

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.9 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 16/5/2016, 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 and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff (Shin.Mim.Ha) his agent the barrister (Ta.Kaf.Zin)

The Defendant: ICR Speaker/ being in this capacity- his two agents the legal official (Sin.Ta.Yeh) and (Heh.Mim.Sin).

The Claim:

The plaintiff initiated the case No.(9/Federal/2016 by his agent, claiming that the defendant /being in this capacity- decided in the session that dated on 2/3/2016, No.(13) the rejection of his client case (the plaintiff) that was presented to the ICR on 30/4/2014, on the membership validity of the representative who objected against him according to the provisions of the article (52/1st) from Iraq Constitution. Because of the decision violating the law and the Constitution, the plaintiff objected on it as follows:

1- IHEC letter has made clear that the plaintiff from the entity (AL-Dawaa Islamic Party) involved in (Dawlat AL-Qanoon coalition) about Baghdad governorate, and he has got (2940) votes, (Ha.Ha.Ha.Heh.Sin) who objected against him has got (1341)votes, he is from the same entity, same governorate, and the plaintiff is the second in the series of the list, while the objected against him is (35) in the series of the list.

2-the decision that was challenged by its validity has included a clear violation for the text of the clause (3rd) from the article (14) from the election law No.(45) for 2013 that has stipulated ((the seats shall be distributed inside the list by the rearrangement of the series of the candidates according to the number of votes that each of them has got, and the first winner is who gets the highest number of votes, And so for the rest of the candidates.)). Violation of this approach included a violation of the constitution and the principle of its superiority.

3- his client finds his Eligibility in occupying the seat in the article (49/1st) from the Constitution 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.)) and the popular representation for his client is the biggest and the will of the majority represents the public will, and it is considered as a law to be followed of the legislative to legislate a Law No.(45) for 2013 relied on (the expression of the opinion by all the means) according to the text of the article (38/1st) from the Constitution.

4- the law of the ICR members replacing No.(6) for 2006 has placed the general cases for replacing and it didn't determine the alternative member, it settled for that he is to be from the list or the mass that the covered member by replacing belong, according to the article (second) from the same law . his client from the same list and same governorates, the legislative in the election law have not wanted to leave the series of the list to the will of the list head, he determined the order of the candidates on the basis of the number of the votes. The head of the mass choosing for another member is an Interruption for the article (14/3rd) of the electoral law, therefore the law of members replacing cant be applied away from the electoral law especially the last law had issued as an annex for the first (as it listed in the case petition). He asked on the end of the case to :

1- approval on bringing the record of the session (13) that dated on (2/3/2016) and on the objection request of his client No.(1812 on 24/12/2014).

2- the decision of annulling the decision of ICR of the membership validity of the representative that objected against (Ha. Ha. Ha. Heh. Sin) instead of the

resigned representative (Nun. Kaf. Mim) because of providing the constitutional conditions in his client.

3- introduce IHEC as a third party in the case to clarify and to burden the defendant all the fees and expenses.

After the case had been registered at the FSC according to the clause (3rd) of the article (1) from the Bylaw, and after warning the defendant/ being in this capacity-, his answer had been listed. He requests the rejection of the case for the reasons listed in it. After the completion of the legal procedures, the day 19/4/2016 had been appointed as a date for the argument. The two parties attended and the introduction of IHEC as a third party in the case to clarify had been decided. It had been decided to delay the argument to the day 16/5/2016. The agents of the two parties attended as well as the agent of the third party. Each party had repeated their sayings and the court had accomplished its investigations. Whereas nothing left to say, the end of the argument had been decided and the decision was recited publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff (Shin. Mim. Ha) had clarified in his case petition that initiated within the legal period that the ICR in the session No.(13) on 2/3/2016 had rejected his objection which presented on 30/4/2014 on the membership validity of the representative who objected against (Ha.Ha.Ha.Heh.Sin) that is alternative him for the resigned representative (Nun.Kaf.Mim) according to the article (52/1st) from the Constitution. He requested in his case the decision to annul the decision of ICR which included the membership validity of the representative that objected against (Ha.Ha.Ha.Heh.Sin). after the scrutiny it was clarified that the mentioned representative (objected on the validity f his membership) has presented to the FSC a request No.(25/The/25) of resigning from ICR on 12/4/2016, it was clarified for the FSC that ICR has ratified on the resign and accepted it. Therefore the objected against him is no more representative in ICR and the representative seat has occupied again after the acceptance of the resign. The case became lacking for a point of the challenge It became irrelevant. Based on this the FSC decided to reject the case of the plaintiff and to burden the plaintiff all its expenses and fees

of the advocacy of the two agents of the plaintiff, amount of (hundred thousand Iraq dinar). The decision had been issued unanimously, presently according to the article (94) from the Constitution and was understood publicly on 16/5/2016.