

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref. 116/federal/media/2014,  
and its unified  
14/federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 2015, 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 two Plaintiffs:**

1. (Jim.Mim.Sin.Kha)- his two agents the barristers (Za.Dha) and (Sin.Za)
2. (Ain.Ha.Ain.Ra.Ghain)- his agent the barrister (Ain.Feh.Nun)

**The Defendant:**

The head of the IHEC/ being in this capacity- her agent the legal official (Alif.Ha.Ain)

**The claim:**

The plaintiff two agents claimed before FSC that in case No.(116/federal/2014) their client the plaintiff (Jim.Mim.Sin) got (17575) votes in ICR's election according to the announced results by the IHEC. He was the seventh in Baghdad Governorate, but the misses (Shin.Teh.Ain), who got (1417) votes, replaced him due to the regulation of ICR's seats distribution No.(14) for 2014, which issued by the IHEC according to the granted authorities to the commissioners' council by the article (4/8<sup>th</sup>) from the law of IHEC No.(11) for 2007 and the law of ICR elections No.(45) for 2013. Whereas this regulation in the third section and within the third step

(women's quota accounting) violates some Constitutional articles such as the article (14) which talked about the principle of equality among Iraqis discrimination based on gender, the article (16) which talked about that Equal opportunities shall be guaranteed to all Iraqis, the article (20) which stipulated(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. ), the article (38/1<sup>st</sup>) which stipulated that the State shall guarantee freedom of expression using all means. For the above reasons they requested from the FS to decide the unconstitutionality of the text that listed in the third step (women quota accounting) from the third section of the ICR's seats distribution Regulation No.(14) for 2014 which issued by the IHEC due to violation of the aforementioned Constitutional texts and the plaintiff equity by granting him the seat that he deserves in ICR through adopting an alternative provisions by the IHEC for this section which correspond with the texts of the Constitution and to burden the defendant all the expenses and fees of the advocacy. The second plaintiff claimed before the FSC in the case No.(14/federal/2015) that he was nominated by the coalition of Dawlat AL-Qanon for AL-Najaf governorate in the parliamentary election for 2014, and this coalition got six seats and he was the sixth by getting (12450) votes but the IHEC excluded hum and replaced him by (Alif.Mim.Ain.Ta) due to the regulation of ICR's seats distribution/ the third section- women quota accounting- the clause (2-Beh/1) and according to this clause it divide the seats that each electoral list got by three. The share of the coalition was two seats for women and the IHEC excluded his client the plaintiff and replaced him by the aforementioned candidate, considering that there is only one woman who got her electoral right. So this clause, which the IHEC relied on it in excluding his client, violates the provisions of the constitution and it deprived of his right and who elected him and it wasted the will of (12450) votes, it violated the articles (14), (16), (20), (38/1<sup>st</sup>), (90/1<sup>st</sup>) from the Constitution and the articles (13/1) and (14/2) from the law of ICR's election so he requested from the FSC to decide the Unconstitutionality of the clause (2/Beh/1) from the third step (women quota accounting) from the third section of ICR's seats distribution Regula-

tion No.(14) for 2014 and to oblige the defendant to make his client instead of the candidate and to burden him all the expenses and fees of the advocacy. In the selected day of the argument, the court had been convened and the agent of the plaintiff in the case No.(116/federal/2014) the barrister (Za.Dhad) attended according to his general attorney that attached in the case file. Also, the defendant agent the legal official (Alif.Ha.Ain) attended according to his general attorney that attached in the case file. The argument had been started publicly and presently. Also, the plaintiff agent in case No.(14/federal/2015) the barrister (Ain.Feh.Nun) according to his general attorney that attached in the case file and the defendant agent and the argument was had been started publicly and presently. The plaintiff agent in the case (116/federal/2014) and the plaintiff agent in the case (14/federal/2015) repeated what was listed in their case petition and requested to decide according to it. The court found that the subject of the two cases is one and it is the challenging of the third step from the third section from the regulation of ICR seats distribution No.(14) for 2014. For saving time and work the court decided to unify the two cases according to the article (76) from the law of civil arguments No.(83) for 1986 (amended) and to consider the case (116/federal /2014) is the origin for been initiated earlier. The plaintiff agent in the origin case supported that. Also the plaintiff agent in the unified case. The women quorum wasn't not achieved only by excluding their client and the court reviewed the answering draft of the defendant agent which was presented as answering on the case petition where he requested to reject the case because the challenged regulation by the two plaintiffs corresponds to the constitution for the reasons listed by the draft and to burden them all the expenses and fees of the advocacy. Also, he presented a clarifying draft about the mechanism of ICR's seats distribution for 2014 of Baghdad governorate which dated 29/4/2015, also the court read the mutual drafts between the two parties of the case. Each agent of each party repeated his previous sayings and requests and where is nothing left to say the court made the end of the argument understood and the decision was understood publicly.

### **The Decision:**

During the scrutiny and deliberation by the FSC, the court found that the two plaintiffs in the unified two cases No.(116/federal/2014) and (14/federal/2015) requested from the FSC to decide the unconstitutionality of the third section within the third step (women quota accounting) from the Regulation of ICR's seats distribution No.(14) for 2014 according to the granted authorities to the commissioners' council by the article (4/8<sup>th</sup>) from the law of IHEC No.(11) for 2007 and the law of ICR elections No.(45) for 2013 for violating the articles (16), (14), (20), (38/1<sup>st</sup>) from the constitution of the Republic of Iraq for 2005, then granting them the seat they deserve in ICR and replaced them instead of the women who take the seats. During the scrutiny the court found that the case of the two plaintiffs including a challenge of the unconstitutionality of the third section within the third step (women quota accounting) from the Regulation of ICR's seats distribution No.(14) for 2014, not the mechanism of the seats distribution so the court is competent to try the case according to its stipulated competent in the article (93/1<sup>st</sup>) from the Constitution and the defense of the defendant that the FSC is incompetent to try this case is not listed, so the court decided to reject this defense. During the returning to the subject of the case the court found that the IHEC applied the regulation which is challenged by its unconstitutionality in what related to the achieving of the quorum of women quota in ICR and the FSC found during scrutiny that the third step from the third section from the above regulation that it corresponds to the article (49/4<sup>th</sup>) from the constitution of the Republic of Iraq for 2005 which stipulated ((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.)) also the article (14) from the law of ICR election No.(45) for 2013 and it has nothing which violates the constitution and the law above and the IHEC issued the third step from the third section for organizing the distribution of ICR seats when accounting the women quota to achieve the purpose of the legislator in achieving the percentage of women representation which shall not be less than the quarter of ICR members that stipulated in the article (49/4<sup>th</sup>) from the constitution. so and for the reasons above, the case

of the two plaintiffs has no substantiation from the constitution and the law which must be rejected. So the FSC decided to reject the case and to burden them all the expenses and fees of the advocacy of the defendant agent amount of hundred thousand Iraqi dinars and the decision had been issued unanimously and decisive and was understood publicly on 8/6/2015.