

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

Republic of Iraq
Federal Supreme Court
Ref. 213/federal/ 2018



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14/5/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Sattar Jabbar Abbas Al-Jabire _ his agent the attorney Emad Hamd Natah.

The Defendant: The Speaker of the parliament/ being in this post – his agents the legal officers; the director Salm Taha Yaseen and the assistant legal advisor Haytham Majid Salim.

The Third Party Requested For Clarification:

1. The High Independent Commission for Election _ its agent the legal officer Ahmed Hassan Abd.
2. The representative whom her membership where under challenge – Ajyal kareem Salman _ her agent the attorney Talb kadhmi Al_Zayadi.

The Claim:

The agent of the Plaintiff claims in the case petition that his client previously made a challenge before the (I.C.R) about the membership of the representative Ajyal kareem Salman according to article (52/1st) of the constitution , on the date 6/11/2018 the (I.C.R) on session (10) issued a decision in the clause (4) of that decision the (I.C.R) rejected the challenge. As the (I.C.R) decision was unconstitutional and violate the Law, his client initiate to impeach it before the (F.S.C) according to the provision of article (52/2nd) of the constitution and claim the right of the parliament seat to his client for the following reasons:

His client was a candidate for the parliamentary elections for year 2018 behalf Tyar Al-Hekma Al-Watany electoral list in Dhi Qar governorate , after announcing the elections results the Tyar Al-Hekma Al-Watany won (2) sets of the total of (19) seat for Dhi Qar governorate; and his client got the second highest votes among the mentioned electoral list, and the Commissioners Council decision no.(19) on 18/5/2018 ratify the winning of his client; as the Commissioners Council applied the seats distributing system accurately that they distribute the seats on the political blocs that get (6) seats (4 seats for the men and 2 seats for the women Quota). That achieves the will of the voters and harmonized with constitution, in case that the women Quota isn't complete the system will make the second equation (after two men seats; the third seat will be a women Quota). As Tyar Al-Hekma got two seats which belongs to the men (the first set for the winner Asaad yasseen, the second seat to his client). The assigned Judges by the Commissioners Council started their work; the sorting and counting process has been done, the commissioners council issued decision no.(69) on 9/8/2018; that

decision included that his client lost his seat and his seat was granted to the representative (Ajyal kareem Salman) which is a candidate from the same electoral list and the same governorate that his client belongs to. Claiming that distributing considered a violation to the Law and conflict with the Constitution on articles (38/1st) that stipulated on the freedom of the opinion expression, (14) that stipulated on equality principle, (16) that stipulated on the opportunity equality. He request from (F.S.C) to reject the clause (4) of the impeached decision and to judge about the incorrect of the representative (Ajyal kareem Salman) winning and to re-grant the parliament seat to his client.

After informing the defendant with the case petition; his client answered with the draft dated 16/12/2018 that the women Quota distributing is a legal and technical process done by The High Independent Commission for Election, the ones who have been harmed by that process can present a challenge on the commission decision before the judicial commission in the cassation court. As the impeached (I.C.R) decision considered a legal and a constitutional decision, they request to reject the case as the (F.S.C) isn't competence with this case according to article (93/1st) of the constitution. After completing the required procedures according to the (F.S.C) bylaw no.(1) for year 2005, the day 28/1/2019 appointed as the proceeding date; on it, the court convened with the present of the agents of the two parties, each one of them repeated their request. The court scrutinized the points mentioned by the agent of the plaintiff in the case petition and decided to involve The High Independent Commission for Election and the representative (Ajyal kareem Salman) as third party in the case according to article (68/4) of the civil proceeding

code and requested them for clarification about what is needed to make a final decision in this case.

The High Independent Commission for Election answered with its draft no.(kha./19/130) on 20/2/2019, included that the seats distributing system aims to achieve a women quota presenting not less than 25% of the seats specified for the governorate by applying it on all the electoral lists without discrimination. The number of seats that are specified for Dhi Qar governorate are (19) seats; only five seats were specified for the women which are $\frac{1}{4}$ the governorate seats. The number of seats that the winning electoral lists got in Dhi Qar governorate are: (Saeroon/ 6 seats, one seat for woman), (Al-Fatih collation /5 seats one seat for woman), (Dwlat Al-qannon /3 seats one seat for woman), (Al-Naser collation /3 seats one seat for woman), (Tayar Al-Hekma /2 seats one seat for woman). The third step of the seats distributing system (the women Quota counting) was applied as the following serial :

1. By applying the clause (Alif/2nd) of it, which is (one seat will be specified for women after three seats for men regardless the number of the male winners), therefore Saeroon list shall specify one seat for the females.
2. By applying the clause (Ba/ 3rd) of it, that stipulate (one seat will be specified for women after every two male winners regardless the number of votes that the male got), therefore the lists that won three seats; which are Al-Fatih collation, Dwlat Al-qannon and Al-Naser collation shall specify one seat for the females.
3. By applying the clause (Ba/ 4th) of it, that stipulate (if the required seats for the women weren't achieved according to the aforementioned; a seat shall be specified for the females from the lists that won two seats, and from the lowest to the highest

electoral lists serial, the candidate that won the second seat shall be replaced with the female candidate that got the higher votes among the same electoral list).

In order to achieve the female five seats for Dhi Qar governorate; the fifth seat is allocated from Tayar Al-hekma electoral list as it is the only list that obtained two seats.

He also mentioned that the court previously rejected the cases that are numbered (179/federal/2018 , 180/federal/2018 & 181/federal/2018) and decided that the third step of the seats distributing system and all its clauses including clause (4/Ba/2) came as proper implementation for article (49/4th) of the Constitution. Also he support what was mentioned by the agent of the defendant that the distributing process is a legal and technical process and that the Commission distribute the quota seats after regarding all the winning lists; and that is controlled by the Code and systems, the Judiciary Commotion for Election previously rejected the case that presented by the plaintiff about the same subject; in case numbered (1399/Appeal/2018) , and it was mentioned in its decision that any violation or error in the Commission acts couldn't be found.

Adding that the (F.S.C) isn't competence to hear the plaintiff case; for the challenge presented by the plaintiff should regard the nomination condition and the necessity of approval by the Law considering the age or the academic degree, not the seats distributing system and the winners that were previously rejected by the Judiciary Commotion for Election and ratified by the (F.S.C).

The representative Ajyal kareem presented the dated draft on 27/2/2018 requesting to reject the case for the same reasons aforementioned by the agents of the defendant; adding that the

plaintiff challenge doesn't focus on the lack of the membership conditions or the violation of the representative replacing code.

The Court scrutinized the case documents and found that the conflict subject is the means that were used to count the (women quota), and the subject including a technical side that requires an expert or more to clear that side.

The two parties were assigned to elect an expert or more to clear the technical side, so they did ; and agreed on the expert Adel Al-Lami, whom presented his report dated 3/4/2019 that a violation occurred to the seats distributing system no.(12 for year 2018 while specifying one of the females seats, as one seat where specified for women from Tayar Al-Hwkma electoral list that won two seats for men according to clause (4/Ba/2) of the third step that stipulate on (if the required seats for the women weren't achieved according to the aforementioned; a seat shall be specified for the females from...). The seats required for women were supposed to be completed according to clause (1/Ba/2) of the third step of the aforementioned system that stipulate on (the female shear of the seats from every list shall be specified by dividing the number of the seats that are specified for the list on (3); the decimal fractions shall be ignored), this equation should be applied on Saeroon list that won six seats ($6 \text{ seats} \div 3 = 2 \text{ seats for women}$) ; by applying this equation the women share will be achieved without the need to move on to the clause (4/Ba/2) of the third step.

After referring to previous years, the share of all lists that won six seats, where including two seats for women. The expert clarified his report on the session that were held on 8/4/2019.

The agent of the plaintiff answered with his draft dated 8/4/2019 included a repetition for what were mentioned on his list dated

16/12/2018, he also added that the (F.S.C) has settled in dozens of decisions issued by the court that it is not competent to hear cases relating to the application of laws that the law already specify a way to appeal it.

The law specify a way to appeal the High Independent Commission for Election decisions; which is to present a challenge before the Judiciary Commission For Election whose it decisions acquire the authoritative judgment, that already rejected the plaintiff challenge. The (F.S.C) previously decided that it isn't in it competent to hear similar cases; on that base the decisions (179/federal/2018,180/federal/2018 &181/federal/2018) were issued. He also add that he has reservation on the expert's report as being the context approved by the competent authority in applying the system and the law which is the High Independent Commission for Elections , and request to assign three experts.

The agent of the Elections Commission replied that he has reservations on the report which he'll present on paper during the postponement period, and he asked the court to record his statements which are: (Mr. expert did not see the system as he referred to clauses 4/Ba/2 and 1/Ba/2, these clauses aren't available in the seats distributing system, and he didn't pay attention to clause 2/Ba of the third step of the mentioned system that stipulate on case if the women share in the electoral list isn't achieved, the following shall be done to accomplish the women share, the concept of the violation here if the women shear is achieved in the list by dividing by four, then there is no referenced by dividing by three, the case subject concerns the constitutionality and the unconstitutionality of the system and it application by the Commission, the expert has dealt with his

experience report in a manner other than what has been assigned to him by the honorable court.).

The expert replied that the sequence contained in the system leads to his conclusion. The agent of the plaintiff replied that what the third party denied that there were no clauses; it's already exists in the system, he present a copy of the Seats Distributing System no.(12) year 2018 to the Court and attached to the case file.

The court found that justice requires that all disputed points be exhausted by three experts, the justice doesn't underestimated the expert right in there expertise report but to raise the suspicion of certainty is the claim for the benefit of justice and commissioned the parties to elect them, so they agreed on (Safa Al Moussawi , Ali Abdel-Elah , Hamdiya al – Husseinini) whom were informed of the task and were assigned to identify the texts governing the case. On 28/4/2019 they presented their report, which included two views, the first was agreed upon by both experts (Safa Al Moussawi , Hamdiya al – Husseinini) that the process of calculating the quota of women specified in the third step of the system includes many steps serialized that must be followed to ensure the distribution of women's quota on the winning lists justly according to their seats won and that the implications of the word received also considered according to the meaning apparent. And they reached the same conclusion as the expert Adel al-Lami in his report aforementioned.

The second view was exclusive by the expert Ali Abdel-Elah which is the same as the opinion of the agent of the third party (The High Independent Commission for Elections) aforementioned.

The agent of the third party (The High Independent Commission for Elections) replied on the experts report with his draft dated

5/5/2019 the conclusion of it that he supports the opinion of expert Ali Abdul-Elah because it represents the real and actual application of the system and that what the two other experts had said in their report was incorrect , as the process of distributing the seats follows what the seats that the list got and what the rest of the other lists got from seats and the prove is the Governorates of Basra and Kirkuk, whereas Al_Fatih list in Basra Governorate got (6) seats and given (2) seats for women, the two experts have neglected what was stated in article (2/Ba) and have relied on a part of it which is (In case the ratio "the shear" is not achieved in the list) and neglected the last part which is (The following shall be followed to complete the ratio) without justification, the list definition was mentioned in article (8) of the first part of the system that is : The list of political party or coalition participating in the elections.

And that any ambiguity in the text of the system must refer to the sources and methods of interpretation, including the preparatory work for the text, and that the Commission is required to apply and interpret the text, also what were mentioned by the two experts that the list that got (6) seats shall specify (2) seats for women; is incorrect , as the process of distributing the seats follows what the seats that the list got and what the rest of the other lists got from seats and the prove is the Governorates of Basra and Kirkuk whereas Al_Fatih list in Basra Governorate got (6) seats and given (2) seats for women.

On the Court session 7/5/2019 assigned the experts Ali Abdul-Elah and Safa Al Moussawi to conduct a debate between the two views that lead the Court to be convict to the both views. The expert Hamdiya al – Husseinini added that the systems are inspired by the international regulations but the I.C.R or the assigned party

changes the regulations according to the case, as happened to change ratios from 1.3 to 1.7, the two agreed experts supported the expert Ali Al-lami result mentioned in his report but their report had more detail. The Court noticed that the representative (Ajyal kareem Salman) in the draft dated 27/4/2019 requested to reject the expert Hamdiya al – Hussein and reported that she had a close family relationship with the president of the Supreme Islamic Council and she knew through trusted people that the plaintiff contacted her and that he had a friendship with Sheikh Jalal al-Saghir, the Court noted that the expert submitted a document proving that she had left the Supreme Islamic Council and nominated in the 2018 elections in another list, for the purpose of enabling the representative to prove the existence of a connection between the plaintiff and Sheikh Jalal al-Din al-Saghir, the court directed her to prove it with a judicially acceptable evidence.

She replied that instead of that she request to direct the case to five experts after the three experts disagreed with their opinion, the agent of the defendant replied that he support the representative request to assign five experts, the Court assigned the parties to elect the experts but they left it to the Court, and after deliberation and consulting the opinion of the parties and experts; the Court assigned the experts (Izz al-Din al-Muhammadi, Hazem al-Badri, Hussein Abd Ali Khalif al-Ajili, d. Ali al-Yaqoubi and Hussein Ali al-Bayati), on the date 12/5/201⁹ the Court received their report showing that after they viewed the case and what was assigned to them by the Court and the F.S.C decision No.(214/federal/2018) that indicated the Court's jurisdiction to consider such appeals, also the Court decision No.(179/federal/2018) that reject the challenge according to the

constitutionality of the third step and clause (4/Ba/2) of the System No.(12) year 2018, and they have unanimously concluded that the entitlement of Saeroon alliance of the women's quota is one quota; with the candidate whom already won by votes (Haifa Kazem Abbas) bringing the total number of women seats on Saeroon list to two (One in terms of origin in the system, and the other with a quota).

The entitlement of Al- Fatih list one quota seat to be given to the woman who get the highest votes on the list in Dhi Qar governorate.

The result of Dawlat Al-Qanon and Al-Nasser collation lists remain the same without any change because each of them contains a woman winner without quota; they are (Zainab Wahid Salman / Dawlat Al-Qanon, Ola Authat Laydh / Al-Nasser collation).

The total number of seats occupied by women in Dhi Qar governorate will be five seats ; this achieves 25% women, and the candidate Ajyal Karim Salman is excluded from the winners, the shear of Tayar Al-Hikma remain two seats without women, the second seat specified for Tayar Al-Hikma is the plaintiff's entitlement Sattar Jabbar Abbas the winner according to the sequence of the votes he got in Tayar Al-Hikma list.

On 14/5/2019 the Court convened; the agent of the plaintiff and the agent of the defendant and the agent of the third party requested for clarification attended and the proceeding began presently and publicly, the agent of the plaintiff replied that the report was explained and in accordance with the law and there are no objection to it, the agent of the defendant and the agent of third party Mr. Ahmed Hassan replied that the report wrong to appraise and they had reservations on it.

The agent of the representative Ajyal kareem requested to postpone the case as he reserved the report on this day, the Court noted that the representative Ajyal kareem presented a postpone request on 12/5/2019, the Court knew that she could connect with her agent from 12/5/2019 till this day to view the case, however, to enable the agent to study the report, the court adjourned its hearing to the end of the proceedings today 14/5/2019. After the session resumes; her agent replied that the case subject isn't on the F.S.C competent adding that the plaintiff already made the case No.(179/federal/2018) that was rejected and can't be present according to the articles (105, 106) provisions of the Evidence Law, also the plaintiff challenged the Commissioners Council decision which was also rejected, and the Commissioners Council has the exclusive power to establish a system of procedures for the distribution of seats and the settlement of disputes accrue between competitors, and his client refuse to choose the experts or refer the case to them, in addition to a contradiction between the experts' report (the single expert report, the three experts report and the five exports report), therefor he request to reject the case as it is out of the Court competent addition to the existent of litigation as the Commission directed a engage and hold the attention to one of the exports and this affects neutrality, the agent of the plaintiff comment that the case (179/federal/2018) is different by the case parties and the subject and this case is under the authority of article (52) of the Constitution.

During scrutiny and after the Court have heard the statements by the parties of the case and their requests found that the case completed the judgment reasons and decided to end the proceeding and the decision is issued publicly in the session.

The Decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff Sattar Jabbar Abbas Al-Jabire on the case (213/federal/2018) challenged the I.C.R decision aforementioned No.(154) on 7/11/2018 decided on session No.(10) that was held on 6/11/2018 and the text of clause (4) of it (after voting the approval was not obtained on the non-validity of the membership of the representative Ajyal kareem and the harmed person the challenger Mr. Sattar Jabbar Abbas Al-Jabire could resort to the F.S.C to appeal the I.C.R decision.) , claiming that the challenged decision violated the system provisions, Law and the constitution requesting his membership right in the (I.C.R) instead of the current representative Ajyal kareem for Dhi Qar governorate.

The F.S.C made it investigations about the case according to the provisions of the Constitution, Law and the seats distributing system No.(12) for year 2018 and assigned respectively one, three and five experts to clear the technical aspects of the seats distributing proses in the elections lists, through the requests of the defendant the I.C.R Speaker/being in this post and the Third Party Requested For Clarification of what is needed to resolve the case and form the full conviction of what is necessary to issue the decision according to the Constitution and in application to the provisions of article (25/2nd) of it and to the I.C.R. elections Code No.(45) for year 2013 and the I.C.R. Seats Distributing System No.(12) for year 2018 and delegation the exports according to article (133) of the Evidence Code No.(107) for year 1979.

After scrutiny the defenses defendants that was presented by the defendant the I.C.R Speaker/being in this post and the Third Party, these defenses refer that it is in the Court jurisdictions to

hear the case, the Court found that defense is rejected according to the Constitution as the clause (1st) of article (52) of it that has given the I.C.R. the jurisdiction to consider the objection submitted to it by the interest of the validity of the membership of one of the I.C.R. members either due to the failure of one or more of the required conditions or to an error in applying the relevant laws and regulations in the process of election or in the procedures of the seats distribution according to the system and in accordance with the rules adopted and the percentages contained in the Constitution and the law and the system, then the I.C.R. shall issue its decision to accept or reject the challenge according to the investigation done by it. The purpose behind assigning this jurisdiction to the I.C.R. is to insure the safety of the position of the challenged representative; subsequently, insuring the safety of the Legislative institution and to establish confidence in the validity and safety of the election of its members, this I.C.R. jurisdiction could be found as it aforementioned in article (52/1st) and in clauses (1st & 2nd) of article (13) of it, this jurisdiction used by the majority of the C.R around the world; for example, Egypt, Kuwait, Jordan, United Arab Emirates, Italy and Japan.

The I.C.R. rejection decision whether it was approved or rejected, the constitution give the authority in clause (2nd) of article (52) of it the jurisdiction in hearing the challenge of the I.C.R. to the F.S.C. within 30 days from its issuance date, the F.S.C. view the challenge on the I.C.R. decision that was issued according to article (52/1st) of the Constitution, using the same jurisdiction that the I.C.R. used, where the investigation takes place in all aspects raised by the plaintiff, even though if it was judged by other authority previously, according to the constitutional authority stipulated on article (52/2nd) of it. Because the implementation of

the provisions of the Constitution is the supreme in the application to the texts contained in the regulations and the laws if it finds in the outcome of its application what is contrary to the Constitution and the laws and regulations related to the process of electing members of the I.C.R and the seats distributing system, this supreme stipulate in article (13) of the Constitution that stipulated on :

(First: This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.).

The F.S.C used this jurisdiction and issued several numerous judgments under it, whose details were given in the judgment issued by it on the date 17/4/2019 case No.(214/federal/2018).

As for the rest of the defenses, the Court find that its judgments were mentioned on the exports reports, and on the five exports report dated 12/5/2019 which was based on the provisions of the Constitution and the I.C.R. elections Code and the I,C,R, seats distributing System properly and in a productive manner; that is an attachment to this judgment, that could be used as a reason for judgment according to article (140) of the Evidences Code. According to that, it been decided :

- ❖ Reject the defenses presented by the defendant/being in this post and the third parties as its lack the legal cause as it been aforementioned.
- ❖ Repeal the I.C.R. decision issued on session (10) on date 6/11/2018 included the reject to the candidate Sattar Jabbar Abbas Al-Jabire challenge, based on the report of the five exports dated 12/5/2019 as a reason to issue a

judgment and considered a part of it and attached to it, so the candidate Sattar Jabbar Abbas Al-Jabire shall take place as a member in the I.C.R. from Dhi Qar governorate instead of the candidate Ajyal Karim Salman, and to burden the defendant/being in this post the expenses and advocacy fees for the agent of the plaintiff amount of (one hundred thousand Iraqi dinars), the decision has been issued decisively and unanimously according to article (94) of the Constitution and article (5) of the Federal Supreme Court Code No.(30) for year 2005, and issued publicly in the session On 14/5/2019.