

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 175/federal/media/2018



Kurdish text

The Federal Supreme Court (FSC) has been convened on 21.11.2018, 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 Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (Kha. kha. Ra.).

The Defendant: Head of the Commissioners Council in the Independent High Electoral Commission/being in this post, his agent the legal official (Alif. Ha. Ain.).

THE CLAIM:

The agent of the plaintiff claims that after the election results were announced by the Independent High Electoral Commission; his client has won a quota woman seat as a candidate from the Democratic Kurdistan Electoral Party list from Naynawa governorate which won six seats; however, the Commission issued decision no.(69) dated 9/8/2018 to re-count the seats for the aforementioned office in a way that violate the law and the seats distribution system and give the seat that the plaintiff won to an electoral list that won two seats. By doing this the Commission crossed the stipulated mechanism and jumped to clause (2_beh_4) while the clause (2/beh/1) should be applied, according to that clause the plaintiff electoral list no.(184) should have two quota woman seats; one of these seats belong to his client. As the Commission gave the seat from the same electoral office to the Publican Mass Party that already have two quota woman seats, therefore that considered a violation to the law of distributing the seats and also violate articles (14, 16 and 20) of the

Constitution that stipulate on the equality before the law and violate the equality of opportunities principle.

The agent of the plaintiff request to impose the defendant to apply what mentioned in the seats distribution system no.(12) for year 2018 and to returned the right to his client and grand her the second quota woman seat from the electoral list no.(184).

The defendant/being in this post was informed by the case petition and its appendixes that he answered by his draft listed 12/9/2018 that included that the article (12) of the ICR Elections Code no.(45) for year 2013 state a condition that the number of the women candidate not less than 25% , and the percentage of representing the women in the Council no less than 25% , and in the presenting of the list should be in the series (a woman after three men). The seats distribution system no.(12) for year 2018 showed in step no.(3) the mechanism of counting the woman quota. As Al-Nasser Collation considered the first winner in the Governorate obtained two women quota seats after dividing it seats on three, therefore the specific percentage completed and there is no need to go down to the other lists. For that reason another woman quota seat wasn't specified to the Democratic Kurdistan Electoral Party. And the FSC ratified the ICR election result for year 2018 on it decision no.(57/the.qaf/2018) on 18/9/2018 and request to reject the case. The Court called the two parties in the day set for proceeding.

The agent of the defendant attended, the agent of the plaintiff didn't attend. As the case complete the legal procedures the Court decided to end the proceeding and issued the following judgment decision publicly.

THE DECISION:

During scrutiny and deliberation by the FSC, the Court found that the plaintiff (Kha. Kha. Ra.) objected on the women quota counting as she is a candidate from the Democratic Kurdistan Electoral Party list from Naynawa governorate, and the Commissioners Council count the women quota sets in a way that violate the law and the seats distribution system, and she wasn't given the seat that she deserve and request to impose the defendant to apply what mentioned in the seats distribution system no.(12) for year 2018 and to grand her the second quota woman seat. For the ratification of the FSC on the final result of the ICR elections according to the Court competence stipulated on article (93/seventh) of the constitution; the plaintiff should made a challenge in the Independent High Electoral Commission decision in that time in the specified period for challenges. also she could object on the candidate that won instead of her before the ICR according to the method shown in article (52/first) of the Constitution for year 2005.

Therefore the plaintiff request shall be rejected for it is out of the Court competence regarding the challenge in the Commissioners Council decision. Therefore the FSC decided to reject the plaintiff claim and to burden her the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars according to the law. The decision has been issued decisively, unanimously and in presents on 21.11.2018.