objection's registration at the council by the two-thirds majority of its members. The reason why the Constitution didn't determine a period for the objection is clear because it may appear to the

objectors during the parliamentary term one of the reasons that affected the conditions of the representative's membership who objected against and until the last day of the parliamentary term. Going to the opposite of that could give legitimacy to the membership of the member which his membership validity is being challenged which violates the provisions of the Constitution in text and core. This is what the FSC decided in its decision that was issued in the case No.(7/federal/2015) dated on 2/2/2015. Rejection of the plaintiff objection of the invalidity of the membership of the representative objected against by the ICR presidency due to the fact that he presented after 30 days from the oath-taking which repeated by the representative under objection on the validity of his membership has no substantiation from the Constitution and the law to this period. As mentioned above and according to the provisions of the article (52/1<sup>st</sup>) from the Constitution, ICR is obliged to decide on the objection and didn't oblige the objector to present his objection during it, escaping it by ICR and not deciding on the challenge during it is not a constitutional reason to reject the objection.

Based on and whereas the decision of ICR presidency didn't include the deciding on the objection objectively but limited to the rejection procedurally. Whereas the article (93/3<sup>rd</sup>) from the Constitution granted the FSC the authority to decide on the validity of the procedures issued by the federal power, and whereas ICR is one of the three federal powers that stipulated by the article (47) from the constitution so the FSC reached to that the procedural decision of ICR presidency taken in the session No.(33) convened on 30/4/2015 of rejecting the plaintiff objection which focused on the invalidity of the representative's (Feh.Beh.Shin) membership from the formal point, claiming that his submission out of the procedure period, violated the provisions of the article (52/1<sup>st</sup>) from the Constitution. ICR had to decide on the objection challenge by two-thirds majority of its members, so the FS decided to revoke the procedure taken by ICR presidency in the session No.(33) on 30/4/2015 and to oblige the defendant ICR speaker to present the objection challenge, which submitted by the plaintiff, to the council for deciding according to the law and to issue the decision according to the provisions of the law objectively and in the light of what will be showed of

facts and pieces of evidence. The plaintiff shall keep the paid fees of the result. The decision was issued unanimously on 22/6/2015 and was understood publicly.