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The Federal Supreme Court (F.S.C.) has been convened on 2.5.2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff:

Muhammed Ali Muhammed Temem – member in the Iraqi Council of Representatives (I.C.R.)/ his agent the attorney Salah Hasan Al-jobory.

The Defendant:

The President of the Board of Commissioners in the Independent High Electoral Commission (I.H.E.C.) – in addition to his post.

**First - the claim:**

The agent of the plaintiff claimed in the case petition that (from the time of establishing the political process in Iraq after the year 2000 and conducting the first elections in Iraq, the defendant in addition to his post has depended on the record of the ration cards as a base for the electors' document, these

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procedures consider violation to the Iraqi Constitution for the following reasons:

1. The dependence of the (I.H.E.C.) on the ration cards considers a violation of the Iraqi Constitution specifically article (49/1<sup>st</sup>) that adopted the standard of the number of Iraqis in a ratio of one per 100,000 Iraqi persons, unlike the standard adopted in the article (15/2<sup>nd</sup>) of the elections law no. (16) of 2005 where it adopted the standard of the electors registered in each governorate records according to what was mentioned above, therefore the text of the article (15/2<sup>nd</sup>) of the election law become contrary with the text of the article (49/1<sup>st</sup>) of the Constitution, article (13/2<sup>nd</sup>) of the Constitution stipulated that (no law that contradicts this Constitution shall be enacted. Any text that contradicts this Constitution shall be considered void), he enclosed a copy of the decision of your estimated court No. (15/teh/2006) on 26.4.2007 which repeal article (15/2<sup>nd</sup>) of the law No. (16) Of 2005 the law of electing the Iraqi Council of representatives of 2005 because it violated article (49) of the valid Iraqi Constitution which in that time obligates the Elections Committee to adopt the record of the ration cards as a base for the electors' records.
2. A decision from the Council of Ministers was issued to not adopt the ration cards and their records within the official documents of the citizens therefore it is not allowed to

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adopt these records in the electoral process which is a count for building the political process and forming the government and the parliament.

3. I enclosed a copy of your estimated court decision No. (11/federal/2010) on 14.6.2010 which also confirms the violation of the amended election law No. (16) of 2005 because it adopted the statistics in the parliamentary elections of the I.C.R. for the cycle of 2010 as it depended on the census of the Ministry of trade of 2005 adopted by the ration cards without official census issued from the competent authority, as the Ministry of trade is not the competent party in determining the population of Iraq and that it census was for the necessity of economic circumstance that Iraq is going throw in regard of food items in that time.

Accordingly for the aforementioned, he requested to call upon the defendant in addition to his post for argument and to compel him to adopt the documents of the personal status as it official documents and it is up to date continually as it is the basis for issuing the identification papers of the citizens, statement of births, deaths and determining the ages and all that related to the electors' records and the citizens including the electors. After informing the defendant in addition to his post with the case petition, his agent responded with the answering draft dated 12.3.2020 requesting in it to dismiss the lawsuit for its

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reasons which stated that the I.H.E.C. is not the party that legislate the laws of the elections as that is competent of the I.C.R., in addition, the records of the personal status department doesn't have an electronic database to adopt it as a base for it, also the elections' laws has obligates the committee to adopt the documents of the ration cards as bases for updating the electors' registry. The plaintiff was informed of the answering draft of the defendant. After completing the required procedures according to article (2/1<sup>st</sup>) of the F.S.C. bylaw, the date 2.5.2021 scheduled for the argument, the court held and call upon the parties, the agents of both parties attended and started in presence public session, the court scrutinizes the case petition and the response of the defendant agent which he repeated during the session, the court also noticed that the plaintiff' agent on 13.1.2020 submitted appendix for his draft dated on 25.11.2019 which included a request to introduce the Speaker of the I.C.R. in addition to his post as third party beside the defendant the president of the board of commissioners in addition to his post, and to compel the third party to repeal article (18) of the I.C.R. elections law which was approved in the Council session no.(24) of 2019 that included to adopt the recodes of ration cards and to legislate a replacement for it that adopt the personal status documents in the next election for the reasons listed in the case petition presented to this court on 25.11.2019, the defendant' agent after reviewing the mentioned

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appendix he requested to reject the lawsuit for not directing the litigation. The court found that the lawsuit acquired its ruling reasons so decided to close the argument, the decision issued publicly.

**Second - the decision:**

During scrutiny and deliberation by the F.S.C., it found that the plaintiff in addition to his capacity requested in the case petition to compel the defendant the president of the board of commissioners in addition to his post to adopt the personal status records as it official documents and it is up to date continually as it is the base for issuing the identification papers of the citizens, statement of births, deaths and determining the ages and all that related to the electors' records and the citizens including the electors, he also requested in his appendix of the draft dated 25.11.2019 to introduce the Speaker of the I.C.R. in addition to his post as the third party besides the defendant the president of the board of commissioners in addition to his post, and to compel the third party to repeal article (18) of the I.C.R. elections law no. (9) Of 2020. The F.S.C. finds that what included in the case petition and its appendix of requests is binding to be rejected for lacking the constitutional and legal substantiation required to be adopted to rule the constitutional lawsuits, what included in the appendix draft dated 25.11.2019 and the request contained in it to introduce the Speaker of the

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I.C.R. in addition to his post as the third party besides the defendant the president of the board of commissioners in addition to his post, to challenge the constitutionality of article (18) of the elections law no. (24) of 2019, consider a substantial change in the litigation subject of the lawsuit, especially that what the request included is fit to be subject of an independent lawsuit, and as the constitutional lawsuit is limited by its petition, the plaintiff in it is captive by his request, meaning that he is not allowed to change the path of the constitutional lawsuit and his requested after filing it before the F.S.C. and collecting the legal fee for it for his wish far from the conditions required by the bylaw of conducting the work in the F.S.C. no. (1) For 2005 therefore, this court decided to refuse what stated in it, as for the plaintiff case, it is binding to be dismissed for two reasons:

First: This court jurisdiction is limited in light of what is stipulated in article (93) of the Iraqi Constitution of 2005 and article (4) of the F.S.C. amended law no. 30 for 2005, deciding the request of the plaintiff of compel the defendant the president of the board of commissioners in addition to his post to adopt the personal status records as it official documents and it is up to date continually as it is the base for issuing the identification papers of the citizens, statement of births, deaths and determining the ages and all that related to the electors' records and the citizens

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including the electors, is not within the jurisdiction of this court and core of its function' duty, as it is not within its duties deciding that according to the provisions of the mentioned articles.

Second: The second reason of rejecting it is that the plaintiff based his case of compelling the defendant in addition to his post by the decisions issued by this court no.(15/teh /2006) on 26.4.2007 which decided that article (15/2<sup>nd</sup>) of the I.C.R. elections law no.(16) for 2005 is unconstitutional because it violated article (49) of the valid Iraqi Constitution, and the decision no.(11/federal/2010) on 14.6.2010 which decide the unconstitutionality of paragraph (beh) of article (1/3<sup>rd</sup>) of the law no.(26) of 2009 the amending law of the I.C.R. electing law no.(16) of 2005 according to the mentioned details in it, according to what these decisions included of obligation on all authorities without noticing that the character bindings of this court decisions is based on the provision of article (94) of the Iraqi Constitution of 2005 which stated that (decisions of the Federal Supreme Court are final and binding for all authorities), therefore, there is no requirement to initiate the lawsuit before this court requesting to bind to the obligation mentioned in the decisions issued by this court for lacking the jurisdiction.

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Republic of Iraq  
Federal Supreme Court  
Ref. 150 / federal / 2019



Kurdish text

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For the aforementioned, the Federal Supreme Court decided: first: to dismiss the lawsuit of the plaintiff Muhamed Ali Muhamed Temem the member of the Council of representatives for lacking the jurisdiction. Second: to burden the plaintiff the fees, expenses, and the advocacy fees for the defendant agent the jurist Ali Saeed Khalaf amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final and binding on all authorities according to the article (94) of the Constitution and article (5/2<sup>nd</sup>) of the F.S.C. amended law no. (30) For 2005, and issued publicly on 2/May/2021 which coinciding 20. Ramadan. 1442 Hegira.

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