

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.68 /federal/media/2016



Kurdish text

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The Federal Supreme Court has been convened on 10/10/2016, 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:** (Kha.Mim.Yeh.Ain)- his agents the barristers (Dhad.Ha.Ain), (Shin.Sin.Sin), (Dal.Ain.Beh), (Ain.Ha.Jim) and (Alif.Jim.Shin)

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

**The Claim:**

The agents of the plaintiff claimed before the FSC in the case No.(68/federal/2016) that the ICR on (25/8/2016) in its session No.(14) issued a decision that decided to withdraw the trust from the plaintiff, whereas the mentioned decision violated the constitution, the law, and the bylaw of the ICR, and it aggrieves him his rights so they initiated to challenged it before the FSC for the following reasons:

First: the voting operation of trust withdraw occurred by direct (secret ballot), this matter clearly violated the constitution, the law, and the bylaw of the ICR for the following reasons :

1- the article (55) from the Constitution is the only and exclusive article in the Constitution that listed the subject of proceeding a direct and secret

ballot, and in only one case, it is the election of (ICR speaker and his two representatives).

2- the sessions of the ICR are public according to the article (53) from the Constitution and the secret ballot violated the Constitution.

3-the article (29) from the bylaw of the ICR stipulated the sessions of the ICR are public.

Second: the challenged ICR hearing session had many defects and procedural breaches, and legal breaches which can be mentioned as follows:

1- the number of voters was not checked with accuracy, as well as repeated names showed up while collecting the votes.

2-it has clarified to the presidential commission that the number of the attendance was (231) representatives and after proceeding the voting it has clarified that the number of voters is (262) representative while the number of signers in the list of voters representatives recording is (253) representative.

3-there are repeating for some papers and names which had been checked such as the name of representative (Ain.Mim) and another paper have the name of (Ain.Jim.Mim).

4- it has found a similarity in the handwriting of the ballot papers which violated the procedures of the session and make it under suspicious and have to proceed the checking, investigation, and challenging.

5- there are mistakes in the representatives' names series who signed on the list of the voters up to more than (ten members).

Third: the challenged decision violated the provisions of the article (58) from the bylaw of the ICR which stipulated (trust withdraw is to be according to Interrogation directed to him, whereas our client the plaintiff has challenged the origin of the interrogation in the recorded case at the FSC No.(65/federal/2016) so the required from the defendant was to wait for the result of the constitutional challenge because the validity of the trust withdraw based on the validity of the interrogation validity so if the interrogation decision void, the dismissal decision will be voided.

2- the challenged decision violated the provisions of the article (58) from bylaw of the ICR which required that the presentation of the interrogation shall not have a personal or private interest for the interrogator also no

interrogation request shall be presented for a subject that the council has already decided on it, and it is known that personal interest is clear through the cases that were initiated from the plaintiff against the interrogator (Ain.Nun) as it constant and explained in the aforementioned case.

Fourth: the decision violated the provisions of the article (61/8<sup>th</sup>-Alif-) which determined the authority of the ICR to withdraw the trust from one of the ministers by the absolute majority in the first article (-9-) from the law of the governorates not organized in province No.(21) for 2008 which stipulated the definition of (the absolute majority will be reached by more than the half of the number of the council members) and the legal and constitutional text is clear and doesn't need any clearing or explaining or any jurisprudence in the text (the article (2) civil).

Fifth: on 25/8/2016 and in the session No.(14) ICR issued the new law of amnesty which stipulated in the article (16) that (this law shall be valid from the date of been decided in ICR) after the adoption of this law had been listed as a first clause on the schedule then the second clause was the trust withdraw from our client the plaintiff (Kha.Ain) then the clause of the conviction by the answering of the mister (Heh.Za), because the issuing of this law was on the same day that the trust was withdrawn and because the subject of the parliamentary charges that were listed by the interrogator representative (charges that have financial and administrative description and covered by the provisions of the amnesty law if it had been referred to the judiciary) it was listed in the text of the article (13) that (this law is valid on the crimes that occurred before the date of being valid), because the mentioned amnesty law has dismissed all these charges and remove its illegal characteristics and illegitimate and consider it justified and the law doesn't punish whereas it takes the illegal characteristics and illegitimate that it had before the issuance of the new law of mnesty so the Constitutional condition for interrogation is the condition of (accounting) that listed in the article (61/7<sup>th</sup>/Jim) from the Constitution and emphasized in the article (58) fom the bylaw of ICR considers dismissed Constitutionally and legaly and has no effects. As Iraqi Constitution stipulated in the article (13) (No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall

be considered void) and the article (19/2<sup>nd</sup>) that stipulated (There is no crime or punishment except by law. The punishment shall only be for an act that the law considers a crime when perpetrated. A harsher punishment than the applicable punishment at the time of the offense may not be imposed.) and the article (19/6<sup>th</sup>) (Every person shall have the right to be treated with justice in judicial and administrative proceedings.) so the issued decision by ICR on (25/8/2016) violated the Constitution and the law, based on the above of reasons and the legal facts they requested from the FSC to decide the unconstitutionality of the issued decision by the defendant/ being in this capacity- on (25/8/2016) which decides to withdraw the rust from the plaintiff for violating the articles (61/8/Alif), the article (61/7/jim), the article (55) from the Constitution and the articles (27/29/58) from ICR bylaw and according to the provisions of the law and to oblige the defendant all the expenses and fees of the advocacy. The agent of the defendant/ being in this capacity- answered on the case petition according to their written draft dated on (20/9/2016) requesting to reject it for the following reasons:

1- the plaintiff mentioned in his case in the clause (1<sup>st</sup>) that the voting operation of trust withdrawing from his was direct secret ballot so we clarified that the agent of the plaintiff has confused between the secret session and the secret ballot and the session of trust withdrawing was a public session and the operation of voting was by the secret voting, this procedure makes no violation for any text of the Constitution or the bylaw of IICR that prevent to proceed a secret voting which been by the approval of ICR and unanimous of all the political masses, especially that the secret voting grants a large space of liberty and far away from any political or media pressure, especially that the hearing for the validity of the voting on a project at ICR is out of FSC competences, Decision No.(18/federal/2006) on (5/3/2007).

2-the agent of the plaintiff claimed that there are procedurals and legal breaches in the voting operation the subject of the case, and we explain to the respected court that the voting operation had been done clearly, smooth, wasn't affected by anything, accurate in terms of procedures, the number of votes that permanent in the session report for (25/8/2016), (262)

representatives participated who had been registered by their names as attendance, it was compared with the number of papers in the ballot box.

3- the claim of the plaintiff that he challenged before the FSC the interrogation request according to the case No.(65/federal/2016) it was supposed to wait for the decision of the court for the mentioned case and, we explain to the court that there is no legal substantiation for what the plaintiff agent mentioned, obliged on what mentioned by the plaintiff agent in the clause (3<sup>rd</sup>/2) in the case draft, we explained to the court that the plaintiff didn't present any evidence that there is private interest or personal interest for the interrogator, the representative (Ain.Nun.Jim) presented her interrogation through ICR according to its overseeing and legislative rule.

4-what was listed by the plaintiff agent about withdrawal confidence decision violation for the provision of the article (61/8<sup>th</sup>/Alif) from the Constitution, we explain that the meant by the absolute majority is the number of the present representatives not the number of total ICR representatives according to what the judgment of the respected court in its decision No.(23/federal/20007) on (21/10/2007).

5-as for what related to what mentioned by the plaintiff agent in the clause (5<sup>th</sup>) from the case petition of including his client the plaintiff, the law of amnesty doesn't apply for the crimes and violations the fellow mentioned because of the interrogation and the confidence withdrawal within the competences of the ICR overseeing on the minister good performance so they requested to reject the case and to burden the plaintiff all the expenses and fees of the advocacy. The plaintiff agents presented an explanatory draft answering on the answering draft presented by the defendant agents on (29/9/2016) explaining that the initiated case by the plaintiff had initiated by his personal capacity not the functional as was listed in the answering draft and they didn't confuse between the secrecy of the session and the secret ballot, they differ between the two description and the listed challenge in the case petition built on the subject and the mechanism of the secret ballot not the secrecy or publicly of the session that held on 25/8/2016 because the Constitution allows to held secret session according to the exception listed in the article (58) from the Constitution. as for what related to the ballot, the Constitution obliged to be public, it is the origin

except one case listed in the article (55) and it didn't grant ICR the authority to make the ballot secret under any condition. ICR holding a secret ballot to withdrawal the confidence from the plaintiff make it contrary to the Constitution so it doesn't prevent to challenge it before the court. They requested to play the (CD) that certified in the session (25/8/2016) that is challenged to the competent experts to examine for explaining the following: Alif- the total attendance of the representatives. Beh- the number of the voters and the number of the signers in the official lists that is depended on the ICR. Jim- explaining if there is repeated papers have similar names of ICR members. The Constitutional legislator granted the FSC the right to try in the Constitutionality of (parliamentary charges) that directed to the interrogated while trying the withdrawal of confidence from him in light of the issuance of a general law of amnesty that is proceeded from the date of being issued so the securing of applying the Constitutional rule that listed in the article (19/6<sup>th</sup>) pursuant to the provisions of the article (19/4<sup>th</sup>) from the Constitution and reasoning by the other clauses of the article (19) from the Constitution, the FSC have the general authority for applying the provisions of the Constitution and it associated to the case file and on the selected day for the argument the court had been convened and the plaintiff attended with his agents the barristers (Dhad.Ha.Sin) and (Shin.Sin.Sin) and (Dal.Ain.Beh) and (Ain.Ha.Jim) and (Alif.Jim.Shin), as well as the agents of the defendant according to their power of attorney that associated in the case file and the argument, had been started publicly and present, the agents of the plaintiff repeated what listed in the case petition and requested to decide according to it and to burden the defendant all the expenses and fees of the advocacy also the agents of the defendant repeated what listed in the answering draft presented to the court as answer on the case petition and requested to reject the case and to burden the plaintiff all the expenses and fees of the advocacy. Whereas nothing left to say the end of the argument had been understood and the decision was understood.

### **The Decision:**

During the scrutiny and deliberation by the FSC, the court found that the plaintiffs' agents challenge by the case petition of the plaintiff the decision of ICR issued on 25/8/2016, decided on the session No.(14) which decided to withdraw the confidence from the plaintiff claiming that voting proceeding of confidence withdrawal violated the Constitution and the law for been direct secret ballot, the FSC finds after return to the Constitution articles that no provisions prevent to proceed direct secret ballot, the article (55) stipulated its proceeding (The Council of Representatives shall elect in its first session its speaker, then his first deputy and second deputy, by an absolute majority of the total number of the Council members by direct secret ballot.) so the Constitution left the proceeding of the direct secret ballot to ICR estimation as it sees a general interest unless the majority of representatives objects on it, so its proceeding doesn't contrary to the provisions of the Constitution. The FSC finds that choosing the method of the ballot through hand rising, pushing buttons or putting the papers in the ballot boxes are procedural issue the ICR speaker and his deputies are competent and without an objection from the representatives, whereas no objection from the majority of the representatives happened and applying to the provisions of the article (47) from the Constitution that devote the principle of the separation between the powers ((The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.)) the judgment of this court settled in many decisions one of them that the court is not competent in trying the validity of the voting in the ICR one of them its decision No.(18/federal/2006) on 5/3/2007, and (3/federal/2007) on 2/7/2007, on this principle as much as the matter relates to the organizational procedures that proceeding by one of the three powers that mentioned in the article (47) from the Constitution by the procedural issues that the ICR is competent to proceed so the trying of this challenge is out of the FSc competences because its competences limited by the provisions of the article (4) from the law of the FSC No.(30) for 2005 and the article (93) from the Constitution and there aren't among these provisions the trying of the mechanism of selecting the voting method in ICR, based on this the case

must be rejected from competence point so the court decided to reject it and to burden the plaintiff all the expenses and fees of the advocacy of the two agents of the defendant/being in this capacity- the two legal officials (Sin.Ta.Yeh) and (Heh.Mim.Sin) amount of hundred thousand Iraqi dinar and the decision issued presently, decisive and by majority, and it was understood publicly on 10/10/2016.