

Republic of Iraq
Federal Supreme Court
Ref. 116/federal/media/2014
Unified with 14/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 8.6.2015 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 whom are authorized in the name of the people to judge, they made the following decision:

The plaintiffs: 1. (Jim.mim.sin.kha.) his agent the attorneys (zin. dad.) and (sin.zin.).
2. (ain.ha.ain.ra.ghain) his agent the attorney (ain. feh.nun).

The defendant: the president of the Independent High Electoral Commission (I.H.E.C.) – being in this post her agent the legal official (alif. ha.ain).

The claim:

The agents of the plaintiff claimed before the F.S.C. in the lawsuit (116/federal/2014) that their client the plaintiff (Jim.mim.sin.) has obtained (17575) votes in the election of the Iraqi council of representative (I.C.R.) according to the announced result by the Commission, his sequence was seventh of Baghdad, but despite that Ms.(shin.teh.ain.) who obtained (1417) votes has

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replaced him according to the I.C.R. seats distributing system No.(14) for 2014 that was issued by the I.H.E.C. by the powers granted to the board of commissioners under article (4/8th) of the I.H.E.C. amended law No.(11) for 2007, and the I.C.R. election law No.(45) for 2013, this system in chapter three of it within step three (women's quota calculation) violates the constitution in number of it articles, as article (14) that stated Iraqis are equal before the law without discrimination based on gender, article (16) stated equal opportunities shall be guaranteed to all Iraqis, article (20) stated 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, article (38/1st) stated that the State shall guarantee freedom of expression using all means, for the mentioned reasons they requested the F.S.C. to rule the unconstitutionality of the provision stated in step three (women's quota calculation) of chapter three of the I.C.R. seats distributing system No.(14) for 2014 issued by the I.H.E.C. for contradicting the mentioned constitutional provisions, and to grant the plaintiff the seat he deserve within the I.C.R., and to burden the defendant the expenses and advocacy fee.

The agent of second-plaintiff has claimed before the F.S.C. in the lawsuit (14/federal/2015) that he was nominated within AlQanon state coalition of Najaf governorate in the election of 2014, this coalition has won six seats, his sequence was sixth by obtaining (12450) votes but the I.H.E.C. replaced him with (alif.

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mim.ain.ta.) based on the I.C.R. seats distributing system –chapter three - women’s quota calculation – paragraph (2- b/1), according to this paragraph it divided the number of seats obtained by each list on three, the coalition share within this governorate was two seats for women, replaced his client with the mentioned candidate under the consideration that there is only one women who obtained her electoral entitlement, therefore this paragraph that the I.H.E.C. has based on when replaced his client is violating the constitutional provision and unfair to him and whoever elected him as it wasted (12450) votes, and violates articles (14, 16, 20, 38/1st, 90/1st) of the constitution, article (13/1, 14/2) of the I.C.R. election law, therefore he requested the F.S.C. to rule the unconstitutionality of paragraph (2/b/1) step three (women’s quota calculation) of chapter three of the I.C.R. seats distributing system No.(14) for 2014, and to compile the defendant being in this post to replace his client instead of the candidate, and to burden the defendant the expenses and advocacy fee. On the date scheduled for the argument the court convened, the agent of the plaintiff in the lawsuit (116/federal/2014) has attended, the agent of the defendant has attended, the agent of the plaintiff in the lawsuit (14/federal/2015) has attended and continued with the argument in present and public, the agents of the plaintiffs repeated their case petition and requested to rule according to it, the Court found that the subject of the two lawsuits are the same which is challenging (step three) (women’s quota calculation) of chapter three of the I.C.R. seats distributing system No.(14) for 2014, in

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order to save time and effort it decided to unified them according to article (76) of the amended Civil Procedure Law No.(83) of 1986, considering the lawsuit (116/federal/2014) the original as it was presented first, the agents of the plaintiffs confirmed that the women quota wasn't achieved until the replacement of their clients, the defendant submitted answering draft requesting to reject the lawsuit because the challenged system is compatible with the constitution, and two burden them the expenses and advocacy fees, he also submitted explanatory draft about the mechanism of distributing the seats of the I.C.R. elections 2014 of Baghdad governorate dated on (29.4.2015). during scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

The decision:

During scrutiny and deliberation by the F.S.C. found that the plaintiffs in the unified lawsuits requested the F.S.C. to rule the unconstitutionality of step three (women's quota calculation) of chapter three of the I.C.R. seats distributing system No.(14) for 2014 issued by the I.H.E.C. by the powers granted to the board of commissioners under article (4/8th) of the I.H.E.C. amended law No.(11) for 2007, and the I.C.R. election law No.(45) for 2013 for violating articles (14, 16, 20, 38/1st) of the constitution of 2005 then grant them the seat they deserve in the I.C.R., during scrutiny the

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court found that the plaintiffs are challenging the unconstitutionality of (step three) (women's quota calculation) of chapter three of the I.C.R. seats distributing system No.(14) for 2014 not the mechanism of distributing the seat therefore the F.S.C. is competent to consider them according to article (93/1st) of the constitution, so the defense of the defendant agent that the court is not competent to consider the case is rejected, by reviewing the case subject the court found that step three of chapter three of the mentioned system is in accordance with article (49/4th) of the constitution that stated (the elections law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives), it is also is in accordance with article (14) of the I.C.R. election law no.(45) of 2013, it doesn't violate the constitution or the law, the I.H.E.C has issued it in order to regulate distributing the seats of the I.C.R. when calculating the women quota to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives as stipulated in article (49/4th) of the constitution. accordingly the plaintiff's case has lost its constitutional substantiation. Accordingly the court decided to dismiss it and to burden the plaintiffs the expenses and the advocacy fees for the agent of the defendant amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final, publicly on 8.6.2015 .