

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

Republic of Iraq
Federal Supreme Court
Ref. 214/federal/2018



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 17.4.2019 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 Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff : Younadem Yousif Kanaa – his agent the attorney
Mouhamed Jasim Al-Juboory.

The Defendants:

1. Speaker of the Parliament/ being in this capacity - his agents the legal officials the director Salim Taha Yasein and the assistant legal advisor Haytham Majid Salim.
2. head of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity, his agent the legal officials Ahmad Hasan Abed.
3. Burhan Aldeen ISahak Ibraheem Eliass.

The Claim:

The Plaintiff's agent claims that his agent (Younadem Yousif Kanaa) had submitted an objection to the council of representatives in 15/9/2018, against the membership of the representative (Burhan Aldeen ISahak) the candidate for Babylon Movement (166) for the quota seat of the Christian component of the governorate of Baghdad. However, the first defendant reject his objection by the decision No(154) dated 7/11/2018, that was issued in session (10) on 6/11/2018, which is a confirmation for the decision of the second defendant, which was based on the seats distribution system of the council of representatives No(12) for 2018, that issued by the commission in contrary to the provisions of the council of representatives elections code No(45) for 2013, as article (11/3rd) stipulated that (the reserved quota seats for Christians and Sabeen Mandaean are within a single constituency), and article (14/3rd) of it which stipulate that the distribution of seats within a list by rearranging the sequence of candidates based on the votes number they obtained, therefore the first winner is the one who obtained the highest votes and so on for the rest of the candidates, and because the council of representatives decision was to reject his client challenge was issued in contrary to that, and according to article (52/2nd) of constitution he challenged it for the following reasons: (Al-Rafidain List 144) got (19424) votes and when divided it on (1.7) according to the (St. Lego system) the result is (11426) votes, according to that the Al-Rafidain List (144) has won the third seat, which means that his client won the seat of Baghdad for the Christian component, in addition to that his client obtained (6079) votes, which represents the highest votes in Baghdad, according to that his client is in the second order of the highest votes within the votes of the Christian component in Iraq according to article (11/3rd)

of the council of representatives elections code No(45) for 2013, while what the technical department adopted in the Independent Electoral Commission is a violation for the provisions of the election code and violates the provisions of the quota seats distribution for the Christian component, and because the representative (Burhan Aldeen ISahak Ibraheem) did not obtained the highest votes, but he got (930) votes, Thus, the voter's votes was removed from his client the candidate (Younadem Kanaa) to (Burhan Aldeen ISahak Ibraheem). For the aforementioned reasons the agent of the plaintiff requested the F.S.C. to judge that the council of representatives decision No(154) on 7/11/2018 that was issued in its session numbered (10) held on 6/11/2018 is unconstitutional. The defendants have been notified with the case petition, the first agents of first defendant responded with the answering draft dated 16/12/2018, which stated that the defendant should challenge the decision of the Commission of announcing the final results before the competent judiciary commission in the court of cassation in initial, which issued its decision No(1281/appeal/2018) dated 15/8/2018 to reject the plaintiff request, and the board of commissioners from judges distributed the seats that is specified for the Christian component according to the winning lists and its candidates who obtained the highest votes based on the provisions of the council of representatives elections code No(45) for 2013, and the seat distribution system No(12) for 2018, therefore the council of representatives decision to reject the appeal is in accordance with the law, and that the case is out of the F.S.C. jurisdiction according to article (93/1st) of constitution, and they request to reject the case. The second defendant/ being in this capacity respond with his draft that dated 13/12/2018 in which he repeated the objections that raised by the first defendant's agents,

and he show that in 12/8/2018 the candidate challenged the decision of the board of commissioners that dated 9/8/2018, to announce the final results for the council of representatives elections, and referred the appeal to the elections judiciary commission, which issued its decision on 15/8/2018 to reject the appeal, and that its decisions are decisive and cannot be subject to appeal according to paragraph (7) of article (8) from the code of independent high electoral commission No(11) for 2007. Also the F.S.C. has issued a decision to ratify the election results on 19/8/2018, and referred to paragraph (Alif/2nd) of article (11) of the chapter four/ constituency, and the electoral code of the council of representatives No(45) for 2013 which stipulated that (the Christian component (5) seats are distributed to the governorates Baghdad, Nineveh, Kirkuk, Dohuk and Erbil), and paragraph third of the article(11) which stipulates that (the reserved quota seats for Christians and Sabean Mandaean are within a single constituency), also the second defendant referred to paragraph (3) from section four/ components seats of the parliament's seats distribution system No(12) for 2018 that (the competing lists for the seats of the Christian component will granted in accordance with the provisions of the third section/ first step of this system), and he show that the distribution of the seats that is specified for the Christian component is according to the winning lists and its candidates who obtained the highest votes based on the council of representatives election code No(45) for 2013 and seat distribution system No(12) for 2018, also the plaintiff challenges an procedural matters and that the commission code(11) for 2007 draw a way to challenge it through the judiciary commission and request to reject the case. The third defendant respond by repeating the arguments of the first and second defendants' agents, and claimed that the case is out of the F.S.C. jurisdiction and requested to reject

the case. The court has called the parties of the case and proceed with the argument in the presence. The plaintiff's agent repeated the case petition and requested to judge for what listed in it. The agents of the first, second and third defendants' repeated what listed in their draft and requested to reject the case. The agent of the plaintiff replay that he is not convinced with votes counting and the method of implementing the seat distribution system, the second defendant's agent replied that the votes of the Christian component distributed to the lists and not to the persons. The court scrutinized the case petition and the answering drafts and found that there are technical aspects require recourse of one or more experts to withdrawal these aspects and requested the parties to nominate who they choose of experts, so they agreed to nominate Dr. Ezz El Din El Mohamadi, Wael El Waeli and Adel El Lami as experts which submitted their report on 3/4/2019. The second defendant's agent responded with his draft that dated 14/4/2019 objecting to the experts' report, the three experts were provided with a copy of the mentioned draft and responded to it thoroughly by their report dated 15/4/2019, about the request of the first defendant's agents to refer the case subject to five experts instead of three, the court found that this matter does not require this extension so it decided to reject the request and to proceed with the case in the session dated 17/4/2019, at that session, reference was made to the explanatory draft dated 14/4/2019 which submitted by the second defendant, the experts' response to what stated in it by their report dated 15/4/2019. The court listened to the parties final statements and announced the conclusion of the session and issued the decision publicly.

The Decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff (Younadem Yousif Kanaa) challenged in his case petition (214/federal/2018) the decision of the council of representative No (154) on 7/11/2018 that was issued in the session No(10) that held on 6/11/2018 which paragraph (2) of it stipulate that ((the approval was not obtained after the vote on the invalidity of the membership of the representative (Burhan alddin Ishaq Ibrahim), and the aggrieved one the appellant (Yonadam Kanna) could resort to the F.S.C. to appeal the decision of the council of representatives within (30) days according to article (52/2nd) of constitution.)). the plaintiff stated in his case petition that the rejection of his objection to the validity of the membership of representative (Burhan Aldeen ISahak) the candidate for (Babylon) list, for the seat of the Christian component of the governorate of Baghdad, was unconstitutional because the plaintiff is also a candidate for the list of al-Rafidain for the seat of the Christian component for the governorate of Baghdad, and he obtained (6079) votes, while the objector (Burhan al-Din Ishaq) obtained (941) votes, and the plaintiff relied on article (52/1st) of the constitution in his objection before the council of representatives, and he based the establishment of this case to the article (52/2nd) of constitution. According to that the court conducted its investigations into the case in the light of its petition and the submitted documents and the arguments of the defendants, and found after the study that the case has technical aspects that require the use of experts to eliminate it, according to article (133) of the law of evidence No(107) for 1979, the court assigned the parties to select them, so they agreed on the experts (Dr. Ezzeddine Al-Mohammadi, Wael Al-Waili and Adel Al-Lami) the court found that the selected experts are specialists who previously occupied positions in the independent high electoral commission so

decided to approve on them, after they receive full copy of the case file from the court, they submitted their report with agreement on (3/April /2019), the report included list of the texts which they were based on, which is the provisions of the council of representatives elections code No(45) for 2013, and paragraph (3) of (section four) of seats distribution system of the council of representatives No(12) for 2018 and (section three/ first step) and (section four/ the components seats) of it, and they used the system of (St. Lego) and the rates of division on the approved numbers to achieve the results, that the distribution of the Christians quota seats on the candidates of the winning lists, by distributing it on the candidates from the Christian component based on what mentioned above, and the candidates of the winning lists of the component seats shall be arranged according to the votes obtained by each candidate from the highest to the lowest and according to the constituencies for which they nominated (Baghdad, Nineveh, Kirkuk, Dohuk and Erbil) regardless the lists that they were nominated for it, then the seat of the constituency is granted for the candidate with the highest votes of competing candidates within that constituency, the other seat shall be granted to the candidate who receives the highest votes of the competing candidates in another constituency, and so on until all the seats that specified for the Christian component is distributed, and that is an application for the aforementioned provision, thus, the seat that specified for the Christian component in Baghdad governorate is for the plaintiff (Younadem Yousif Kanaa) who won (6079) votes against the votes of his rival from Baghdad governorate (Burhan Aldeen ISahak Ibraheem) who won (941) votes, regardless the lists that they were nominated for it. This is what the Court has pointed out from the experts' report and the table attached to it that dated(3/April/2019), and it subsequent report dated 15/4/2019, and the table attached to it which came in the

same context and reached the same result. After that the court examined the arguments submitted by the defendants, which is the lack of jurisdiction of the F.S.C. to consider this case, the answer to that is paragraph (1st) of article (52) of constitution has assigned the council of representatives the jurisdiction to consider the objection submitted to it by the interested party, on the validity of the membership of one of the members of the council either for lacking one or more of the required conditions of it, or for an error in the application of relevant codes and regulations in the process of his election or in its procedures, then the council shall issue the decision either to accept the objection or reject it, in order to ensure the safety of the representative position that subject to objection and its implications on the legislative institution, and to establish confidence in the health and safety of its members election, and the council of representatives jurisdiction to investigate the reasons of objection found its support in articles (52/1st) and (13/1st and 2nd)of the constitution, this jurisdiction is exercised by the majority of the parliaments in the world, including Egypt, Kuwait, Jordan, United Arab Emirates, Italy and Japan, because this jurisdiction in Iraq came under the constitutional authorization that stipulated in article(52/1st) of the constitution, which have the priority in the implementation. the council of representatives decision to accept or reject the objection shall be subject to appeal before the F.S.C. within thirty days from the date of its issuance, when reviewing the appeal the F.S.C. exercise the same jurisdiction as the council of representative through the constitutional authorization that stipulated in paragraph (2nd) of article (52) of the constitution, where the court is responsible to investigate all aspects that was raised by the plaintiff in his appeal even if it had been taken considered by other party previously, because the implementation of the constitution provisions including the article

(52/2nd) have the priority in implementation upon the texts contained in the codes and regulations if it's found in the outcome of its implementation what contrary to the constitution and laws and relevant regulations, the priority of the constitutional texts is stated in article (13) of constitution which stipulated that (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. exercised through this constitutional authorization in many of its judgments issued in the consideration of appeals that submitted to it upon the decisions of the council of representatives taken under the article (52/1st) of constitution, and that is for the previous cycles upon the current cycle for 2018, and issued (43) judgments as shown in the attachment table to this judgment which is part of it, as for the rest of the arrangements, the court conducted its investigations and found, after reference to the laws and relevant regulations and to the reports of the three experts that were elected by the parties of the case, these defenses are not based on a valid constitutional or legal reason. According to that the court found that the case procedure has completed, and decided to adopt what the experts has stated in their report dated (3/April/ 2019 and its subsequent report dated 15/4/2019) in accordance with the provisions of the constitution and the law, based on the provisions of paragraph (1st) of article (140) from the law of evidence, goes to consider these reports as part of this judgment. Accordingly, the F.S.C. found that the council of representatives decision the subject of the appeal came in contradiction with the provisions of the articles (20) and (38/1st) of the constitution, where they granted every citizen the right to vote freely to those who represent him in the council of

representatives, and prevail for those who won the majority of the votes made by citizens to express their will, and that voters who voted for the plaintiff (Younadem Yousif Kanaa) as a candidate for the Christian component in Baghdad are more than the votes of his rival by (5138) votes for the same component and the same region (Burhan Aldeen ISahak), which had to be taken into consideration by the council of representative when reviewed the objection of the plaintiff, in implementation for the provisions of the article(38/1st) of the constitution and adopt the texts contained in the elections code of the council of representatives and the texts contained in the parliament seats distribution system when issuing decision on the objection of the plaintiff. And where that was not done, the F.S.C. decided to reject the council of representatives decision No(154) on 7/11/2018, which was issued in the session No(10) that held on 6/11/2018, which include the rejection of the plaintiff's (Younadem Yousif Kanaa) objection to the validity of the membership of the representative (Burhan Aldeen ISahak) for being unconstitutional, and to burden the plaintiffs the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars, and the decision issued unanimously and decisively according to the provisions of article (94) of constitution and article (5) of the F.S.C. bylaw No(30) for 2005, and issued publicly on 17/4/2019.