

In the name of god most gracious most merciful

Republic of Iraq  
Federal supreme court  
Ref. 62/federal/media /2015



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 6.7. 2015 headed by 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 and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: (mim. ra. dad. alif.) / his agent (alif. sad. ha.) and (jim. ha. dad.) (Collectively and individually)  
the jurist (ha. yeh. ha.).

The Defendant: Speaker of House of Representatives/ being in this capacity his agents (sin. ta. yeh.) and (ha. mim. sin.).

The Claim:

The agent of the plaintiff claimed in his petition that the defendant/ being in this capacity have already decided under his decision No. (11) of 2005 notification the House of Representatives by terminating the membership of his client, the plaintiff (mim. ra. dad. alif.) from the House of Representatives under the pretext of losing the condition of getting a prep degree a minimum or equivalent without submitting the mentioned decision and the challenged to the vote before the House of Representatives and that this constitutes a clear violation of the provisions of article (52/1<sup>st</sup>) of the Constitution of 2005 which

specified the methods of termination of the members of the House of Representatives and which reads: ((The House of Representatives decides on the validity of its membership within 30 days of the date of registration of the objection by a two-thirds majority of its members)) and because decision of the House of Representatives, which did not follow the procedures stipulated in article (52/1<sup>st</sup>) of the Constitution, exceeded its powers under the Constitution, and the said decision is contrary to the Bylaw of the House of Representatives, where there is no authority for the Speaker of the House of Representatives or the presidency of the House of Representatives to close the members of the House of Representatives by decision of the presidency until after it is submitted to a vote by a two-thirds majority of the members of the House of Representatives, and a member of the House of Representatives is not an employee who's been dismissed or his services terminated by order of the competent minister or the head of the entity not associated with the Ministry because he is elected by the will of his constituents and gained his membership with the confidence of the votes of his constituents for what was presented and because of the list of suit for other reasons requested by his agent of the plaintiff:

- 1- Make a hasty decision to consider the case to prevent the Speaker of the House of Representatives from approving the swearing-in of another candidate instead of the plaintiff.
- 2- Ruling that the individual decision taken by the Speaker of the House of Representatives/ being in this capacity in the session No. (41) on 26/5/2015 and No. (11) of 2005 is unconstitutional and repealed and cancel all its consequences and approve the validity of his client's membership in the House of Representatives.

The defendant's attorney replied to the petition with their draft on 30/6/2015 linked to the case file that article (49/2<sup>nd</sup>/3<sup>rd</sup>) of the Iraqi Permanent Constitution of 2005 stipulated what is required for a candidate to be a member of the House of Representatives and regulated by law and where law No. (45) of 2013 (House of Representatives

Elections Law) was legislation under which the conditions set the conditions to be met in the candidate for the House of Representatives (article 8) which section (4<sup>th</sup>) of it state that (the candidate) must have a minimum or equivalent preparatory certificate and then issued Law No. (6) of 2006 (The Law on the Replacement of Members of the House of Representatives) and article (1) of it ((Membership in the House of Representatives expires for one of the reasons mentioned in the article referred to, including Section (2<sup>nd</sup>), the loss of one of the organic conditions stipulated in the Constitution and the Electoral Law)) and where the High Electoral Commission informed the House of Representatives in its letter No. (2101) on 18/5/2015 it contains that the Syrian general secondary school document /literary branch bake to Mr. (mim. ra. dad.) is incorrect and does not correspond to their records (forged) in accordance with their investigations and procedures taken in that regard. Therefore, the plaintiff's membership shall be terminated (by law) and the decision of the Presidency of the House of Representatives in session No. (41) on 26/5/2015 it came in accordance with the provisions of the Constitution and the law, when the defendant's agent's request to reject the case. The agent of the plaintiff answers on the draft of the defendant's agent / Speaker of House of Representatives / being in this capacity repeat what is stated in his petition and request a ruling according to it. After registering the case with this court according to the provisions of the paragraph (3<sup>rd</sup>) of the article (1) from the bylaw No. (1) of 2005 after completing the required procedures according to the paragraph (2<sup>nd</sup>) of article (2) from the mentioned bylaw, On 6/7/2015, a hearing date was set for the case, in which the court was formed, the defendant's agents were present and the argument commenced immanence were initiated. The plaintiff's agents repeated the petition and asked for a judgment under it, the defendant's agents answered we repeat what's on the draft and requested to reject the case there is no objection to considering this case if the representative of the High Commission comes and Mr. (alif. ha.) has come as an agent of

the Independent High Electoral Commission to clarify from him what it takes to resolve the case, the third-person agent added that there was a subsequent letter of the previous letter sent to the House of Representatives and this letter No. (kha/15/474) on 2/6/2015 the House of Representatives has been informed that and according to the letter of the Ministry of Education, the certificate is authentication and it is not forged, according to the letter of the Ministry of Education, the defendant's agents answered asking if the certificate modifies the prep, he added that the objected letter was received to the House of Representatives after the decision was issued and both parties repeated their statements and where there is nothing left to say the end of argument has been made clearly, the decision had made clear public.

#### The Decision:

After scrutiny and deliberation by the FSC at its session on 6/7/2015 found that the Prime Minister's Office has already taken decision No.(11) of 2005 at the House of Representatives session No. (41) on 26/5/2015 including informing the House of Representatives to close the membership of MP (mim. ra. dad. alif.) from the mentioned council for the loss of one of the conditions of membership stipulated in article (8/4<sup>th</sup>) of the House of Representatives Elections Law No. (45) of 2013 in order not to be satisfied with the decision, MP (mim. ra. dad. alif.) initiated a challenge to the Federal Court, requesting for it to be cancelled because it was issued in violation of the provisions of article (52/1<sup>st</sup>) of the Constitution in formal terms as well as objectively, since there is a subsequent letter indicating that his certificate is not forged and officially approved. Whereas this court found that decision No. (11) of 2015 (challenged as unconstitutionality) was issued on the basis of the letter of the Independent High Electoral Commission No. (kha/15/456) on 20/5/2015 it was established that the document Syrian general secondary school / literary branch/ belonging to Mr. (mim. ra.

dad. alif.) was incorrect and did not correspond to the records of the Syrian Ministry of Education (forged) according to its letter No. (394/2/43(4/4) on 4/2/2015 not to mention the subsequent letter that indicates the opposite. The FSC found that the decision No. (11) of 2015 was issued by the presidency of the House of Representatives without actually investigating and without presenting the subject of consideration of the validity of the membership of MP (mim. ra. dad.) to the Council to decide on it in accordance with the mechanism stipulated in article (52/1<sup>st</sup>) of the Constitution. As the House of Representatives confirmed the issue of the impugned decision against the presidency of the House of Representatives and not the House of Representatives during his intervention at the forty-first session of the House of Representatives on 26/5/2015 it is stated in accordance with the powers vested in the presidency of the Council and on the basis of article (1<sup>st</sup>) of Law No. (49) of 2007 (Law amending the Law to Replace Members of the House of Representatives No. (6) of 2006), based on the book of the Independent High Electoral Commission No. 456 on 20 May 2015, which includes that Mr. (mim. ra. dad.) is considered to be a violation of the conditions of nomination to be a member of the Iraqi Parliament .... in accordance with the powers (Mr. (mim. ra. dad.)'s membership in the Iraqi Parliament has been terminated). Article (93/3<sup>rd</sup>) of the Constitution has given the FSC the power to decide on the validity of the proceedings issued by the federal authorities. Since the House of Representatives is one of the three federal powers stipulated in Article (47) of the Constitution, the FSC has concluded that the decision of the House of Representatives adopted at the session (41) on 26/5/2015 No. (11) of 2015 cannot be considered a decision of the House of Representatives because it was not issued in the manner described in Article (52/1<sup>st</sup>) of the Constitution which states ((The House 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), it was necessary for the House of Representatives to

decide on the validity of the membership of MP (mim. ra. dad. alif.) and issue a resolution on it by a two-thirds majority of its members and since the House of Representatives did not resort to it decided to veto the measure taken by the Presidency of the House of Representatives in the 41st session to finish the membership of MP (mim. ra. alif.) and the defendant obliging the defendant/ Speaker of the House of Representatives / being in this capacity by presenting (the subject of the deputy) to the council to decide in accordance with the law and the decision was issued in accordance with the provisions of the law and in the light of the facts and evidence shown to him, while retaining the fee paid to the result, and the decision was issued on the basis of the provisions of article (94) of the Constitution of the Republic of Iraq of 2005 and article (5/2<sup>nd</sup>) of the FSC's Law No. (30) of 2005 with unanimously and the decision had made clear public on 6/7/2015