

Republic of Iraq
Federal Supreme Court
Ref. 92 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/10/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Farouk Hilal Juma'a – his agents the Barristers – Mohammed Majeed Al-Saidi and Ahmed Mazin Makkiya.

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed by his agent that he candidate on the list of the coalition of parliamentary (Al-Nasr) for the fourth election cycle and after the elections were held and the results were announced for 2018 from the Independent High Electoral Commission on Saturday, 19 May 2018 and since he was considered the biggest loser in his electoral list for Basra governorate, and since the Representative (the winning candidate) the current governor of Basra is a member of the Iraqi parliament and did not take the oath of office after declaring victory in the elections as a Representative from Basra governorate in The first session dedicated to swearing in the fourth election session the first legislative chapter of the first legislative year on Monday, 3 September 2018, and he was not sworn in afterward and continues to

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work as (governor of Basra) and this constituted a shortage of members of the Council of Representatives and also a decrease in the number of Representatives from Basra governorate which will be the reason for the lack of a parliamentary vote represents 100,000 voters in favor of Basra governorate, in violation of the text of article (49/1st) of the Iraqi Constitution and article (50) of it as well as contrary to the text of paragraph (2nd) of article (4) of the Law of the Council of Representatives and its formations No. (13) of the same law, which stipulated (the Representatives takes the constitutional oath before the Council in the first session at the invitation of the speaker of the session) as well as his violation of article (13) of the same law above-mentioned, which specified the obligations of the Representative and stipulated in paragraph (1st) that the Representative should be sworn in in the first session of the Council, and since article (12) of the same law specified the conditions in which the prosecution ends in the Council, including (the Representative holds a position in the presidency of the republic or in the Council of Ministers or any other official position) in paragraph (4th). Since the Governor of Basra has assumed the presidency of the Government of Basra, this is the reason for the expiry of his membership as stipulated in the previous law, which the defendant did not comply with, which is legislation he enacted, and based on the letter in the number (Ra/127) on 14 June 2019 issued by The Council of Representatives/ Office of the Legal Counsel of the Council of Representatives, which reviewed the request to resign by Mr. Governor of Basra and the letter of the head of the Al-Nasr

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Coalition bloc in the number (37) on 9/12/2018, which demanded the replacement of the Representative (Asaad al-Aidani) with Mr. Farouk Hilal because he represents the first reserve in Basra governorate from the same list, and article (6) of the Bylaw of the Council of Representatives came in support and confirmed of the above and article (19/1st) of it, which stipulated that "it is not permissible to combine the membership of the Council of Representatives and any job, or another official position). Accordingly, for all the constitutional and legal grounds provided and for preceding the court by issuing a decision to reject a suit similar to this subject, considering that the winning candidate who did not take the oath of office is not considered a Representative but at the same time the seat remains vacant abandoned by the winner except in the financial aspect so the plaintiff asked the Federal Supreme Court to call upon the defendant to plead, and to judge on the obligation to terminate the membership of the winning candidate Representative (Asa'ad Abul Ameer Ghaffar Tuama'a Al-Idani) and to regard the plaintiff as a compensatory alternative to the parliamentary seat as the biggest loser from the al-Nasr coalition list for Basra governorate, and to burden him with all fees, expenses and the advocacy fees. The case was registered with the Court in number (92/Federal/ 2021) and the legal fee was collected in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005, and the defendant/ being in this capacity was notified in its petition and documents in accordance with the provisions of article (2/1st) of the aforementioned Bylaw and his agents replied to

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the answering draft dated 2/8/2021, which included: 1. That the agent of the plaintiff has denied the candidate who is not sworn in based on an earlier decision of the Federal Supreme Court and may mean the numbered decision (140 unified with 141/federal/media/2018) and the numbered decision (80/federal/2019) However, he asks the court to judge by the termination of the membership of the winning candidate (Assaad al-Aidani), which has put his applications in contradiction with the content of his list because the winning candidate (Assaad Al-Aidani) and in this case the agent of the plaintiff must follow the path set by article 52 of the Constitution in challenging the validity of his membership, either because he is not a member of the Council of Representatives and the prosecutor should specifically indicate the constitutional or legal basis on which he is based in the application to terminate the title of Mr. Asaad al-Aidani as a winning candidate who has not been sworn in. 2. The Federal Supreme Court has already heard a case concerning the application for the replacement of another winning candidate who did not take the oath of office and issued its numbered decision (80/Federal/2019) on 16 September 2019 and included what it stipulated (since this case was not addressed in the Council of Representatives Law and its formations and was not addressed in the Law on the Replacement of Members of the Council of Representatives, which is the case of a candidate winning the elections of the Council of Representatives and not attending the sessions and being sworn in until the Council of Representatives finds legislative treatment for such a case remains the plaintiff's request to

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judge by relieving the winner and to replace him is not based on the Constitution and the law, and since this case was not regulated in law as the court set out in its previous decision, the plaintiff's request is unsubstantiated. When the defendant's agent applied, the plaintiff's case was dismissed and judicial expenses were charged. After completing the procedures required by the court's Bylaw, a date was set for the case, and the parties were notified with it, based on the provisions of article (2/2nd) of the aforementioned Bylaw, and the day appointed for the argument, the court was convened, the plaintiff and his agent (Ahmed Mazen Makkia) were present, and the defendant's agents, legal counsel Haitham Majid Salem, and the official jurist Saman Mohsen Ibrahim. The public in presence argument proceeded. The agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. The agents of the defendant/ being in this capacity answered and requested to reject the case for the reasons listed in the answering draft dated 2/August/2021. The agent of the plaintiff projected an answering draft which summarized that the Representative (the case subject) had violated a stipulation of membership authentication stipulations according to what the article (50) of the Constitution stipulated. This article obliged that the winner shall take the constitutional oath to become a member of the ICR, both parties repeated their previous requests and sayings. The end of the argument has been made clear, and the day 20/10/2021 has been set as a date for issuing the decision. On an aforementioned day, the Court has convened and issued the following decision publicly.

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The decision:

Upon the scrutiny and deliberation, the court noted that prosecutor Farouk Hilal Juma requests to judge by terminating the membership of the Representative (Asaad Abdul Amir Ghaffar al-Aidani) from Basra governorate and adopt him as his replacement as the biggest loser in his electoral list (Al-Nasir Coalition for Basra Governorate) because the Representative (case subject) did not take the oath before the Council of Representatives and did not proceed as a Representative and he holds the post of governor of Basra before the elections and continues in the aforementioned position and thus its membership shall be terminated under article (49/1st) of the Constitution of the Republic of Iraq for 2005, which stipulated (the Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a direct secret general ballot. The representation of all components of the people shall be upheld in it), and the article (19/1st) of the ICR's Bylaw which stipulated (it is not permissible to gather between the membership of the ICR, any work, or any other official post) and by the effect of the article (12/4th) of the ICR's law and its formations No. (13) for 2018 which included the termination of the ICR membership of the Representative if he assumed a post in the Presidency of the Republic, the Cabinet, or any other official post. This court finds that the plaintiff's case is admissible in terms of jurisdiction and liability because it falls within the jurisdiction of the Federal Supreme Court in accordance with the provisions of article (52) of the Constitution of the Republic of Iraq of 2005, and the plaintiff and the defendant/

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being in their capacities are legal litigants who meet the terms of the litigation and have the legal capacity to litigate. In examining the requirement of the plaintiff's interest, which is a prerequisite for accepting the case, the court considers that the interest is the intended purpose of the judicial claims and that the constitutional action, like any other case, must be in the interest and that the interest must be legal, personal, direct and in accordance with the general principles set out in the Civil Procedures Law No. (83) of 1969 amended and article (6/1st) of the Bylaw of the Supreme Federal Court No. (1) of 2005, although the plaintiff's interest in his case is legal, personal, direct and timely, it must be available from the time of the proceedings and continues during its proceedings and until the judgment is handed down. Upon reference to the plaintiff's case, the Court found that his interest in the case ended when the Council of Representatives dissolved itself on 7/10/2021, as there was no longer a House of Representatives in which the plaintiff could be a member, and that this had been achieved. For two reasons, the first is the plaintiff's inaction in claiming his alleged right for approximately three years from the date of the first legislative chapter of the first legislative year of the Session of the Council of Representatives, which falls on 3 September 2018 until the initiation of this case on 7 July 2021, and the second reason was the dissolution of the Council of Representatives before the end of the electoral cycle and the holding of early elections for the new session on 10 October 2021. Since the interest is the practical benefit or benefit to the plaintiff from judging him by his requests in the proceedings and the impossibility of achieving any benefit or benefit to the plaintiff from responding to his call for the end of the parliamentary session of the House of Representatives, of which the decision is requested to be

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replaced by a member, and since the interest is a prerequisite for accepting the case and the court, if not available, cannot enter into the basis of the case and look into its subject matter, but this is a positive reason for its response, for all that has been submitted and by the request of the Federal Supreme Court. The verdict reads: First: to reject the case of plaintiff Farouk Hilal Juma. Second: to burden the plaintiff with fees, expenses, and the advocacy fees for the agents of the defendant the Speaker of the ICR/ being in this capacity for each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount of one-hundred thousand Iraqi dinars and to be divided between them according to the law. The decision has been issued unanimously, final, decisive, and binding for all powers according to the provisions of the articles (94) of the Republic of Iraq Constitution for 2005 and (4),(5) of the Federal Supreme Court Law No. (30) for 2005 which amended by the Law No. (25) for 2021. The decision has been made clear on 13/Rabee Al-Awal/1443 Hijri coinciding 20/October/2021 AD.

Signature of the President
Jassim Mohammed Abbood

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Signature of
The member

Diyar Muhammad
Ali

Signature of
The member

Ayoob Abbas Salah