



The Federal Supreme Court (F S C) has been convened on 17.2.2015 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-Tamimi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (kha.mim.sin.alif.ain)/ – his agents the barristers (ain.ra.ha) and (ain.waw.mim).

The Defendant: the head of the high independent electoral commission/ being in this capacity/ his agent the jurist official (alif.ha.ain).

The Claim

The agents of the plaintiff claimed that the high independent electoral commission didn't apply the order of distributing the electoral seats, which issued under the number (14) for 2014, especially in what related to women's quota mentioned in the (third step) of the order abovementioned, and the clauses come after that. It came with a new mechanism of distributing the seats wasn't listed in the order above mentioned, while the seats' distribution was violating the constitution and touches the rights of the nominees and the electors, he proposed to challenge it before the FSC because the dedication of a seat for the females of the list which the plaintiff belongs to No. (227) despite his attaining the biggest number of the electors' votes considered a constitutional violation, while it violated the constitutional articles (article14- the principle of equality and article 16... equal opportunities and article 20- Iraqi citizens, men, and women, shall have the right to participate in public affairs and 38/1st the State shall guarantee the freedom of expression using all means, press, assembly, and demonstration). What was enacted by the enactor in the law of elections No.

(45) For 2013 was corresponding with the FSC's decision No. (12/federal/2010) and (36/federal/2013) on (14.6.2010 and 26.8.2013) respectively. Whereas these decisions took into consideration the justice and fair, and the commission didn't oblige with it when used the mechanism of seats' distribution and replacing the plaintiff by the female element, worthy to mention that the share of Nineveh governorate from the electoral seats are (31) and the women's share is (8) seats (a quarter of the seats) after distributing it according to the (third step/alif) of electoral seats distribution order abovementioned, by the women's quota became in Nineveh governorate (7) seats from the origin of (8) seats dedicated for it. As per the claim of the plaintiff, two lists were left which they are (Nineveh national alliance) and (Al-Arabiya alliance) and both lists have three seats. He claims that his list possessing votes more than the other left list (Al-Arabiya alliance) which means that the last list is the weakest winner, therefore it will take the eighth seat which dedicated to women. But the commission didn't follow this procedure and replaced it with the eighth seat. Accordingly, the agents of the plaintiff requested to judge by (unconstitutionality) of the ICR's elections seat distribution order No. (14) for 2014 (the third step – women's quota). The agent of the defendant/ being in this capacity answered the petition of the case by his draft dated on (23.7.2014) that the seat distribution had been executed according to the third step of the electoral seat distribution order abovementioned clause (2/beh/3) (a seat for women shall be dedicated after two winner men in regardless of the votes which the men attained). The electoral seat distribution order No. (14) For 2013 had been issued as implementing of the ICR's elections law No. (45) For 2014, and the plaintiff had challenged it before the judicial committee of the elections. The decisions of the aforementioned committee are final and decisive according to the article (8) of the high independent electoral commission law No. (11) For 2007. Accordingly, the agent of the defendant requested to reject the case. The agents of the plaintiff presented and illustrative draft on 18.12.2014 which included a repetition of what they listed in the petition of the case. After registering the case according to the clause (3rd) of the article (1) of the FSC's bylaw No. (1) For 2005, and completing the required procedures according to the clause (2nd) of the article (2) of the aforementioned bylaw, the day 18.11.2014 had been scheduled as a date for the argument. On this day, the Court had been convened with the attendance of all the parties. The

agent of the plaintiff repeated what was listed in the petition of the case, and they added that the plaintiff had been excluded from winning the ICR membership and this matter violates the law. They requested to grant the seat for their client. The agent of the defendant answered, and he requested to reject the case because the plaintiff previously challenged the subject of the case and his challenge had been rejected. Therefore, his case is not a competence of the FSC. The agents the plaintiff answered that their client is challenging the unconstitutionality of the seat distribution order, for the scrutiny the Court decided to postpone the argument till 18.11.2014. On 18.11.2014 the Court had been convened like before, the agents of the plaintiff repeated what listed in the petition of the case, confirming that the commission didn't implement the clause (2/alif) of the third step (counting the women's quota) from the order of seat distribution No. (14) For 2014 which meaning (after every (3) men woman). This matter caused an aggrieve for their client, whereas the share of the women should be (4) seats from the list of (united for reformation) which won by (12) seats, but for decided percentage (8) seats for the women, the commission took the eighth seat from their client. For more scrutiny and to study the reasons for the challenge of how counting the women's quota, the argument had been postponed till 17.2.2015. On this day, the Court had been convened like before and on the scheduled dated the case's parties attended, and each one of them repeated during the session what listed in their drafts and previous sayings. Whereas nothing left to be said, the end of the argument had been made clear and the decision was recited publicly.

The decision

During the scrutiny and deliberation by the FSC, the court found that the agents of the plaintiff claims in the petition of the case that the high independent electoral commission didn't implement the order of seat distribution No. (14) For 2014, especially what related to women's quota referred to the third clause of the aforementioned order and the clauses comes after it. Whereas the commission used a new mechanism for the seat distribution wasn't listed in the order above mentioned. While the electoral seat distribution on the winner nominees of the ICR elections was violating the constitution with the method shown in the petition of the case, and it's

infringing the rights of the nominees and the voters as well. Therefore, they proposed to challenge it before the FSC. Whereas the competences of the Court are stipulated in the article (93) of the Constitution of the Republic of Iraq for 2005, and the article (4) of its law No. (30) For 2005 but not among these competencies is trying the challenges presented on the mechanism of seat distribution of the ICR. Whereas the law of the high independent electoral commission No. (11) For 2007 had determined in the article (8/3rd & 4th) the method of trying the challenge followed by distributing the ICR's seats as a competence of the judicial committee in the federal cassation Court. Accordingly, the Court decided to reject the case for incompetence and to burden the plaintiff the expenses and the advocacy fees for the agent of the defendant/ being in this capacity the jurist official (alif.ha.ain) amount of one-hundred thousand Iraqi dinars. The decision has been issued final and unanimously according to the provisions of the article (94) of the Republic of Iraq Constitution for 2005, and the article (5/2nd) of the FSC law No. (30) For 2005. The decision has been made clear on 17.2.2015.