

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 82/federal/media /2015



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17.11.2015 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: (alif. ain. zin. ha. shin.) his general agent (ta. kaf. zin.).

The Defendant: 1- Speaker of House of Representatives/ being in this capacity his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

The Claim:

The plaintiffs' agent claimed in the case No. (82/federal/2015) that his client on 7/1/2015, he lodged an objection to the Iraqi Parliament objecting to the validity of the membership of MP (ha. ain. shin. ra. shin.), as well as the letter of the Al-Ahrar bloc No. (kaf/ha1) on 7/1/2015 to which his client the objector (against) belongs, requesting the replacement of his client the objector (against), but the defendant/ being in this capacity decided at the hearing on 13/8/2015 that the membership of the MP objected on the basis of article (52/1st) of the Constitution. Thus, he rejected his client's objection and admit the validity of the membership of the objector (against) MP, who is the

alternative to the MP occupied as a minister, and since this refusal was contrary to the provisions of the Constitution, the electoral law and the replacement law (6 of 2006), his client is challenging the decision of rejection for the following reasons: First- His client got (7594) votes, which is the first in the reserve list for the (Al-Ahrar Alliance), while the MP who objected got (6739) votes third in the reserve list and is considered a clear violation of paragraph ((3rd) of article (14)) of the Law (45 of 2013), which stipulated (Seats are distributed within the list by rearranging the candidates based on the number of votes each received and the first winner is the one who gets the highest votes and so on for the rest of the candidates) his client got the series (1) in the reserve list sirens the mentioned law put a legal bases be a foundation to choose the winner candidates when violate it considered a violation of the Constitution. Second- House Of Representatives Replacement Law has put a general situation to House Of Representatives Replacement Law didn't determent the replacement but mentioned in its article (2nd) paragraph (2) that (if the Parliament seat was vacant included the government's seat that determent by the electoral law compensation from the bloc that's belong to it the member who contained of replacement in the same government), therefore his client and the objector (against) are in the same government and bloc, aw the legislator in the Electoral Law of the House of Representatives No. (45 of 2013) determent of arrangement the candidates in the list according to the number of the votes which had it then the head of the bloc choose another member considered a clear violation and interruption to the text of article (14 3rd of Law No. (45) of 2014) this what the FSC proceed in its decision No. (109/federal/2014) accordance beside to above the provisions of article (38/1st) of the Constitution which obligate respect (freedom of expression by all means) and request in the concluded of rule to annulment House Of Representatives' decision validity of the deputy's membership the objector (against) (ha. ain. shin. shin.) assign the parliamentary seat to his client (alif. ain. zin. ha.) replacement the

deputy who occupied as a minister (nun. kaf. ain. ain.) in order to provide the constitutional and legal conditions to his client and charging the defendant/ being in this capacity all expenses and fees and lawyer's expenses. After registering case to this court according to paragraph (3rd) of the article (1) of the bylaw of the FSC after completing the required procedures according to the paragraph (2nd) of the article (2) from the same system, a date 21/10/2015 was appointed of argument the plaintiff's agent and the agents of the defended were attended then the argument commenced immanence and public, the plaintiff's agent repeat what in the petition and the agents of the defended answered that we repeat what in the answering draft and we request to correct what in the draft, the plaintiff and the deputy objector (against) from Najaf government from the same bloc and alliance and we request to introduce the Independent High Electoral Commission as a third person in the case for the purpose of verifying this, the argument has been postponed to 17/11/2015, the parties' agents and the Under-Secretary of the Independent High Electoral Commission attended, and the Court noted that the commission's letter had been received No. (939) on 11/11/2015 and the court asked the third person's agent about the correct name of the plaintiff. The under-secretary of the Independent High Electoral Commission confirmed that the correct name of the plaintiff is (alif. ain. zin. ha. ahin.) and his father's name was mentioned in the letter earlier (ain.) and asked to correct this, the third-person agent confirmed that the minister and both the plaintiff and the MP objected to the validity of his membership from Najaf government and that the reason for the weighting of the least votes at most was because of the candidacy of the bloc and not an option for the House of Representatives and after um or repeated both parties his statements and the court completed its investigation, the end of argument has been made clearly and issued its following decision:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff (alif. ain. zin. ha. shin.) clarify in his petition that the House of Representatives in its session on 13/8/2015 decided to replace the membership of MP (nun. kaf. ain.ain.) with MP (ha. ain. shin. shin.) to occupied as a minister and that he objected to the replacement in the House of Representatives and his objection was rejected on 13/8/2015 and in light of that he filed the case No. (82/federal/2015) before this court on 19/8/2015 so that the objection of the case and the establishment of the case would be within the legal period stipulated in article (52) of the Constitution Republic of Iraq 2005, the ruling requested the cancellation of the decision of the House of Representatives to the validity of the membership of the MP who objected to the validity of his membership (ha. ain. shin. shin.) and assign the parliamentary seat to the plaintiff instead of the MP who occupied as a minister (nun. kaf. ain. ain.) in order to provide the constitutional and legal conditions in it and when scrutiny and deliberation found that the plaintiff and the MP challenged the validity of his membership (ha. ain. shin. shin.) are of the same list of the deputy who occupied as a minister (nun. kaf. ain. ain.) and from the same government (Holy Najaf), however, the plaintiff received more votes than the challenged member, with (7594) votes, while the objector (against) got (6739) votes, both from the reserve list in sequence (1) and the second in sequence (2) and the plaintiff thinks that he is better in the parliamentary seat and the FSC finds that the House Of Representatives Replacement Law No. (6) of 2006 came free from the replaces of the replacement member except for two criteria, namely, to be of the same entity and from the same government and about the silence of the law on this aspect, the provisions of the House Of Representatives Replacement Law No. (45) of 2013 with regard to the preference of solutions, the closest to the spirit of the Constitution is the text of article (38/1st) of it,

which requires respect (freedom of expression by all means) and this is consistent with the freedom of the voter to choose his candidates for the seat of the House of Representatives and to replace them when the seat is vacant for the highest votes, which must be taken. Considering the case of such a situation and since Law No. (45) of 2013 was provided for in article (14/3rd) of it that (Seats are distributed within the list by rearranging the candidates based on the number of votes each received and the first winner is the one who gets the highest votes and so on for the rest of the candidates) and since that the MP (ha. ain. shin. shin.) didn't get the highest votes to replace who occupied as a minister the MP (nun. kaf. ain. ain.), the decision of the House of Representatives, which is challenged by its validity, is incorrect from this side because it does not respect the will of the voters and the alternative must be chosen from those who received the highest votes after occupied as a minister MP's seat and the vacancy of his parliamentary seat to occupy that seat. The decision of the House of Representatives to approve the candidacy of the objector (against) MP (ha. ain. shin. shin.) and to charge the defendant the Speaker of the House of Representatives/ being in this capacity the expenses of the lawsuit and the fees of the lawyer agent (ta. kaf. zin.) attorney amount (100,000 dinars) and the judgment was issued public and unanimously decisively on the basis of article (94) of the Constitution, the decision had made clear public on 17/11/2015.