

Republic of Iraq  
Federal Supreme Court  
Ref. 88 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/2/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoub Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Khaled Ahmed Taha who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Murtadha Kamil Mohesin  
2. the Secretary General of the Civil National Movement/ being in this capacity

Their agents the  
Barristers Basim  
Khazal Khashan and  
Ahmed Saeed Mousa

The Defendant: the Speaker of the ICR/ being in this capacity – his Agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiffs claimed that they challenged before this court the constitutionality of the distribution of electoral districts in Babylon Governorate in accordance with the table attached to the Law on the Election of the Council of Representatives No. (9) of the same law published in the Iraqi Gazette (4603), as well as the constitutionality of paragraphs (fifth, sixth and seventh) of the article (16) of the same law because it is contrary to the Constitution for the following reasons: first: the Council of Representatives voted on the table of the section of the Governorate of Babylon to four constituencies comprising each of the same positions of a certain number of electoral centers, a table other than the one voted was published in

*saady*



the Iraqi Gazette, where the published table was transferred Abu Gharagh sub-district which has 55,588 registered voters from the second district to the first district, withholding the schedule voted by the Council of Representatives and carrying the signature of the Speaker of the Council, and publishing another table, violates the first article in the Iraqi Constitution, Article 1, because the parliamentary system requires that laws be enacted by a vote of the Council, and published as voted on without changing their texts. Second: It was agreed in the Council of Representatives that members of the Council of Representatives from each province will divide their districts by the number of seats in the Quota of women, and most members of the Babylon governorate Council are now candidates in the 2021 elections of the Council of Representatives, and the deputies of the governorate have been divided into constituencies and distributed electoral centers in a distribution that brings together the electoral centers in which each deputy candidate received a large percentage of votes in one district to facilitate his victory in the elections. This is contrary to the principle of equal opportunities between candidates who have drawn constituencies in accordance with their electoral interests, and other candidates who had no opinion in drawing them, and that the transfer of positions in the district of Abu Gharagh from the second district to the first district was a dedication to this infringement on the right of other candidates and voters to equal opportunities, which was done by means contrary to the provisions of the Constitution. Third: The inequality of electoral districts runs counter to the principle of equal opportunities, as the transfer of Abu Gharagh from the second constituency to the first constituency (55,588) added voters to a total of 311,420 voters, bringing the number of Voters in the second

*saady*



district (227,754) are voters only, bringing the difference between the number of voters in the first and second districts (666 and 83), although the number of competing seats in both constituencies is four, and this is one of the inequality reasons in the constituencies of Babylon Governorate. Fourth: Article (16) paragraph (7<sup>th</sup>) stipulates that (if two or more constituencies receive the same percentage, a seat is added to the district with the lowest number of votes) and the percentage indicated in this paragraph is the percentage of women in the electoral district after adding a hypothetical seat according to paragraph (5<sup>th</sup>), the application of paragraph (7<sup>th</sup>) necessarily means that when the completion of women's seats in the governorate requires that only one seat be allocated to women from one of the three constituencies, this seat will be allocated from the second district seats if the three constituencies receive the same percentage according to paragraph (5<sup>th</sup>), and achieve the same percentage of voting in all of them, because the Second District is the lowest list in terms of the number of registered voters, contrary to the principle of equality before the law listed in article (14) of the Constitution, the right of the candidate and his or her voters to equal opportunities in article (16) as well as to the right of voters to choose who to represent and the principles of democracy. Fifth: in accordance with article (16) paragraph (7<sup>th</sup>) a seat is reserved for women from the list with the lowest number of votes, and the above-mentioned tables have revealed the resulting primary discrimination and conflict with the principle of equality between Iraqis before the law, and with the right of each member of the people, candidates, and voters, to equal opportunities, and therefore is invalid by article (13) of the Constitution, all that is stipulated in this paragraph, as well as paragraphs (fifth and sixth) of this article. For the foregoing, the

*saady*



plaintiffs requested the defendant's call to argue and rule that the table attached to the House Election Act No. (9) of 2020 was unconstitutional and that paragraphs (fifth, sixth, and seventh) of this law were unconstitutional because they conflicted with articles (1) (2/1<sup>st</sup>/Beh), (5), (14), (16) and (20) of the Constitution, and the defendant's obligation to redistricting the districts of Babylon governorate in accordance with the provisions, rights, and freedoms enshrined in the Constitution. The case was registered with this court in number (88/Federal/2021) and the legal fee was met on the basis of the article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendant/ being in this capacity with its petition and the documents attached to it in accordance with article (2/1<sup>st</sup>) of the above-mentioned Bylaw, and its agents answered by their answering draft attached to the case file and requested that the plaintiffs' case be dismissed and to burden him with the fees, judicial expenses and advocacy fees because they did not submit what Proves the validity of their claim and that the table attached to the Council of Representatives Elections Law No. (9) of 2020 published in the Iraqi Gazette No. (4603) on 9/11/2020 is the same as it was voted on in the session of the Council of Representatives and the plaintiff must prove the contrary, and the text in question was a legislative option in accordance with the jurisdiction of the Council of Representatives to legislate federal laws in accordance with the provisions of section (1<sup>st</sup>) of article (61) of the Constitution. After completing all the proceedings, a date was set for the case on the basis of the provisions of article (2/2<sup>nd</sup>) of the aforementioned Bylaw, and the parties were informed of it, and on the day appointed to the case the court was formed, the plaintiff himself was present, as well as his two agents, Basim Khazal Khashan and Ahmed Saeed Musa, and the same agents

*saady*



for the second plaintiff / being in this capacity attended, the legal counsel Haitham Majid Salem. The public in presence argument proceeded. The first plaintiff himself and the agents of the plaintiffs repeated what was listed in the petition of the case and requested to judge according to it, as well as, the agent of the defendant/ being in this capacity repeated what was listed in the answering draft presented by them, and requested to reject the case for the reasons listed in it. The Court noticed that there is a letter received from the general secretariat of the ICR/ legal department by the number (1/13/10106 on 10/11/2021) which included the reply of the parliamentary affairs directorate based on the letter of the Court, and attached with the minutes of the session No. (18) when voting on some articles of the ICR's elections law took place. The letter and its attachments paired with the case's file, each party repeated his previous sayings and requests. Whereas nothing left to be said, the Court has made the end of the argument clear and issued the following decision publicly:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, the plaintiffs (Mortadhaa Kamel Mohesin and the Secretary-General of the National Civil Movement/ being in this capacity) were challenged by their agents on the constitutionality of the distribution of electoral districts in Babylon governorate in accordance with the schedule attached to the Law on the Election of the Council of Representatives No. (9) for the year 2021 published in the Iraqi Gazette (4603) as well as an appeal against the constitutionality of paragraphs (fifth, sixth and seventh) of the article (16) of the said law, which indicated

*saady*



the provisions to be applied to complete the required number of seats for women allocated to the Council of Representatives, on the grounds that it is in conflict with the Constitution for the reasons listed in the petition, and when checking and after reading the minutes of the session of the Council of Representatives in the number (18) held on 29/10/2020, during which some articles of the Law on the Elections of the Council of Representatives were voted on and the CD with them, which includes the proceedings of the session and the schedules for the electoral districts in governorate of Babylon and send it to the Presidency of the Republic. It was found that these details were matching the tables published later in the Gazette by the number (4603) on 9/11/2020, and the dividing of the governorates into constituencies according to the tables attached with the papers which have been voted on in the session number (18) is not violating the principle of equal opportunities listed in the Constitution of the Republic of Iraq for 2005. As well, the paragraphs (5<sup>th</sup>,6<sup>th</sup>,7<sup>th</sup>) of the article (16) of the ICR elections Law for 2020 are considered a legislative choice, and nothing with it violates the provisions of the Constitution or contradicts it. Accordingly, for not the existence of a constitutional violation, the FSC decided to reject the case of the plaintiffs Murtadha Kamil Mohesin and the Secretary-General of the National Civil Movement/ being in this capacity and to burden them with the fees and expenses with the amount of one-hundred thousand Iraqi dinars as advocacy fees for the agents of the defendant/ being in this capacity, each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim to be divided between them according to the law. The decision has been issued unanimously, decisive according to the provisions of the articles (93 and 94) of the Constitution of the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 88 / federal /2021



Kurdish text

---

Republic of Iraq for 2005 and articles (4 and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 12/Rajab/1443 Hijri coinciding 14/February/2022 AD.

**Signature of  
The president**

**Jasem Mohammad  
Abbood**

---

*saady*