

Republic of Iraq
Federal supreme court
Ref. 18/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 6.7.2021 headed by Judge Jasem Mohammad Abbod and the membership of the judges Sameer Abbas Mohammed, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad, and Khaled Taha Ahmed Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Head of the Tishreen National Assembly, Iyad Fadel Driss/
being in his capacity, his attorney, Qusay Nazim Khalaf.

The Defendants: 1- Speaker of Council of Representation/ being in his capacity his deputy, legal advisor, Haitham Majed Salem, and jurist Saman Mohsen Ibrahim.
2- The President of the Republic/ being in his capacity his deputy, the head of legal experts, Ghazi Ibrahim Al-Janabi.

The Claim:

The first plaintiff/ being in his capacity claimed that the first defendant, the Speaker of the Iraqi Council of Representatives/ being in his capacity had enacted the Iraqi Council of Representatives Elections Law No. (9) of 2020 ratified by the second defendant, the President of the Republic/ being in his capacity on 11/5/2020 which states in the first paragraph of Article in the fifth chapter of it on (the multiple electoral districts are divided in the same governorate), as the second paragraph of

it stipulated (the candidacy shall be individually within the electoral district), Accordingly, the first paragraph of Article (15) in Chapter (Five) of the aforementioned law is in violation of the Constitution of the Republic of Iraq for the year 2005, because there are no electoral systems in multiple districts in the same governorate, and that the electoral system is commensurate with the local council elections that result in local governments And the governors, and it is not compatible with the general parliamentary elections in the country, because the contested text would persecute the right of the independent candidate for his inability to run for a province completely, in addition to that it is unfair and harms the rights of the voter, and the tables attached to the contested law, on which the electoral process is based, it is a serious mistake because the number of voters in these electoral districts is unequal, which affects equal opportunities between the candidates, the electoral system has been established to serve the parties and large blocs that have a popular audience and have an organizational movement before and during the elections, which creates inequality of opportunities between the candidates because Iraqis are equal in rights and opportunities. Therefore, the plaintiff/ being in his capacity filed the lawsuit and requested the ruling of unconstitutionality of the (1st) and (2nd) paragraphs of Article (Fifteen/ Chapter Five) of the Iraqi Parliament Elections Law No. (9) of 2020 and highlighted the approval of the establishment of the political party numbered (257) issued by the Department of Parties and Political Organizations Affairs on 8/4/2021, and after registering the lawsuit and collecting the fee for it in accordance with the provisions of article (1/3rd) of the FSC's Bylaw No. (1) of 2005 and after informing the defendants/ being in their capacity and asking them to answer in writing based on provisions of article (2/1st) of the aforementioned bylaws. The attorneys of the first defendant, the Speaker of the Iraqi Council of Representatives/ being in his capacity in their regulations dated 11/5/2021, requested the dismissal of the plaintiff's lawsuit/ being in his capacity for not clarifying the

point of violating the (1st and 2nd) paragraphs of Article (15) of the aforementioned Iraqi Council of Representatives election law to the constitution. In addition, the contested text is considered a legislative option, and it is one of the competencies of the Iraqi Council of Representatives stipulated in Article (61) of the Constitution. The second defendant's attorney/ being in his capacity requested in his draft dated 4/5/2021, that the plaintiff's lawsuit/ being in his capacity be dismissed in terms of formality, because the plaintiff (Ayad Fadel Drees) did not have a legal personality because the (Tishreen National Assembly) does not have a legal and legal personality because it is not registered as a political party in a constituency political parties and organizations, objectively speaking, he asked to dismiss the case for several reasons, including that item (3rd) of Article (49) of the constitution stipulates that "A law shall regulate the requirements for the candidate, the voter, and all that is related to the elections" therefore, legislating the contested law and the electoral system to be chosen is a legislative option that belongs to the Council of Representatives, also, item (1st) of Article (49) of the Constitution stipulates 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." The valid law has adopted this criterion by defining the electoral district, and thus it has applied the text of the Constitution in a sound application, free from any defect or the constitutional breach, in addition to the fact that the plaintiff mentioned in his petition that the criterion of the governorate is the best as an electoral district. This jurisprudence is contrasted with another jurisprudence that says that the district at the governorate level produces a local representative similar to a member of the (provincial) council.) There is another opinion that says that if Iraq were one electoral district, it would be better, but the majority agrees that the adoption of the electoral system according to the simple majority system (the non-

transformable vote system) stipulated in Article (15) of the mentioned Iraqi Parliament Elections Law is fairer due to its proximity from the Iraqi voter. After completing the required procedures in accordance with Clause (2nd) of Article (2) of the FSC's bylaw No. (1) of 2005, the date of the pleading was set on 6/7/2021, in which the plaintiff's attorney attended/being in his capacity lawyer Qusay Nazim Khalaf, as well as the plaintiff's attorneys The first is the Speaker of the Iraqi Council of Representatives / being in his capacity the legal advisor Haitham Majid Salem and the legal employee Saman Mohsen Ibrahim, and the second defendant attended the President of the Republic / being in his capacity the chief legal experts in the Office of the Presidency of the Republic, Ghazi Ibrahim Al-Janabi, the immanence, and public pleading was initiated. The plaintiff's attorney / being in his capacity reiterated what was stated in the lawsuit petition and requested the ruling according to what was stated in it and requested an approach by the Independent High Electoral Commission to clarify the discrepancy between the population percentage of each region and the number of seats allocated to it. He added that there are decimals outside the seat distribution system whose fate has not been clarified. The court rejected the request, and the attorneys of the first defendant/being in his capacity requested to dismiss the case for the reasons stated in their list dated 11/5/2021. The second defendant's attorney/ being in his capacity also requested to dismiss the case for the reasons mentioned in his list dated 4/5/2021 and reiterated The attorneys of the two parties had their last statements and requests, and since there was nothing left to be said, the court has been made the pleading clearly and issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff the head of the (Tishreen National Assembly), Ayad Fadel Driss/ being in his capacity he requests in his lawsuit the unconstitutionality of the first and second paragraphs of Article (15) of the Iraqi Parliament Elections Law No. (9) of (2020) on the basis of their violation of the Constitution of the Republic of Iraq of 2005, as there is no in the systems Multiple electoral districts in one governorate this system is compatible with the local council elections and is not compatible with the parliamentary elections, and the adoption of this system entails unfairness to the candidate because he is unable to nominate for his governorate completely and would prejudice the rights of the voter in addition to the fact that the electoral districts are unequal in terms of the number of voters, which leads to inequality Opportunities between candidates and that this system was legislated by the first defendant / being in his capacity to serve the parties and large blocs, The FSC finds that the plaintiff's claim/ being in his capacity is obligatory to respond to the absence of a violation of the provisions of the Constitution, because legislating the contested law and choosing the electoral system is a legislative option for the Council of Representatives in accordance with the requirements of the public interest based on Clause (First) of Article (49) of the Constitution, which It stipulates that (First: 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.) (Third) of the same article as (A law shall regulate the requirements for the candidate, the voter, and all that is related to the elections.) Paragraph (1st) of Article (61) of the Constitution of the Republic of Iraq for the year 2005 also stipulated that (The Council of Representatives shall be competent in the following: First: Enacting federal laws.)

Because of the foregoing, the FSC decided the following ruling: First: Rejecting the claim of the plaintiff, head of the (Tishreen National Assembly), Ayad Fadel Drees/ being in his capacity. Second: Charge the plaintiff/ being in his capacity fees, expenses, and attorney fees for the attorneys of the first defendant, Speaker of Parliament/ being in his capacity legal advisor Haitham Majed Salem and legal employee Saman Mohsen Ibrahim and the attorney of the second defendant, the President of the Republic/ being in his capacity Ghazi Ibrahim Al-Janabi, Chief Legal Experts, an amount of (100,000) one hundred thousand dinars distributed among them in accordance with the law, and the decision was issued by agreement conclusive and binding on all authorities based on the provisions of Articles (94,93) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/2nd) of the FSC Law No. (30) of 2005 amended by law No. (25) of 2021 and the decision had made clear public on 26 / Dhu al-Qa'dah / 1442 coinciding with to 6/July/2021.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
**Sameer Abbas
Mohammed**

Signature of
The member
Haidar Jaber Abed

Signature of
The member
Haider Ali Noory

Signature of
The member
Khalaf Ahmad Rajab

Signature of
The member
Ayoub Abbas Salih

Signature of
The member
**Abdul Rahman
Suleiman Ali**

Signature of
The member
**Diyar Muhammad
Ali**

Signature of
The member
Khaled Taha Ahmed