

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.81 /federal/media/2015



Kurdish text

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The Federal Supreme Court has been convened on 21/10/2015, 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, Hussein Abbas Abu Al-Temman, and Sulaiman Abdallah Abd AL-Samad who authorized in the name of the people to judge and they made the following decision :

**The Plaintiff:** (Ra.Yeh.Ha.)- his agent the general 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 Third Person who is on the side of the Defendant:** Mim.Ha.Sin)- his agent the barrister (Alif.Sad.Ha)

**The Claim:**

The Plaintiff agent claimed that ICR has already decided- in its convened session on (13/8/2015) No.(12)- the validity of the membership of the representative (Mim.Ha.Sin) –under objection-. The objection – which presented by the plaintiff agent to ICR on (30/12/2014) according to provisions of the article (52/1<sup>st</sup>) of the constitution- was rejected. Since the decision violated provisions of the Constitution and the ICR's election law No.(45) in 2013, the plaintiff decided to challenge the ICR's decision- which was passed on the

session (12) on (13/8/2015)- including the validity of the membership of the Representative (Ha.Mim.Sin) -under the objection-. The plaintiff got (6490) votes, the first in the reserve list of the electoral list (together for reforming) from the entity (together for Iraq) while the representative –under objection- got (5386) votes, the fifth in the reserve list of the electoral list (together for reforming) from the entity (together for Iraq). For the above, the plaintiff sees himself deserving to occupy the seat instead of (Kha.Mim.Ain)- who became a minister-, because the challenged decision included a legal violation of the text of the clause (3<sup>rd</sup>) from the article (14) of ICR's election law No.(45) in 2013 which stipulated (( the seats shall be distributed inside the electoral list by rearranging the candidates ranks according to the number of votes each one got. The first winner shall be who got the highest votes, so on for the rest of them.)). The evidence of the plaintiff's right is the purposes -which ICR's election law No.(45) in 2013- seeking to achieve. It was stipulated in the article (2) from the law that it aims to guarantee rights of the elector, the candidate, and the election justice, liberty, and dignity to get to ICR. Since the electoral law put in its article (14) a legal basis to be the standard to choose the winners' candidates, so violating this legal basis means violating the constitution which is the highest law in the state. Based on that, all laws issued by the state shall subject to the constitution, fit with it, and derived its roots from the Constitution rules and principles. This is known as the principle of the Constitution's superiority. According to this principle, the normal laws shall not contradict or be contrary to the Constitution's rules. This leads us to a result that ICR's election law No.(45) in 2013 got its legal rules from the Constitution of the Republic of Iraq of 2005 and being violated these provisions means violating the higher legal rules included by the Constitution. the violation doesn't fit with the principle of (the Constitution superiority) and the challenged decision included a clear violation of the law provision. Also, the law of ICR's members replacing No.(6) of 2006 placed general cases for replacing ICR's members and didn't determine the member who will be the alternative of the replaced representative. The law just mentioned in its article (2/2<sup>nd</sup>) ((if the occupied seat is within the governorate's seats that determined by the electoral law, the member who

is covered by replacing will be replaced by a member that from the same bloc, the same governorate's list.)). Since the plaintiff and the person under object are from the same bloc (together for Iraq) and the same governorate (Nineveh), and the legislator – in the law of ICR's election No.(45) of 2013- wanted to not let the rank of the candidate in the electoral list to the will of the bloc's head, he determined the candidate's rank in the list based on the number of votes they get in the electoral process so the purpose of the legislator for these legislations can't be ignored. Also, choosing by the bloc's head the other member- who from the same bloc which is contrary to the permanent ranks that results from the electoral process- will make a clear violation and suspending of the text of the article (14/3<sup>rd</sup>) from the aforementioned law ((the law of ICR's election No.(45) of 2013)). So the law of ICR's members replacing No.(6) of 2006 can't be applied without law No.(45) of 2013, especially that the last law is attached to the issuance of the first law. The FSC mentioned that in its decision No.(109/federal/2014) on 16/12/2014 that the law of ICR's members replacing No.(6) of 2006 didn't mention who will be the alternative of the replaced member. As the law didn't stipulate anything about this, the texts of ICR's election law No.(45) of 2013 -for what relates to who has the priority to take the seat- is the closest to the Constitution core and to the text of the article (38/1<sup>st</sup>) which obliges to respect ((Freedom of expression using all means.)). This fits with the elector's freedom to choose the candidates of ICR's membership. Based on that and because the FSC is the one who in charge to achieve the eminence and the superiority of the Constitution and because the existence of the Constitution is not the only importance it has but also the implementation. Also, the mentioned court is the guarantee against any violation of the Constitution applying in text and core. The plaintiff agent requested (( the decision of annulling ICR's decision of the representative's membership validity – under objection- (Mim.Ha.Sin) and to grant the seat to his client (Ra.Ye.Ha.) instead of the representative who became a minister (Kha.Mim.Ain) because he has the Constitutional and legal requirements.)) the defendant agent being in this capacity- answered on the case petition that the plaintiff agent refers to the ICR's decision in the session no.(12) on 13/8/2015 which taken

by voting on the representative's membership validity, and that voting had been annulled according to the request of the representative (Mim.Ha.Sin) – under objection- No.(79) on 15/8/2015. He mentioned that his occupation of this seat fits with the law and the decisions of the FSC. Also, there is more than one criminal report against the plaintiff. The request of the representative –under objection- was presented to ICR in the session No.(14) on 17/8/2015 and got the voting of accepting the annulment of the voting on the representative's membership validity (Mim.Ha.Sin). the defendant agents attached their draft with photocopies of the decisions and recommendations of the session no.(14) on 17/8/2015. The two agents of the defendant clarified that the purpose of ICR's decision of annulling the voting of the representative's membership validity to not being annulled or leads to legal effects. Whereas ICR's procedures of voting and voting annulment are one of the organizational matters of the council, the FSC has no competent to meddle or valuing according to its decision No.(51/federal/2009) on 12/10/2009. The defendant agent added that the case initiated by the plaintiff agent doesn't have the formality that obliged by the Constitution according to provisions of the article (52/2<sup>nd</sup>). First, It must be a decision of ICR then be challenged it which the case doesn't have according to the annulment of the aforementioned decision. So the case must be rejected from the formality point. As the defendant agents referred in their answering draft that there is more than one criminal report against the plaintiff, especially what was mentioned of reports according to the letter of the ministry of interior/ agency of the ministry for the police affairs/ department forensics investigation/ the penal record) No.(2268) on 19/1/2015 which defects the plaintiff's capability to nominate for the election or occupying a parliamentary seat or challenging the membership of ICR members. The case must be rejected. As the defendant agent clarified that the representative (Mim.Ha.Sin.) occupied the seat instead of the mister (Kha.Mim.Ain) who became the minister of defense, he is the biggest forfeiter from the entity (together for Iraq) within the coalition (together for reforming) for the governorate of Nineveh in the elections of ICR for the third term and he is the third in the reserve of the mentioned list, not the fifth as mentioned by the

plaintiff agent in his case. As it is clarified in the letter of IHEC/ commissioners' council No.(Kha./15/236) on 10/3/2015 and whereas the seats that were occupied in the ICR are three seats, so the representative (Mim.Ha.Sin) occupied his seat and the plaintiff is the biggest forfeiter and the first in the reserve of the list of the mentioned coalition and according to the IHEC commission, the plaintiff shall direct his case in the right direction against the one who occupied the parliamentary seat of the entity (together for Iraq) without being included in the three reserve then he has the right to direct the dispute and make the challenge's procedures according to provisions of the article (52/1st) from the Constitution and get a decision from the ICR before disputing the council's decision before the FSC according to the clause (2<sup>nd</sup>) from the mentioned article. For the above, the two agents of the defendant/ ICR speaker/ being in this capacity- requested from the court to reject the case formally and in content and to burden the plaintiff all the judicial expenses. After the registration of the case according to provisions of the article (1/3<sup>rd</sup>) from the FSC's bylaw No.(1) for 2005 and completing the required procedures according to the clause (1<sup>st</sup>) from the article 2) of the mentioned system, the day 21/10/2015 was selected as the date of the argument and the court was convened in that day. The plaintiff agent attended as well as the defendant two agents. The plaintiff agent repeated the case petition and requested the decision based on it. It was noticed that the mister (Mim.Ha.Sin) presented by his barrister (Alif.Sad.Ha) a request to be a third party beside the defendant, so the court decided to accept and charged him to pay the case's fee. The plaintiff agent repeated the case petition and requested the decision according to it. The defendant agents answered we repeated the answering draft and requests to reject the case. The plaintiff agent made a comment (( my client has no criminal report as the third party claims and he didn't know what ICR made in the decision of 17/8/2015. When he initiated the case, he relied on the decision which taken by ratifying the validity of the membership for (Mim.Ha.Sin).)) the third party agent said ((I repeat what is listed in the request of being a third party). The plaintiff agent presented decisions issued by the federal court of cassation and been attached to the case. Whereas nothing left to say, the

court made the end of the argument and the decision was understood publicly.

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The decision:

After scrutiny and deliberation by the FSC, the court found that the ICR has already decided in its session No.(12) on 13/8/2015 about the validity of the representative's membership (Mim.H.Sin) who became a representative instead of the representative (Kha.Mim.Ain) who became a minister. ICR rejected the objection which presented by the plaintiff on 30/12/2014 about that he is the one who deserves the seat of the representative who became a minister because he and the representative –under the objection- are from the same bloc, same governorate that the minister belong to. For not being convinced by the decision of ICR, he initiated to challenge before the FSC for the reasons listed by the case petition. Also, the third party requested from the court to reject the case for the reasons that listed by his request of the third party. It was clarified to the court that ICR's decision -taken in the session No.(12) on 13//2015 –subject of the case- and that challenged by the plaintiff- annulled by the ICR based on the presented request from the representative (Mim.Ha.Sin) –under challenge- and for the reasons in his request and by its decision taken in the session No.(14) on 17/8/2015 and the court been informed that the decision was annulled according to the two letters of the legal department of ICR No.(1/13/9076 on 31/8/2015) and No.(1/9/Shin/9262) on 6/9/2015 attached to the case file. The court finds that ICR decision -taken on the session No.(12) on 13/8/2015 and challenged by the plaintiff- has become annulled by later decision from the mentioned council which taken in the session No.(14) on 17/8/2015. So the challenged decision doesn't exist and the case become unproductive because the decision the decision -which can be challenged before FSC according to provisions of the article (52) from the Constitution- is the decision issued by ICR in the validity of the its members' membership. Since the aforementioned decision issued on 13/8/2015 about the validity of the representative's

membership (Mim.Ha.Sin) annulled by ICR on 17/8/2015, so there is no decision can be challenged before the court according to provisions of the article (52) from the Constitution. the FSC decided to reject the case formally and to burden the plaintiff all the fees of the advocacy for the defendant's agents and the agent of the third party amount of hundred thousand Iraqi dinar divided between them equally. The decision had been issued decisively and unanimously according to provisions of the article (94) from the Constitution and the article (5/2<sup>nd</sup>) from the law of the FSC No.(30) for 2005 and was understood publicly on 21/10/2015

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