

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 93/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14.10.2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Muhamad Rajab Al-Kubaysi who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Ali Hadii Salih Muhee Al-Sharify -his agents the attorneys Muhamad Salih Almuhana and Aus Ahmed Ali.

The defendants: The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

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Athraa

The claim:

The agents of the plaintiff claimed that among the legal provisions that injustice the right many of the Iraqi people is the decision that was issued from the I.C.R. regard the law of first amendment to the governorates and districts councils' electing law No.(12) for 2018 in his session that held on (22/7/2019), as this amendment violated the text of article (13/2nd) of the constitution which stipulated that (no law that contradicts this Constitution shall be enacted) because the amendment –the subject of challenge) in article (5/3rd) of it contradict with the constitution according to what will be clarified and all according to its implications and the constitutional article that it contradict with, as the following:

First: The text of article (5/3rd) of the law of first amendment to the governorates and districts councils' electing law No.(12) for 2018 (the subject of challenge) has violated the constitution, as it stipulated not to allow those covered by the amnesty to nominate to the membership of the governorates' councils, noting that the provision of the mentioned article didn't stipulate the type of amnesty is it general or private because of the difference in their provisions, what was stipulated is ambiguous and included both types apparently, and didn't even stipulated the year of the amnesty and remain absolute for the previous years undetermined even if it was before many years, and the failure to observe the probation period stipulated in the laws in force, which do not exceed three years, as in the suspension of implementing at least, knowing that there is no probation period for the one covered by the general amnesty as it contains full and absolute forgiveness of

the beneficiary, therefore the amendment text (the subject of challenge) is contrary to the following constitutional text:

1. The amendment –the subject of challenge- violated the text of article (2/Jim) of the constitution as it contradict with the basic rights and freedoms listed in it, were the constitution guaranteed the right and free of nomination for the Iraqi individual according to the text of article (20) of it which stipulated that (Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office), according to that the amendment has deprived who is covered by the general amnesty from exercising his right, despite his cover by article (153/1) of the Iraqi penalty law No.(111) for 1969 which stipulated the following ((the general amnesty shall be issued by law and shall result in the expiry of the lawsuit and the annulment of the conviction in which it has been issued and the fall of all the original, subsidiary and supplementary penalties and precautionary measures and shall have no effect on the previous penalties unless the amnesty law stipulated otherwise)). As long as the general amnesty law didn't stipulate the deprivation of whom covered by it from the right he owns including the nominating right, so by that and in accordance with that article consider equal with others in the right of nominating, there is no effect of the judgment issued against him the original or the consequent and the general amnesty was imposed on the basis of the act, the penalty, and the verdict of guilty was removed therefore the challenged amendment is not authorize to follow him with a consequential penalty stipulating

that he shall not be nominated for the membership of the governorates councils therefore that consider as clear violation for the constitution which guaranteed the nomination right for all Iraqis.

2. The amendment –the subject of challenge- violating the text of article (15) of the constitution which stipulated the ((every individual has the right to enjoy life, security and liberty, deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority)) as the amendment has deprived the liberty of nomination of the Iraqi individual who is covered with the general amnesty and its features that are stipulated in article (1/153) of the Iraqi penalty law No.(111) for 1969, and prevented him from practicing his right without judicial decision, noting that the listed restriction in the amendment has affected the essence of the right and liberty that are guaranteed by article (20) of the constitution, by that the amendment – under challenge- has violated these articles in addition to its violation to the text of article (46) of the constitution which stipulated that (restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom), the amendment has violated the essence of these rights.
3. The amendment – under challenge- violated the text of article (19/9th) of the constitution which stipulated that ((laws shall not have retroactive effect unless stipulated otherwise)) therefore

the amendment has deprived the Iraqi individual who willing to nominate whom is covered by its content and have what contradict with it before it issuance in retroactive effect in violation to the constitution, as it supposed to be effected on the registered cases after it issuance, and the previous cases should be processed according to the electoral laws that were in force in the time of committing the act or its judgment within the period of its validity specifically the related articles of the nomination conditions according to the form adopted in the electoral laws as listed in the text of article (7) of the law of electing the governorates councils No.(36) for 2008 which adopted the nominating conditions that are listed in article (5/3rd) of the law of governorates that are not incorporated in a region No.(21) for 2008 which stipulated that (to be good conduct, reputation, behavior and is not condemned to a felony or misdemeanor violating honor) which is the adopted form in the former electoral laws even the time of the fallen regime, that the nominee subject to it according to its validity and in force effectivity, it didn't include to deprive who is covered with the general amnesty, and it was adopting the crime that violating honor listed in article (21/6) of the Iraqi penalty law No.(111) for 1969 (amended) as it was determined and defined since the time of issuing the law at that time.

4. The expression (the crimes of financial and administrative corruption) was mentioned within the amendment text (under challenge) which was defined by the Integrity' law No.(30) for 2011 as the following (the definitions' chapter, within the determination of the integrity concept, that listed group of legal

articles in force including what was within the Iraqi penalty law No.(111) for 1969 which wasn't known by this expression before the mentioned integrity law in force, as it was listed within different chapters undefined by the expression (the financial and administrative corruption) including violations, misdemeanors, and felonies accordingly the prevent the Iraqi individual who is convened under these articles from nominating before issuing the mentioned Integrity law consider as violation to the text of article (19/9th) which stated that laws shall not have retroactive effect, and the prevention of nomination shall be limited to the cases that are registered after the issuance of the Integrity law No.(30) for 2011 taking into consideration the big injustice of who is covered with the general amnesty of these articles before the validity of the Integrity law as cleared in paragraph (3) above.

5. The challenge amendment that is related to the nomination conditions article (5/3rd) of it violated the text of article (95) of the constitution which stipulated that (the establishment of special or extraordinary courts is prohibited) as the amendment in its text has prevented who was convicted before its issuance specifically in the time of former regime by the special courts which was repealed after 2003 for its unconstitutionality and violating the legal and judicial controls that contributed in the injustice of many Iraqis, note that the lists of convicts in the special courts in the time of the former regime are saved in the computer of the criminal registration directorate of the ministry of Internal affair, of whom served his sentence of them or who included with the general or special amnesty, and it is can't be

removed as it is saved for tenth if years, especially who was convicted with a felony or misdemeanor not violating honor or misdemeanor not violating honor that are listed in article (21/6) of the Iraqi penalty law No.(111) for 1969 therefore deprived the convicts in these courts including who was covered with the general amnesty consider as violation for the mentioned article (95) of the constitution.

Second: Article (5/3rd) of first amendment law to the law of electing the governorates councils No.(12) for 2018 (under challenge) stipulated that (to be good conduct, reputation, behavior and is not condemned to a felony or misdemeanor violating honor, including the cases of the financial and administrative corruption under final judicial judgment, whether it was covered with the amnesty or not) as this article has stipulated one of the nomination conditions for the membership of the governorates councils, as the content of this article was distinguished by an addition that is not stipulated in other articles of determining the nomination conditions in similar legal articles were it added the text (including the cases of the financial and administrative corruption under final judicial judgment, whether it was covered with the amnesty or not) as such addition was not stated in the nomination conditions for the post of the president of the republic in article (68/4th) of the constitution, and such addition was not stated in the nomination conditions for the post of the prime minister in article (77/1st) of the constitution, and such addition was not stated in the nomination conditions for the membership of the council of representatives and the post of the minister in the related articles, and a fortiori, it was supposed to

emphasis the nomination conditions for the mentioned posts, where it is inconceivable to deprive the Iraqi individual who is covered by the general amnesty law, which included within the content of the text of the article (153/1) of the Iraqi penalty law No.(111) for 1969 of the right and freedom of nomination for the membership of the governorates councils which was granted in article (20) of the constitution according to the amendment (subject of challenge) he shall have the right to nominate for the post of the president , the prime minister, the council of representatives' membership, or minister , one of the required conditions of nominating for these posts is (to be good reputation, behavior and is not condemned to a felony or misdemeanor violating honor) therefore the mentioned addition shows the difference between the nomination conditions and the inequality and prevent the equal opportunities between Iraqis willing to nominate, the amendment (the subject of challenge) contradict with the text of article (16) of the Iraqi constitution which stipulated that (equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken). The agent of the plaintiff requested to (judge the unconstitutionality of article (5/3rd) of first amendment law to the law of electing the governorates councils No.(12) for 2018 for violating the mentioned constitutional article, and to compile the defendant/ being in his post to issue the required legislations to treat and avoid the violation of the amendment (the subject of the challenge) to the constitution and to burden the defendant/ being in this post the expenses and the advocacy fees in half).

The agent of the defendant/ being in this post responds to the case petition stating that the challenged text came as legislative choice to the council of representatives according to its stipulated jurisdictions in article (61/1st) of the constitution, and the mentioned text came absolute as the absolute remain absolute which means that the general and privet amnesty are covered by the provisions of the challenged text, as for the violation of the challenged text to article (2/Jim) of the constitution the agents of the defendant clears that the election of the council of representatives and the governorates councils are regulated by a law and the legislator care to the availability of the right conditions in the nominee for these councils for its importunateness, it is inconceivable that one of the representatives of the people had been convicted of a crime of honor or financial or administrative corruption. As for the violation of the challenged text to article (15) of the constitution, it's a rejected claim on the plaintiff because the mentioned article has included exception of it provision (except in accordance with the law and based on a decision issued by a competent judicial authority), also for the claim of violating the challenged text foe article (19/9th) of the constitution, as it also included exception (unless stipulated otherwise). As for the claim that the expression the crimes of financial and administrative corruption is violating the provisions of article (19/9th) of the constitution, the challenged text came as legislative choice of the legislator and doesn't violate the constitution. As for the claim that the challenged text violated article (95) of the constitution, the text of the mentioned constitutional article has prohibited the establishment of special or extraordinary courts and it didn't include provision regard the

judgments issued from these courts, but the issue was treated by enacting the transitional justice' laws as a result to his opposition to the former regime and all what regard the economic crimes, public finances and administrative and financial corruption, these crimes do not involve political opposition in the former regime and remain governed by the law the subject of the case. as to what the plaintiff agent has mentioned about the absence of the text (the subject of the case) t in the election laws of the President of the republic, the Prime minister and members of the council of representatives, each law has its own privacy and time, especially since the text was not in this form before 2008, so it is governed by the legislative will, for all that the agents of the defendant requested to reject the case. After the case was registered before this court according to the provision of paragraph (3rd) of article (1) of the F.S.C. Bylaw No.(1) for 2005 and completing the required procedures according to paragraph (2nd) of article (2) of the mentioned the Bylaw, the date 14/10/2019 was scheduled for the argument, the court convened and the agent of the plaintiff the attorney Muhamad Salih Al-muhana has attended, the agents of the defendant the speaker of the I.C.R. has attended, and continued with the argument in presence and publicly, the agent of the plaintiff repeated the case petition and requested to judge according to it and submitted answering draft to what listed in the defendant draft he briefed it that there is different between the general and the privet amnesty, and the origin is that the laws don't be retroactively effective, he added that the judgment issued against his client was issued by privet court, the agents defendant repeated that they have no comment on that. The court found that the case is

completed for reasons of judgment, the argument is closed and the decision is issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the agents of plaintiff has challenged the constitutionality of paragraph (3rd) of article (5) of the law No.(14) for 2019 (first amendment law to the law of electing the governorates and districts council) No.(12) for 2018, the challenged paragraph for being unconstitutional stipulate one of the conditions for the membership of these councils ((to be good reputation, behavior and is not condemned to a felony or misdemeanor violating honor, including the cases of the financial and administrative corruption under final judicial judgment, whether it was covered with the amnesty or not)) the plaintiff based his claim on the mentioned constitutional article in the case petition under the claim of violating paragraph (3rd) of article (5) of the mentioned law for the mentioned constitutional articles. The F.S.C. found by analyzing the challenged paragraph that it is a restriction on those who hold public posts in the state elected or appointed by the nature of these tasks and this restriction does not contradict the constitutional articles that the plaintiff listed in the case petition, as it guarantees adequate protection of the right of the state and society to assume responsibility for those who are of good conduct and behavior who are not condemned to a felony or misdemeanor violating honor including the crimes of the financial and administrative corruption under final judicial judgment, whether it was covered with the amnesty or not, because his inclusion by the amnesty doesn't deny a character in him does not fit with the public

responsibility in occupying a position in the state, those who claim not to be covered by this restriction and are included despite being outside it because what was sentenced for was not an honorable crime, can refer to the legal ways to challenge to not be covered. As for the plaintiff request to obliged the defendant/ being in this post to issue legislation he claimed to include a defect, this is out of the F.S.C. jurisdictions, accordingly the plaintiff case is lack the constitutional and legal substantiation and out of the jurisdiction, therefore the court decided to reject the case from these points, and to burden the plaintiff the expenses and the advocacy fees for the agent of the defendant amount of (one hundred thousand Iraqi dinars). The decision has been issued unanimously and final according to article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 14/10/2019.