

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.77 /federal/media/2019



Kurdish text

The Federal Supreme Court has been convened on 14/10/2019, 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, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman, and Mohammed Rajab AL-Kubaisi, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: Najim Abod Ghadhban- his two agents the barristers Aadil Mohammed Aalwan AL-Lami and Waleed Kasid AL-Zaidi.

The Defendant: ICR speaker/ being in this capacity- his two agents the legal officials, the manager Salim Taha Yaseen and the legal counselor Haitham Majid Salim.

The Claim:

The two agents of the plaintiff claimed in the case petition that their client- the candidate in the elections of ICR for 2018 within the electoral list (Bayariq AL-Khair) No. (145)- presented an objection to the defendant/being in this capacity. It is about the challenging of the validity of the representative's membership (Aaleya Falih Ouwaed AL-Emara) on 16/5/2019. based on the article (52/1st) from the Constitution. he didn't receive any answer or a reply about his objection, although it was 30 days ago which is considered as a violation of the principle of the law supremacy, leads to got fellings of justice deprivation, and violation of the articles (14, 16, 20) from the constitution. ICR silence and abstention to answer is considered as an implied

refusal. it represents a negative decision that is required to head to the FSC, for presenting the challenge according to the article (52/2nd) from the Constitution. Because of these reasons and the reasons that were mentioned in the case petition, the two agents of the plaintiff requested from the FSC to oblige the defendant to present the objection on ICR, in order to vote on it - in the first session the quorum will be two-third- as an implementation of the article (52/1st) from the Constitution. also, they requested from the FSC to decide the non-answer and the silence of the defendant on the objections that- presented to him- , despite the availability of the two conditions: the period of 30 days has ended, and The quorum had been attained that were listed in the article (52/1st) from the Constitution, as an abstention and represents a negative decision of the rejection that, issued by the council, while the administration didn't issue a written decision of the rejection. As well as, they requested to decide the non-observance by a specific period, in order to present the challenge of the negative decision before the FSC at any time, even after the end of the challenge period in what related to the article (52) from the constitution. after notifying the defendant by the case petition, he answered on it by his answering draft, which dated on 4/8/2019, that the plaintiff presented his objection- which mentioned by the case petition- and wasn't heard by the ICR, because the required quorum wasn't achieved, according to the provision of the article (52) from the Constitution, in the last sessions. Whereas the plaintiff initiated the case before the ICR decide on the objection, so his case has no reason to be initiated because the challenge focuses on the ICR's decision of the membership's validity, and this is what the FSC settled on in many decisions. what the plaintiff claiming about considering the non-presentation of the objection as a negative decision is only his opinion about the explanation of the constitution articles. Because of these reasons, they requested from the FSC to reject the case and to burden the plaintiff with all the expenses and fees of the advocacy. After the completion of the required procedures, according to the bylaw of the FSC No.(1) for 2005, the court selected the day 16/9/2019 as a date of the argument. The court had been convened on that day, so the two agents of the plaintiff attended, and the agent of the defendant the legal official Haitham Majid. The argument was started publicly and presently.

The two agents of the plaintiff repeated the case petition and request to decide based on it. The agent of the defendant answered that he repeated the answering draft and requests to reject the case because of the listed reasons in the draft. The court charged the agents of both parties to present explanation drafts. On 14/10/2019 the court had been convened, so the agents of both parties attended and the argument was started publicly and presently. The court noticed that the plaintiff through his agent limited the case according to the answering draft which dated 2/10/2019 to oblige the defendant to present the objection in the first session in which the quorum will be attained and continuously. The agents of the defendant answered that this relates to the subjects that are listed in the schedule. During the scrutiny by the court, it found that the case got the reasons to be decided, so the court decided the end of the argument and the decision was recited publicly in the session.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff limited his case- according to the explanatory draft dated on (2/10/2019) – to the request of issuing a decision which obliges the defendant ICR speaker to present the challenge of the objection on the validity of the representative's membership (Aaliya AL-Emara) because he is the one who deserves the seat and that's shall be in the first coming session of the council that the quorum of two-third will be achieved and to put his objection subject on the schedule of each session of ICR's sessions as implementation to the article (52/1st) from the constitution. the FSC found that the plaintiff's request after limiting his case relates to administrative conduct about a specific challenge that its period decided by the article (52/1st) from the Constitution. such as this conduct is administrative conduct the court that competent to decide in is a court that competent to try the administrative conduct. The FSC competence for applying the provisions of the article (52) is limited in trying the challenge that is presented against the decision issued by the ICR according to its competence stipulated by the article (52/1st) one. This is what the judiciary of the FSC settled on in its decisions such as the issued decision No.(72/federal/2019) on 23/9/2019. Based on

that, the case must be rejected from the competence point. The court decided to reject the case and to burden the plaintiff all the expenses and fees of the advocacy for the defendant's agents, amount of hundred thousand Iraqi dinars. The decision was issued unanimously and decisively based on the article (94) from the Constitution and the article (5) from the FSC Law No.(30) for 2005 and had been understood publicly on 14/10/2019.