

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.1 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 16/2/2016, 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, Sulaiman Abdullah Abd AL-Samad and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: (Alif.Ain.Kha)- his agent the barrister (Sad.Ha.Sin.Jim).

The Defendant: head of the commissioners' council in the IHEC/ being in this capacity- his legal official (Ra.Nun.Ain).

The Claim:

The plaintiff's agent has claimed that the IHEC has already issued its decision No. (7) for the regular record that dated on 12/3/2013, including the ratification on the system of seats' distribution for elections of governorates' council No.(12) for 2013, despite the mentioned system had been issued two years ago and the operation of distribution the seats' for the governorates council has been done, but this doesn't prevent to challenge it because it is violating the Constitution and the Law, and the negative traces of this system still exists, and most of the governorates suffers when any replacing operation occurred for one of the candidates. This law made the women's seats in Salah AL-Deen governorate council 8 seats out of 29 seats that were allocated for Salah AL-Deen governorate. The origin is to be (7) seats for women and not as the system mentioned, the commissioners' council has

made a mistake in this jurisprudence and he has added one seat for women which is violating the Constitution and the decisions of the FSC that related to it, the origin that the percentage of women (25%) of the seats and when we calculate it:

Number of seats 29/ percentage of women representation $4 = (7.25\%)$ thereby the integral number is (7) seats and the decimal fractions is being neglected because the percentage (25%) which is quarter doesn't reach to one number and this is known in mathematics, here it clarified (according to the plaintiff's claim) that this system has exceeded candidates who got votes that qualified them to win a seat then they were replaced by (woman) didn't get the minimum limit for these votes, thereby there is waste and injustice for a big number of electors' votes, also the commissioners' council mentioned clearly and honestly in his record that fractions are being neglected in the distribution for percentage of women in one of its clauses, when they divided by (3). It is best for the commissioners' council to unite its procedures in neglecting the fractions in all cases. For the above reasons, the plaintiff's agent requested (the decision to calculate the number of women seats in Salah AL-Deen governorate council as (7) not (8) seats). The defendant agent being in this capacity answered on the case petition that the system of seats distribution No.(12) for 2013 has granted the women in Salah AL-Deen governorate council 8 seats not (7) seats, the mentioned system purposes to achieve a percentage of women quota not less than (25%) of the allocated seats for the governorate through applying it for all the participated lists in the elections without any discrimination. Achieving this objective relies on the clause (4th) from the article (49) from the Constitution where it stipulates to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives. Which mean the percentage of women from the decided quota can be increased slightly but it shall not be reduced below it in any form. Also, the FSC has already issued its decision No.(13/The./2007) which the court decided in it that the aforementioned Constitutional text is considered for the councils of the governorates for uniting of the objective, thereby achieving the percentage of women quota that is (quarter) or more is inevitable and the commission shall not ignore it or be authorized of achieving it or not. it is

obliged to the commission because it is derived from the Constitution, so the commission made the number of women seats in Salah AL-Deen governorate as (8) seats not (7) seats. The defendant agent has added that what the plaintiff mentioned (the quarter doesn't reach to one number as known in mathematics) this is not fitting with the proper legal logic in the subject of the presented case before the court because the number of the seats in each governorate whether odd number or even number thereby the result of dividing by (4) to achieve the quarter percentage will be whether integral number or integral number with decimal fraction (quarter, half or 3 quarters). For the case of Salah AL-Denn, the number of allocated seats are (29) seats and the result of dividing this number by (4) is (7,25), so in for all cases this decimal fraction will be rounded to an integral number and shall not be neglected because neglecting will lead to that the quota percentage will be less than (25%) and allocating only (7) seats for women no (8) seats. Also, the request of the plaintiff will make the women quota in Salah AL-Deen (24%) and this violates the clause (4th) of the article (49) from the Constitution, and as the defendant agent clarified about what the plaintiff mentioned in his case petition that the challenged system has stipulated in the clause (Alif.) from the third step to neglect the fraction, this text is not fitting with the plaintiff case because the mentioned clause has stipulated ((the share of each list shall be determined through dividing the number of allocated seats for the list by (3) and the decimal fractions are neglected)) it is being applied on the lists that won by big number of seats but for the case of (AL-Arabiya coalition bloc) which includes the entity that the plaintiff belongs, it won only two seats and for the case of dividing by three the number of seats that the list got will be less than one seat not two seats as the coalition of the plaintiff has got, and the elections of the councils of the governorates that not orginazied with provine had proceeded on (30/4/2013) which mean two years and eight months ago which mean legally more than half of the term of the authorityfor the governorates council. This means there are legal centers had been made through this period, from the other side the purpose of the challenge is to make new legal centers and disturbance the stability of the conditions in the councils of the governorates, for the above the defendant agent/being in this capacity requested

to reject the case because the system of seats distribution No.(12) for 2013 fits with the text and core of the law and the Constitution. The plaintiff agent presented an answering draft for the defendant agent draft on 24/1/2016 including repetition for what listed in the case petition which takes to answer him from the defendant agent by a draft dated on 7/2/2016, included repetition for the explanation that he listed in the first draft. After the case had been registered according to the clause (3rd) of the article (1) from the FSC system No.(1) for 2005 and the requested procedures had been completed according to the clause (2nd) of the article (2) from the mentioned system, the day (16/2/2016) had been appointed as a date for the argument and the court had been convened with the presence of the parties agents, the plaintiff agent repeated what he listed in the case petition and requested to decide according to it and presented a request that he pleases to delay the date of the argument to present an answering draft and he has added that his client has lost the seat as a member in Salah AL-Deen governorate council when this seats had been occupied by a woman for completing the quorum that is (25%). Whereas IHEC has modified the number from (7) to (8) so his client has been damaged by the mentioned decision of the commission and the plaintiff objects the commission decision at the court of the administrative judiciary and it had not been objected before the commissioners' council of the aforementioned commission, the defendant agent answered on him, I repeats what listed in my answering draft and the two parties has repeated their previous saying, whereas nothing left to say the end of the argument had been decided and the decision was recited publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff agent is claiming that IHEC didn't apply the system of the seats' distribution for the elections of the councils of the governorates which it has already issued it under the No.(12) for 2013 according to its decision No.(7) for the regular record No.(29) on 12/3/2013, whereas the mentioned commission and when it distributed the seats of election on the candidates who

won In Salah AL-Deen governorate which its number is (29) seats, the commission didn't comply to the listed mechanism in the aforementioned system where it when divided the number (29) by (4) to achieve a percentage of (25%) for women quota in the governorate council, it didn't comply with the result of the dividing which is (7) it modified the decimal fraction of the mentioned result of dividing to one number. It made the number of women seats in the council of the mentioned governorate (8) seats instead of (7) and this violates plainest principles of mathematics, thereby his client had been deprived of his seat and it was granted to a woman, and because what IHEC did violates the Constitution and the decisions of the FSC for this matter and touches the rights of his client, he initiated to challenge the mechanism that the mentioned commission has proceeded to distribute the seats of Salah AL-Deen council before the court requesting the decision to ((calculate the number of women seats in Salah AL-Deen council as (7) seats not (8) seats)). The court finds that its stipulated competence in the article (93) from the Constitution of Iraq republic for 2005 and the article (4) of its law No.(30) for 2005, it is not included trying the challenges that presented against the mechanism of distribution of councils of governorates seats. The law of IHEC No.(11) for 2007 has made in the article (8/3rd and 4th) the trying of the challenging of the adopted mechanism in distribution the seats of councils of the governorates a competent of the judiciary committee that was convened in the federal court of appeal for this matter, thereby the try of this case is out of the FSC competences. For the above the court decided to reject the case from competence point and to burden the plaintiff all the expenses and fees of the advocacy of the defendant agent/being in this capacity the legal official (Ra.Nun.Ain) amount of hundred thousand dinar and the decision had been issued decisively according to the provision of the article (94) from the Constitution of Iraq republic for 2005 and the article (5/2nd) of the FSC law No.(30) for 2005 unanimously and had been understood publicly on 16/2/2016.