

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 94/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16.12.2015 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, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The plaintiff:

(kha.ain.mim.) -his agents the attorney (ta.kaf.yeh.)

The defendant:

the speaker of the Iraqi council of representative (I.C.R.)/ being in this post – his agents the legal officials (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

The claim:

The agent of the plaintiff claimed that the I.C.R. in the session No.(12) on (13/8/2015) approved the membership authenticity of the Representative under challenge (mim.ha.jim.heh.) and rejected his client objection according to the provision of article (52)

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paragraph (1) of the Iraqi constitution, as this decision violated the provision of the constitution and the I.C.R. election law No.(45) for 2013 therefore his client challenge the decision for the following reasons:

1. The challenged decision included a violation to the text of article (14) of the election law where his client obtained the (2nd) series in the reserve list as he obtained (2864) votes, while the Representative whom his membership authenticity is under challenge obtained (1321) votes which make his client the winner of the replacement seat of the representative who become minister (ha.alif.sad.shin.), as violating what stated in the election law consider as constitutional violation contradict with the principle of (preeminent of the constitution).
2. His client see that he have prior right in occupying the seat according to article (49/1st) of the constitution which stipulated that (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.) therefore the public representation of his client is the higher, also the challenged decision violate the provision of articles (20 and 46) of the constitution.
3. The replacement law stated general status of replacement and didn't determine the representative that replace the resigned representative, just stated that shall be from the same list under (article two), as his client is from the same list and the same governorate so he is the biggest loser in the reserve list.
4. His client was among the winner within the list of (the state of law for Baghdad governorate) but in order to achieve (the quota

of women) be was removed , accordingly his client see that he have prior right in occupying the replacement seat because he is among the winner of the list (the state of law), and to implement the provision of article (2/4) of the civil law No.(40) for 1951 which stated the legal rule (if the preventive is removed the prohibited shall return).

5. The Law No.(6) of 2006 treated the issue of replacement in the I.C.R. within the closed list system, but in the election of (2014) the issue is different as the system become (opine list) which means that the people choose their representatives directly.
6. The candidates are equal in the rights and duties and both of them are from the list of (the state of law) from the governorate of Baghdad which is one list it number is (277), and differentiated only by their electoral numbers, this paragraph is part of the protesters demand in the Iraqi street.

finally he requested to (judge by repealing the decision of the I.C.R. of approving the membership authenticity the challenged (mim.ha. jim.heh.) and to assign his seat to his client (kha.ain.mim.) instead of the representative who become a minister (ha.alif. sad.shin), and to burden the defendant/ being in this post all the expenses and advocacy fees. After the case was registered according to paragraph (3rd) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2nd) of article (2) of the mentioned bylaw the date 16/12/2015 was scheduled for argument, the court convened and the parties agents attended and repeated their statements. Whereas nothing left to be said 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 plaintiff has filed the lawsuit No.(94/federal/2015) within the legal term requesting to judge by repealing the decision of the I.C.R. that was issued in the session No.(12) on 13/8/2015 of approving the membership authenticity of the challenged Representative (mim.ha.jim.heh.) and to assign the seat to his client (the plaintiff) instead of the Representative who become a minister (ha.alif.sad.shin), the plaintiff see that the decision is violating the provision of the constitution and the I.C.R. election law No.(45) for 2013 which state that ((the seats shall be distributed within the list by re-arranging the series of the winners according to the votes numbers that obtained by each of them the first winner is who obtain the highest votes numbers and also for the rest of candidates))...the F.S.C. finds that the representative (ha.alif.shin.) become a minister his parliamentary seat become vacant, then was occupied by (mim.ha.jim.heh.) and he is from the same list and entity (the state of law/ entity of Independents) that the representative who become a minister belong to from the governorate of (Baghdad) their replacement should be implemented according to (paragraph (2) of article (2) of the law of replacement) which stipulated that (if the vacant seat is within the governorate' seats that are stated by the electoral law, then shall be replaced from the bloc of the Representative who is covered by the replacement within the same governorate) even if the plaintiff is from the same list and governorate but he is from different bloc (the state of law/ unity party entity) therefore he is not submitted to the provision of paragraph (2) of article (2) of the replacement law No.(6) for 2006

that is binding to implemented on the case of the plaintiff, and there is no need to refer to the election law No.(45) for 2013, by that the lawsuit lost its legal substantiation, the court decided to reject it and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendant/ being in this post amount of (one hundred thousand) Iraqi dinars distributed on them equally. The decision has been issued final according to article (94) of the constitution and unanimously on 16/12/2015.