



The Federal Supreme Court (F S C) has been convened on 4.30.2018 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-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (feh.ain.alif.ain.feh) – member of Baghdad governorate Council – representative of Faili Kurds – his agent the barrister (sad.mim.ain).

The Defendants: 1- Speaker of the ICR/ being in this capacity – his agents the jurists the director (sin.ta.yeh) and the legal consultant assistant (heh.mim.sin).

2- The Higher independent electoral commission/ being in this capacity – his agent Mr. (alif.ha).

The Claim

The agent of the Plaintiff claimed before the FSC in the case number (44/federal/2018) that the current amendment on the ICR elections law number (45) for 2013 clause (waw) for item (2nd) of article (11) (granting Faili Kurds (1) seat in Wasit governorate Council). The higher independent electoral commission announced that all quota seats which dedicated for minorities such as Christians and Mindai Saba'a considered Iraq as one electoral office, except Faili Kurds. Whereas it considered one closed office in Wasit. Inasmuch Faili Kurds are aggrieved group forms 25 % of Shiite Kurds in Iraq whom exposed to kill and displacing. They are now dispersed in Baghdad and many other Iraqi governorates, most of them still in diaspora countries. Therefore, this decision regarded abnormal injustice against Faili Kurds, and it will deprive 90 % of them the right of participation in the elections.

Accordingly, the agent of the plaintiff requested from the FSC to call upon the defendants/ being in their capacity for argument, and to judge with making Iraq one electoral office for Faili Kurds quota, along the lines of other minorities. Also to judge by stipulating the quota candidate of Faili Kurds to be a victim of this group. This matter shall be enhanced with confirmation letter from the Ministry of migration and displaced, general directorate of identity, foundation of martyrs and political prisoners for incompetence of the defendants of treating Faili Kurds case. As well as removing all negative implications of them according to the higher criminal Court decision number (426) for 2010 and the following instructions issued by the cabinet, and to burden them all expenses and advocacy fees. The agents of the first defendant (Speaker of the ICR/ being in this capacity) answered by answering draft dated on (3.20.2018) that article (49/3rd) of the Constitution stipulates (a law shall regulate the requirements for the candidate, the voter, and all that is related to the elections). Therefore, the elections law number 45 for 2013 (amended) has been enacted according to rule of the Constitution, and it also represent the legislative will in all its texts and latterly amendments. They requested to reject the case because the plaintiff's request is out of the FSC's competence which stipulated in article (93) of the Constitution and article (4) of its law, and they also requested to burden the plaintiff all the judicial expenses. The agent of the second defendant (higher independent electoral commission) by its letter Ref. (kha/18/712) on 4.1.2018 that the first amendment of the ICR's elections law number (1) for 2018 deal with quota of Faili Kurds similar to quota of Yzedi group and quota of Shabak group as shown in article (11/2nd/beh-dal) of the ICR elections law number (45) for 2013 which stipulated (dedicated seats from quota to Christians and Mindai Saba'a including one electoral office). Also the commission is an executive body not legislative, and its work about this case was as implementation for the law and obliging to it. Therefore, he requested to reject the case for Non-adversarial. After entitling this case at this Court and completing required procedures according to the bylaw of the FSC number (1) for 2005. The day 4.30.2018 was set as a date for argument, and on that day the Court has been convened. The agents of both parties attended, the agent of the plaintiff repeated the petition of the case and she requested to judge according to it. She presented an answering draft on the drafts of the

defendants, and she recited a briefs of it during the session. The agents of the defendants answered that they repeats what listed in their answering drafts, and they requests to reject the case for the reasons mentioned in these drafts. Whereas nothing left to be said, the end of the argument made clear and the decision recited publicly in the session.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the case of the plaintiff is a request of obliging the defendants each of the Speaker of the ICR and the higher independent electoral commission by making Iraq one electoral zone as for Faili Kurds. This matter will enables them from collecting voters' votes all over Iraq, and shall get electoral seats fits with their population percentage in Iraq. This process will bring fair to their rights. The FSC finds that executing this request forms a legislative choice for the ICR according to its competence stipulated in article (61/1st) of the Constitution, and it had been exercised in what related to officially approved religious sects in Iraq according to religious sects regulation number (32) for 1981 (amended) in relation to Christians and Mindai Saba'a. Therefore, executing this request is out of the FSC's competence which stipulated in article (93) of the Constitution and article (4) of its law number (30) for 2005. Accordingly, the Court decided to reject the case for incompetence, and to burden him the expenses and advocacy fees of the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the law. . The decision issued decisively according to provisions of article (94) of the Constitution and article (5) of the FSC's law number (30) for 2005, and made clear on 4.30.2018.