

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 93/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13.11.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges, Jaafar Nasir Hussein, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman, Mohammed Rajab Al-Kubaisi, Mohammed Qasim Al-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (beh. kha. kha.) his two agents (waw. shin. kaf.) and (ha. ra. sad.)

Defendant / Chairman of the Board of Commissioners of the Independent High Electoral Commission / being in this capacity his attorney the human rights officers (alif. haa. ain.).

Claim:

The agent of the plaintiff claimed that the defendant had already issued his decision No. (19) on 18/5/2018 contain the specialization of the seat won by his client for women, where he received (19675) votes in the elections of the House of Representatives for the province of Muthanna, the refer decision was based on the distribution system of the House of Representatives seats No. (12) of 2018. And to the plaintiff's conviction with the above-mentioned decision, he challenge to the FSC for the following reasons: 1- The system is violate to democratic principles for excluding the plaintiff (the winner with the highest votes and third place) in the Alliance Sayirun of the province of Muthanna And keep the lowest number of votes and replace it with a woman with the lowest votes among women candidates and this is a

violation of the principles of democracy represented by the right of voters to choose who represents them. 2- This system also violet with the principle of parity that it contains the article (16) of the constitution by keeping the next in the votes instead. 3- It also violate the mentioned system the article (14) of the constitution by replace the winning man with the most votes women winning the lowest votes in the same electoral list, this is violate to the provisions of article (14) of the constitution in the equality of men and women before the law. 4- The challenged system violates article (13/2nd) of the constitution because it violates the principles of democracy, equality of opportunity and equality state by the constitution is void by virtue of article (13/2nd) of the above-mentioned constitution. When the plaintiff's request (unconstitutional judgment, third step (calculating women quota) of the system of distribution of seats of the House of Representatives No. (12) of 2018. The defendant's agent replied to the petition with the following: The decision was challenged In order to consolidate the principles of democracy, the constitution requires that the share of women in the parliamentary seats be not less than (25%), which could be more than that. The challenged system did not depart from the principle of equal opportunity provided for in article (16) of the constitution which was confirmed by the article (14) of the election law of the Iraqi House of Representatives No. (45) of 2013 to make the representation of women in parliament not less than (25%) of parliamentary seats. also did not violate the principle of equality provided for in the article (14) of constitution by making women's quota (25%) of parliamentary seats as mentioned above. In addition, there is no conflict between the challenged system and article (13/2nd) of the constitution as stated in mentioned system application for the article (49/4th) of the constitution, the of the defendant's agent to reject the case. After registration of the case in accordance with the provisions of paragraph (3rd) of article (1), of the bylaw of the FSC No. (1) of 2005, after completion of the procedures required in

accordance with paragraph (2nd) of the article (2) from mentioned system appointed day 9/10/2018 a date for argument in which the court was formed and the plaintiff's agents and the defendant's agent attended. The plaintiff's agents repeated what was stated in the petition and requested the judgment. The court noted that the subject of the case was still in doubt, and the agents of the plaintiff were informed of a list to focus on what they wanted and were informed of the jurisdiction of the FSC. In view of the unconstitutionality of the legislation and the consideration of the illegality of the proceedings taken on the merits of the case, the case was postponed 13/11/2018, The court has been convened as before and the argument was initiated public advocacy. It was noted that the plaintiff's agent had submitted an explanatory list dated 23/12/2018 restricted his case under the judgment ((Unconstitutionality of the legal text contained in the system of distribution of seats of the House of Representatives no. (12) of 2018 which is the state of the paragraph (2) from the third step (calculating women quota), the defendant's agent responded to the illustrative draft for the agent of the plaintiff in his draft date 4/11/2018 which included a repetition of what was stated in pleading and request to reject the case. The agents of the plaintiff and the defendant repeated their previous statements where there is nothing left to say, the end of argument has been made clearly and the decision had been made clearly.

The Decision

When scrutiny and deliberation by FSC found that the plaintiff restricted his case under his draft date 23/10/2018 challenge of unconstitutionality the legal text contained in the system of distribution of seats of the House of Representatives No. (12) of 2018 Which is the text of the paragraph (2) from the third step (calculating women quota).

The FSC found that the receipt of the provisions (the third step - calculating women quota) in the system as a proper application of the

provisions of article (49/4th) of the constitution and its text ((The electoral law aims to achieve a representation of women not less than a quarter of the members of the House of Representatives)) and does not intersect with the ruling and this is what has been settled by this court in many of its provisions, including the ruling in the case (116/federal/2015) with unified and the judgment issued in the case (14/federal/2015) and what the plaintiff mentioned in the calculation method (women quota) in fact request to amend the procedures for calculating them and this is outside the jurisdiction of the FSC. Accordingly, the plaintiff's case is not based on a basis of the constitution and the law, and decided to reject it, and charge the plaintiff expenses and fees attorney and the defendant's agent and the amount of one hundred thousand dinars. The judgment was made by agreement decisively according to the provision of article (94) of the constitution and the article (5) of the FSC Law No. (30) of 2005 and clearly public on 13/11/2018.