

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.6 /federal/media/2016



Kurdish text

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The Federal Supreme Court has been convened on 9/8/2016, 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, Hussein Abbas Abu Al-Temman and Sulaiman Abdullah Abd AL-Samad, who authorized in the name of the people to judge and they made the following decision :

**The Plaintiff:** Head of the commissioners' council in the IHEC/being in this capacity his agent the legal official (Ra.Nun.Ain).

**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 has claimed that the ICR issued the law of political parties No.(36) for 2015 and listed in the article (59) from it (the Cabinet shall issue the essential instructions to making easy the validation of this law after preparing it by the IHEC), and because of it violates the provisions of the article (102) from the Constitution that stipulates that IHEC is independent commissions subject to monitoring by the Council of Representatives. The commission sees that issuing instructions of the law implementation by the Cabinet is touched this independence and interfere from the executive power in the commission work and because the department of parties affairs became within the administrative structure of the commission according to the parties law. Based on this no party shall interfere in the commis-

sion work in any form especially the executive authority, and the plaintiff agent requested to call upon the defendant to the argument and oblige him by the amendment of the article text (59) from the law of political parties No.(36) for 2015 according to the following (( the commissioners' council shall issue the essential instructions to make easy the implementation of this law) as validation for the Functional authority and the authorities of the commissioners' council that was stipulated in the law of the IHEC No.(11) for 2007 (Amended). The defendant/ being in this capacity -had been notified by the case petition and its attached, and he answered on it by a draft dated on 22/2/2016 which listed that the plaintiff didn't clarify how the article (59) from the law of political parties is violating the Constitution to make the challenge true but he settles for exciting his concern from the interfering of the executive authority in the commission work, and because concerning is not forming a substantiation for the case, and the article (59) forms the conviction and a legislative that owned by the ICR in legislating the federal laws, and the mentioned article has determined the party of preparing the instructions, it is the commissioners' council in the IHEC thereby it denies the interfere of the executive authority and if the cabinet interferes in the instructions that are made by the commissioners council, the stakeholder party can challenge those instructions, and the article (59) from the law that is being challenged is fitting with the text of the article (80/3<sup>rd</sup>) from the Constitution because the cabinet is the concerned party to issue the regulations, instructions and the decisions for implementation the law. The request of the plaintiff to oblige the ICR by the amendment of the article(59) – the subject of the challenge- in the way that he listed has no substantiation from the Constitution because the FSC is not competent in obliging the ICR to proceed a specific amendment on the laws and the Constitution made clear the methods of laws amending by presenting a proposal or draft of law amending to amend according to the article (60) from it. The defendant agent requested to reject the case. The court has called upon the two parties the plaintiff agent repeated the case petition and request the decision according to what listed in it and presented an answering draft on the draft of the defendant agent, it included stress for what listed in the case petition and an answer on the draft of the defendant agent and made clear that the

IHEC is one of the independent committees that was stipulated in the article (102) from the Constitution and the challenged article contrary to this article and the law of the IHEC No.(11) for 2007 has allowed the commission in the article (4) from it to issue instruction to make easy the implementation of the provisions of the law and he cleared that his purpose of the case is the decision of the unconstitutionality of the article (59) from the aforementioned law and the FSC could adopt the proposed draft Each party repeated their sayings and whereas nothing left to say the end of the argument had been understood publicly:

### **The Decision:**

During the scrutiny and deliberation by the FSC, the court found that the plaintiff agent being in this capacity and after the case had been made clear in the session that dated on 9/8/2016 has challenged the unconstitutionality of the article (59) from the law of political parties No.(36) for 2015 which stipulated (the Cabinet shall issue the essential instructions to make easy the validation of this law after preparing it by the IHEC) and the article (2) from the aforementioned law of the definitions and the clause (3<sup>rd</sup>) from it, it stipulated (department of the parties: Department of the parties affairs and the politic organizations in the IHEC No.(11) for 2007, it stipulated (grants authority for the IHEC to prepare the regulations and the instructions). Because of the department of the parties affairs and the political organization became according to the law within the departments of the IHEC, the commissioners' council is the allowed to issue the instructions of implementation of the law provisions No.(36) for 2015. The text of the article (59) that is being challenged by its unconstitutionality has breached the independence of the IHEC and it is within the commissions that the Constitution recognizes it in the article (102) from it as one of the commissions that are independent and granting this authority to the cabinet breaches its independence and it contrary to the article (102) from the Constitution. Based on this the text of the article (59) from the law of political parties No.(36) for 2015. And to burden the defendant being in this capacity all the expenses and fees of the advocacy of the plaintiff agent the legal official (Ra.Nun.Ain) amount of

hundred thousand dinars. The decision was issued unanimously on 9/8/2016.