

**Thursday, July 16, 2009**

## **'Food ration' criteria for parliamentary seats violates Iraqi Constitution**

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***Editor's Note:*** In a dispute over seat apportionments in the Council of Representatives, the Iraqi Federal Supreme Court held that using the public register system register based on food rations was unconstitutional under the current Constitution of Iraq. This unconstitutionality does not however invalidate elections held under the previous transitional constitution of 2004, which with the electoral law was consistent. The consequence is important: the effective number of Iraqis must be ascertained for the next elections, rather than the previous register based on "food rations."

Decision Number: 15/T/[Introduced in] 2006

Date: April 26, 2007

Plaintiff: Iraqi Tawafuq Front [Iraqi parliamentary bloc] – represented by lawyers (A.H.), (S.K.), (Sh.S.)

Defendant: The Speaker – represented by lawyer (A.J.) [Not clear why the lawyers' names are withheld in original, possibly for security reasons]

Lawyers for the plaintiffs introduced before this court a case in which they claim that the Iraqi Council of Representatives passed on October 15, 2005 Elections Law 16/2005, which came to replace the previous Elections Law 96/2004, and that Article 15.2 of the 2005 law states that each province, following its official administrative boundaries, shall be considered as one district representing a number of seats that corresponds to the number of registered voters in that province in accordance with the elections held on January 30, 2005, said elections having adopted the public distribution system [this is the system inherited from the previous regime where citizens received an individual food ration card to benefit from the UN oil-for-food regime.]

This means that the law adopted the criterion of registered voters [based on the food ration card]. However, the Constitution of the Republic of Iraq for 2005 states in Article 49.2 that the number of Council of Representatives members shall be calculated as one for each 100.000 Iraqis. The Constitution has therefore adopted a criterion based on total population, [and it is argued by plaintiff] that Article 15.2 of Elections Law 16/2005 presents a clear violation of Article 49.2 of the Constitution.

This constitutional violation would cause particular damage and unfairness to the provinces of Ninawa, Salah al-Din, Diyala and Babil, because they will lose some of their seats in the Iraqi Council of Representatives if the criteria mentioned in the Constitution is ignored.

Plaintiffs bring their claim for unconstitutionality of Article 15.2 of Elections Law 16/2005, and request the court to declare Art. 15.2 unconstitutional and abolish all measures and regulations based on this Article. The claim is based on Article 13.1 and 13.2 of the Constitution of the Republic of Iraq for 2005 and argues for a clear violation of Article 49 of the Constitution.

After introducing the case in accordance with Article 1.3 of the bylaws of the Federal Supreme Court, and completing all necessary requirements in accordance with Article 2.2 of said bylaws, a date was set for a court hearing, where representatives of the plaintiff and the defendant attended the session and presented their credentials. The hearing started by acknowledging an explanatory memorandum submitted in September 11, 2006 to this court, in which the plaintiffs requested from the defendants that they substitute the Speaker of the Council of Representatives as named defendant instead of the Council of Representatives as a whole.

The court responded favorably and held that the defendant is the Speaker of the Council of Representatives and not the Council of Representatives as such. Lawyers for the plaintiffs then submitted briefs dated October 19, 2006, December 13, 2006 and April 16, 2007 in which they argued that the law on which the elections was based was the Transitional Administrative Law [TAL, the provisional constitution of 2004] and that Article 15.2 of Elections Law 16/2005 contradicts Article 31a of the TAL.

The court reviewed plaintiff's briefs as well as the briefs presented by the defendant on September 14, 2006, November 13, 2006 and February 19, 2007. In its briefs, the defendant requested the dismissal of the case and costs to the plaintiffs, on the basis that the case did not fulfill the fifth requirement of Article 6 of bylaws 1/2005 relevant to the Federal Supreme Court procedures. The defendant also argued that the text in Article 15.2 was conform to the text of Article 49 of the Constitution. After hearing the statements of the representatives of both parties, the court concluded its deliberation and issued the following decision.

The plaintiffs submitted their arguments in court hearings dated December 13, 2006, claiming the unconstitutionality of Article 15.2 of Elections Law 16/ 2005 because said Article violates Article 31a of the Transitional Administrative Law stipulating that "the Council of Representatives consists of 275 seats. It shall enact a law for the replacement of its members in cases of resignation or death."

On reviewing the case, the Federal Supreme Court finds that the elections which took place in Iraq to elect the members of the Council of Representatives were conducted under the provisions of the TAL; that Article 15.2 of Elections Law 16/ 2005 stipulates that each province under its official administrative boundaries shall be considered as one district, with the number of seats in it corresponding to the number of the registered voters in that province in accordance with the elections that took place on Jan. 30, 2005, [which was carried out] on the basis of the public distribution system.

We note that Article 31a of the TAL did not adopt the size of the population of Iraq population as the criterion for distributing the seats of the Council of Representatives. [We] also note that Article 15.2 of the above mentioned Elections Law has adopted

the criteria of registered voters in each province for the elections that took place on January 30, 2005, on the basis of the public distribution system.

There is no contradiction between Article 15.2 of Elections Law 16/2005 and Article 31a of the TAL. In fact, Article 15.2 is consistent with the provision of Article 31a of the TAL, and the request of the plaintiffs on the unconstitutionality of Article 15.2 is not based on sound legal basis. The court dismisses this claim.

Regarding the request of the plaintiffs on the unconstitutionality of Article 15.2 of Elections law 16/2005 because it constitutes a violation of Article 49 of the current Constitution, the court finds that Article 49.1 of the Constitution stating 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. They shall be elected through a direct secret general ballot.

The representation of all components of the people shall be upheld in it. “ Article 49.1 of the Constitution adopts the Iraqi population as the basis for the apportionment of one seat for each 100.000 Iraqis. This contradicts the criterion adopted in Article 15.2 of Elections law 16/2005 on the basis of the registered voters in each province as mentioned above.

Therefore Article 15.2 of the Elections Law stands in contradiction with Article 49.1 of the Constitution. Article 13.2 of the Constitution states that “[n]o law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.” The first paragraph of this Article further states: “The Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.”

The court holds therefore that Article 15.2 of the Elections Law 16/2005 is unconstitutional as it contradicts the provisions of Article 49.1 of the Constitution. The legislator should [literally, may, lil-musharri] enact a new law that is consistent with the provisions of Article 49.1 of the Constitution, but the measures followed to elect the current Council of Representatives remain intact.

Taking into consideration that both parties of this lawsuit have won part of this case, each party is responsible for covering its own fees and legal expenses.