

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

Republic of Iraq
Federal Supreme Court
Ref. 2/federal/media/2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16/8/2016 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen, Ade Hateef Jabbar and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff:

(Waw. Jim. Ra)- the head of the administrative board of the Tawasoul organization for youth empowerment/ being in this post. His agents the attorneys (Zin.Dad.Dal.Yeh) and (Sin.Zin.Dad.Dal).

The Defendants:

1. Speaker of the parliament /being in this post – his agents the legal officials (Sin.Ta.Yeh.) and (Heh.Mim.Sin.).
2. Prime Minister/ being in this post- his agent the assistant legal advisor (Ghain.Jim.Dal) and (Ha.Ain.Jim)

The Claim:

The agents of the Plaintiff claimed before the F.S.C. in the case No.(2/federal/2016) that :

First: The constitution of the republic of the Iraq for 2005 included many texts that guarantee equality and equal opportunities for all Iraqis regardless of the diversity, also included that no law that contradicts with the principles of democracy, rights or freedoms shall be enacted, we mentioned it in the following:

1. The text of article (2/Beh) (No law may be enacted that contradicts the principles of democracy).
2. The text of article (2/Jim) (No law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution).
3. The text of article (14) (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status).
4. The text of article (16) (Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken).

Second: Yet, in violation to the mentioned constitutional text, some laws and regulations has been issued that contrary to it, including:

1. The text of article (9/10th) of the law of the Independent High Electoral Commission (I.H.E.C.) No.(11) for 2007 which stipulated that (representation of the components of the Iraqi society shall be taken into account in the formation of the I.H.E.C. according to the regulations and rules), and the text of article (3) of the first amendment law of the I.H.E.C. law No.(11) for 2007 issued by the No.(21) in 2010, which stipulated that (when appointing its personnel into permanent jobs the I.H.E.C. should takes into account the balance between all components of the Iraqi people).

2. The text of paragraph (12/Alif) of article (9) of the council of representative Bylaw (I.C.R.) that was issued in the official gazette issue (4032) on (5/2/2007) which stated that 12/Alif: the President agrees with his deputies in the Presidency in supervising and oversight all the employees in the board of the council, and in making decisions regarding the appointment or sending abroad, to achieve the principle of balance and equality of opportunity for all Iraqis in holding the state jobs...etc.
3. The text of paragraph (3rd) of article (12) of the mentioned I.C.R. Bylaw, 3rd: if the post of the speaker of the council or any of his deputies is vacant for any reason, the council shall elect successor to him by the absolute majority in any session that convened to fill the vacancy according to the controls of the political balance between the blocs.
4. The text of paragraph (7th) of article (2) of the council of ministers bylaw No.(8) for 2014, issued by the council of minister decision No.(103) for 2014 on (8/12/2014) which was issued in the official gazette issue (4343) on (2/12/2014) (the recommend to the I.C.R. to approve the appointment of undersecretaries, ambassadors, and owners of special grades in way that achieve the national balance in accordance with the provisions of the constitution and the related legislation).
5. The text of paragraph (12th) of article (12) of the mentioned council of ministers bylaw, (12th): the approval on the appointment of the general directors and those who are at the same degree, according to the law and the senior civil servants regulation, in way that achieve the national balance in accordance with the constitution and the related legislation, and refer them to retirement at his request).

Third: according to what listed above from texts within the law of the I.H.E.C., and each of the Bylaw of the I.C.R., and the Bylaw of the

council of ministers, which included the phrases (in order to achieve a balance in the representation of the components of the Iraqi people, or, in what achieving the principle of balance and equal opportunities, or, according to the controls of the political balances between the blocs, or, in order to achieve national balance), these words actually mean (the sectarian, ethnic and political quotas) which relied on in establishing the political process in Iraq after the fall of the regime, and it was the main cause for the suffering of the Iraqi people, which is in fact contradict with the constitutional texts that we referred to earlier, which emphasizes the principle of equality and equal opportunities among Iraqis in all aspects of life, and that confirms the unconstitutionality of those texts. We would also like to refer that the conditions required under the article (6) of the F.S.C. Bylaw No.(1) for 2005, are available in our case as the following:

1. The plaintiff in this case have direct and current interest and effected in his legal and social position, as there is a text included in the bylaw of his organization (Tawasoul organization for youth empowerment) state on (defending democracy, principles and constitutional texts), as overcoming the state of apportions consider as enhancement for the democracy and protection for the constitutional principles.
2. The text that included within the law of the I.H.E.C. No.(11) for 2007, and the texts included in the bylaws of the I.C.R. and the councils of ministers, formed a dedication of the sectarian, ethnic and political quotas, which has been reflected negatively and effectively by violating the principles of democracy, whose defending its principles is one of the objectives goals of the plaintiff's organization.

3. the damage that happened in Iraq since the fall of the regime on 2003 and so far, is because of quotas which reflected on all aspects of life in the Iraqi society and the Iraqi state, therefore the decision to consider the challenged texts to be unconstitutional, and repeal it and amending it will reflect positively in various aspects of life.
4. The damage that we have mentioned in the paragraphs above is real and tangible, not theoretical, future or unknown.
5. The plaintiff did not benefit from the texts required for the judge of unconstitutionality in whole or partially.
6. As the plaintiff is a civil society organization among its objectives is to defend democracy, therefore the texts under appeal were related to it, and applied to it as part of the democratic process in Iraq.

Forth: for the aforementioned reasons we appeal that the text (1, 2, 3, 4 and 5) that are listed in paragraph (second) above to be unconstitutional. The agents of the plaintiff requested the F.S.C. the following:

- 1) Invite the speaker of the I.C.R./ being in this post, to the argument, and then judge him according to the aforementioned constitutional text with the following:
 - A. To judge that the text of paragraph (10th) of article (9) of the I.H.E.C law No.(11) for 2007 is unconstitutional.
 - B. To judge that the text of article (3) of the first amendment law to the I.H.E.C law No.(21) for 2010, is unconstitutional.
 - C. To judge that the text of paragraph (12th) of article (9) of the valid I.C.R. Bylaw, is unconstitutional.
 - D. To judge that the text of paragraph (3rd) of article (12) of the valid I.C.R. Bylaw, is unconstitutional.
- 2) Invite the Prime Minister/ being in this post to the argument, and the to judge him according to the aforementioned constitutional text the following:

- A. The unconstitutionality of the statement that they listed above, which was mentioned in paragraph (7th) of article (2) of the valid bylaw of council of ministers No.(8) for 2014.
- B. The unconstitutionality of the paragraph (12th) text of article (2) of the valid bylaw of council of ministers.

And to judge the defendant to do what it takes to modify the amended I.H.E.C. law No.(11) for 2007, I.C.R. Bylaw, and the council of ministers Bylaw, according to the decision that will be issued by the F.S.C. based on the principle of superiority of the Constitution in accordance with the text and spirit of the constitution. the agent of the defendant the speaker of the I.C.R. /being in this post has replied an answer to the case petition by his draft dated (26/6/2016), stated that the constitution of republic of Iraq for 2005, has taken into account the specificity of Iraqi society in terms of its multi tradition, ethnic, religious, and doctrinal, and structure its provisions on the basis of guaranteeing the rights of the all components of people in their enjoyment of citizenship rights, including ensuring their representation in the State institutions. in many constitutional texts, the constitutional legislator mentioned the components of the people by name and obligate that they must enjoy their religious rights article (2), linguistics in article (4), administrative, political, cultural and educational in article (125). And to establish bodies that guarantee the rights of these components article (105 , 106), as article (9/1st/Alif) was explicit in stipulating the balance between the components of the people when forming the armed forces and the security services were it stipulate that (the Iraqi armed forces and the security services shall consist of the components of the Iraqi people, taking into consideration (their balance and uniformity without distinction or exclusion...), according to that the Iraqi constitution has establish the certain guaranteeing the rights of the people components to enjoy the advantages and duties of citizenship, and thus the plaintiff is wrong in his case, and that what the text under appeal has included had been confirmed by the constitutional's basis, and that the ensuring

the rights of the people components is not conflict with the principle of equality and equal opportunity, but that guaranteeing these rights is a requirements for achieving equality and provide an opportunities for all Iraqis. The constitution has obligated the regular legislator to organize the guarantee of the right of the components of the people by laws as stipulated in the aforementioned articles in the case. He requested to reject the case and to support the constitutionality of the articles under appeal as far as it related to the I.C.R., and to burden the plaintiff the legal expenses. The agent of the defendant the prime minister replied to the case petition by his editorial draft dated on (8/2/2016) regarding the appeal of unconstitutionality of the statements listed in paragraph (7th) of article (2), and paragraph (12th) of article (2) of the council of ministers 's Bylaw No.(8) for 2014, he replied on that, that article (93) of the constitution of republic of Iraq for 2005, it has guarantee in paragraph (3rd) of it the right of the council of ministers, and the plaintiffs of right, to direct appeal before the court according to article (6/1st) of the bylaw of the court No.(1) for 2005, its require that the plaintiff have current and direct interest in the case subject related to his legal, financial and social post. When referring to the paragraphs that the plaintiff requested in his case petition to judge by its unconstitutionality, We didn't find that he have interest in the institution of the case, his claim that the interest is achieved by exceeding the state of quotas, which strengthens the principles of democracy, which achieve the objectives of his organization is inappropriate claim, as it does not conflict between the protection of constitutional principles and the representation of the components of the people in various institutions of government, and that the valid constitution confirmed in many of its articles to take into account the balance in various facilities of the state, including article (9/1st) which point out that the Iraqi armed forces and the security services are composed of the component of the Iraqi people taking into consideration their balance and uniformity without distinction or exclusion, as he referred to that in article

(49/1st) of it and article (125). Were the principal of equality that was stipulated by the constitution does not mean the treatment of categories of citizens (despite the disparity between it legal position), even and equal treatment without discrimination. As the rejected discrimination is the discrimination that creates unfair distinction between people despite the uniformity of their legal positions. Therefore he requested to reject the case and to burden the plaintiff all the expenses and the advocacy fees. The agent of the plaintiff replied to the answering draft of the agent of the speaker of I.C.R. that dated on (23/3/2016), that the agent of the defendant the speaker of I.C.R. discussed in his answering draft after reviewing the mentioned appeals against the articles from the law of the I.H.E.C. No.(11) for 2007, and article (3) of its amendment according to the law No.(21) for 2011, and article (9/12th) of the I.C.R Bylaw, justifying the use of the statement (balance) within these articles by the listed texts in the constitution of republic of Iraq for 2005, Which deals with the guarantee of religious, linguistic, administrative, cultural and educational rights and the establishment of bodies that guarantee the rights of components, he missed that guaranteeing the right of the components does not mean that jobs and positions at various levels should be filled in the manner of sectarian and ethnic quotas regardless of the eligibility of the incumbent of those jobs, and the extent of their eligibility and competence to hold the position. and this is what actually done through successive ministerial formations since the vote on the Constitution and considered effective. When we appeal by the unconstitutionality of the legal articles and the paragraphs not because it guarantees the rights of components, as the statement (the balance) have been used to devote sectarian and ethnic quotas, distantly from the representing the components through efficient person and worthy of holding the jobs and positions. Also he appealed against the statement of (the balance) included within the article (9/1st) for the importance and sensitivity of the subject, which led to its inclusion within this area without other areas, and that

makes him right in its request to rule by unconstitutionality. The agent of the defendant stated that guaranteeing the rights of the components does not contradict the principle of equality and equality of opportunity, and he responds to this by demanding the adoption of the principle of equality and equal opportunities in the post incumbency and positions in the State, and the compete to incumbency its must be based on the principle of efficiency and equality by all components distantly from sectarian and ethnic quotas, With the possibility of guaranteeing the rights of all components, which makes the case consistent with the constitutional texts that are concerned with their superiority upon all legislation. For the aforementioned reasons he requested to judge according to the case petition. The agent of the plaintiff replied to the draft of the agent of the council of minister by the answering draft that dated on (23/3/2016) clearing that the agent of the defendant the prime minister discussed in his answering draft on the case petition the requiring of existence of a direct, influential, and current interest in the legal, financial, and social post of the plaintiff in implementation of paragraph (1st) of the F.S.C. Bylaw No.(1) for 2005, in order to have the right to initiate the law suit before the F.S.C.. he respond to that, by that he clear in his case petition the availability of all required conditions for initiate the law suit before the F.S.C., in the approved case in article (9) of the court bylaw, in order to achieve the objectives mentioned in the sequence (7) of the goals of the (Tawasoul organization for youth empowerment), which is headed by its administrative commission, with is (7- the organization seeks through peaceful and legal means to defend democracy and constitutional texts), were as this text speaks about defending the democracy and constitutional texts, and that the organization is approved by the Department of NGOs associated with the General Secretariat of the Council of Ministers under the registration certificate that is currently valid, which give the right to the plaintiff to initiate this law suit, and the statement (the balance) that was mentioned in the council of ministers' Bylaw, means in

reality and implementation the sectarian and ethnic quotas that are fundamentally contradict with the principles of democracy adopted by the Constitution. As for the reference of the constitution in more than one place to the components, dealing with the components and guaranteeing their rights is different than the concept of sectarian and ethnic quotas that were a direct cause what Iraq suffering from calamities. As for the text of article (9/1st) of the constitution about the balance of armed forces, this is because of the specificity and importance of the subject in order to avoid being challenged by this paragraph. It was stated in the Constitution for a specific situation within the armed forces, which means that illegality the use of the statement (the balance) listed in that paragraph, and it was not stipulated in other placements as an exception rather than a general rule. As for what the agent of the defendant has pointed out for the principle of equality that was approved by the Constitution, this does not mean treating the categories of citizens (despite the disparity between it legal positions), we show that the principle of equality is indivisible, but that this principle means absolute equality between citizens who have the same required qualifications to occupy any position in the State regardless of their sectarian and ethnic belonging. The court has convened in the appointed date, attended for the plaintiff/ being in this post his agent the attorney (Zin.Dad.Dal) by the power of attorney linked to the case petition. Attended for the defendant the speaker of the I.C.R./ being in this post his agents the legal officials (Sin.Ta.Yeh.) and (Heh.Mim.Sin.) by the power of attorney linked to the case petition. Attended for the plaintiff the prime ministers/ being in this post his agent the legal officials (Ha. Sad), and proceed with the case in presence and publicly, the agent of the plaintiffs repeated the case petition and requested to judge according to it, the agents of the defendant the speaker of the I.C.R./being in this post repeated what listed in the answering draft and requested to reject the case and to burden the plaintiff the expenses and all the attorney fees, the agent of the defendant the prime ministers / being in this post repeated what

listed in the editorial answering draft and requested to reject the case and to burden the plaintiff all the expenses. where nothing left to be said the argument has been closed and the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the F.S.C. and after studying what listed in the case petition which included the appeals that the plaintiff submitted against the articles listed in the I.H.E.C code, and against the listed article in the I.C.R. bylaw, and also against the listed article in the bylaw of the councils of ministers, for violating the provisions listed in the constitutional text that he mentioned in the case petition, which was listed above, and the tenor of the texts under appeal for being unconstitutional that it adopted the principle of balance between the blocs, which means in fact as he says ((sectarian, ethnic and political quotas)). The court reviewed the answers of the defendants/ being in their posts, by refereeing to the constitutional articles which the plaintiff adopted it as the base for his request to rule by unconstitutionality of the texts under appeal that mentioned above. It was found that the enactor of these constitutional texts took into consideration the particularity of the Iraqi society, as it is multi-ethnic, religious, and doctrinal. It aims when enacting to guarantee the rights of all the Iraqi people to build the state and its constitutional institutions and to participate in its administration according to the abilities and scientific and professional qualifications of the individuals of these components, to prevent the exclusion of any component, and without the individuating of a component, sect, race, or doctrine to take over the administration of the state and its institutions, these texts include the text of articles (2), (3), (4/1st), (9/1st), (105), and (106) of the

constitution. By viewing the content of these texts and their meanings and goals, it found that it aim for this objectives and seeks to achieve it in all its dimensions. And by referring to the text under appeal or being unconstitutional listed in the code of the I.H.E.C., and the bylaw of the I.C.R., and the bylaw of the council of ministers, the F.S.C. found that it was drafted according to the aforementioned constitutional text aiming for the same objectives that the constitutional text are aim to achieve, which is the participation of all members of the components of the Iraqi people in the responsibility of running the affairs of the State, and assume positions and posts, each according to its specialization and abilities and achieve the equality that were meant by the article (14) of the constitution, which is good choice, transparency, professionalism. However, the practical implementation of these texts the subject of appeal was contrary to the purpose of their enacting, the forces that have the decision has been interpret it differently to what it aim of objectives first in the name of the electoral entitlement, second in the name of the gather participation, and third in the name of compatibility, and other names that led in one way or another to the complaint in the case petition. The F.S.C. found that the text under appeal for being unconstitutional listed above, it content and meanings did not included any violation for the mentioned constitutional text in the case petition, However, the flaw was in the implementation of the decision-makers and the forces to these texts, which resulted in the failure to achieve its objectives and the lack of balance and justice and equality in responsibility between the members of the Iraqi people and the opportunities in their legitimate rights and without the adoption of competence, professionalism and integrity. The F.S.C. find that the correction of this flaw in the implementation is not by cancelling the constitutionally texts the

subject of appeal, but by correcting the course of the implementation in the ways prescribed by law. Therefore the F.S.C. decided to reject the plaintiff's case and to burden him the expenses and the advocacy fees for the agent of the defendants amount of one hundred thousand Iraqi dinars divide on them equally. The decision has been issued decisively and unanimously and issued publicly on 16/8/2016.