

Republic of Iraq
Federal Supreme Court
Ref. 172 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Aamer Dawod Ebrahim Alfaily/ attorney.

The defendant: the Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post- his agents the legal advisor Haytham Majid Salim.

The claim :

The plaintiff has claimed in the case petition that the I.C.R. voted on article (13/clause 3rd) of the I.C.R. election Law of 2019, as it states (the allocated seats of quota for Christians and Sabeen Mandeans are within one constituency), whereas it discriminates between the components of the minorities in violation to the valid Iraqi constitution, as granting the Sabeen component (quota) share one seat of Baghdad governorate within one constituency, and the Christians component (quota) share five seats for the governorates (Baghdad, Ninawa, Kirkuk, Dahuk, Erbil) also within one constituency. The law has limited the right to vote of the Faily

Republic of Iraq
Federal Supreme Court
Ref. 172 /federal /2019



Kurdish text

component to Wasit governorate only, not within one constituency but to all Iraq, the same as the Christians and Sabean Mandeian components, by that it affects the candidate as well as the Faily component in other governorates of Iraq from practicing their right as Faily component to enjoy political rights including the right to vote, elect, and candidate. As the Faily component people are distributed in all Iraq, therefore this law shall deprive most of them from participating in electing their representative whom they see qualify to occupy this parliamentary seat. This Law contradicts the provision of articles (14), (13), and (20) of the constitution, as well as affecting the equality principal between the Faily component with the people of the Christians and Sabean components. According to article (93/1st) of the constitution and article (4/2nd) of the F.S.C. law No. (30) for 2005, and in accordance with the F.S.C. judgment (7/federal/2010) which considered the allocated quota seat for the Sabean Mandeian component within one constituency. For the aforementioned the plaintiff requested the F.S.C. to rule the annulation and unconstitutionality of clause (3rd) of article (13) of the I.C.R. election law of 2019 issued by the I.C.R., also requested to inform the executive authority to enact new text that is corresponded with the provisions of articles (14) and (20) of the constitution, throw considering the allocated quota seat for the Faily component within one constituency. After informing the defendant with the case petition, his agent responded with the answering draft

Republic of Iraq
Federal Supreme Court
Ref. 172 /federal /2019



Kurdish text

dated on 5.1.2020 requesting to reject the lawsuit because enacting law that is under challenge came as legislation choice for the I.C.R. according to it stipulated jurisdictions in article (61/1st) of the constitution, which doesn't the challenged article unconstitutional, it is legislative choice of the legislator, as the judgment of the F.S.C. has stated on Ref. (20/federal/2014) on 13.7.2014. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 20/1/2020 was scheduled for the argument, the court convened and call upon the parties and continue with the argument in presence and public, the plaintiff repeated the case petition and requested to judge according to it, the agent of the defendant repeated the answering draft requesting to reject the lawsuit. During scrutiny, the court found that the law being challenged for its unconstitutionality, wasn't published in the official Iraqi Gazette or on the official website of the I.C.R., to ensure of its validity date, and if it became valid before filing this lawsuit on 24.2.2019. on the court session held on 27.1.2020 the plaintiff stated that he presented a CD confirming that the I.C.R. has approved article (13), and it has been published on the website of the I.C.R., the agent of the defendant commented that the law wasn't fully legislated, and it doesn't consider as valid until today. 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.

Republic of Iraq
Federal Supreme Court
Ref. 172 /federal /2019



Kurdish text

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff has challenged that clause (3rd) of article (13) of the I.C.R. election law of 2019 is unconstitutional, claiming that this text has limited the right to vote of the Faily component to Wasit governorate only without other governorates, under consideration that it is of the components which was granted a (quota) of the I.C.R. seats, the plaintiff presented a copy of the aforementioned I.C.R. election law bill, requesting that the right to vote of the Faily component cover all Iraq governorates. The F.S.C. finds that the plaintiff has filed his lawsuit based on the bill of the election law before it become valid, by that considering this submitted challenge is not within the jurisdictions of the F.S.C. stipulated in article (93) of the constitution, and article (4) of it law No.(30) for 2005 which limits its jurisdictions to overseeing the constitutionality of the valid laws and regulations, accordingly the plaintiff lawsuit is binding to be rejected for the aspect of jurisdiction. the court decided to reject the lawsuit and to burden the plaintiff the expenses and the advocacy fees for the defendant agent amount of IQ.D (one hundred thousand). This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5/2nd) of the F.S.C. law No.(30) of 2005 and issued publicly on 27/1/2020.