

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 99 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Basim Kazaal Khashaan - his agent the attorney Waled Shaial Kadhem.

The defendant:

The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal advisor Haytham Majid Salim.

The claim:

The agent of the plaintiff claimed in the case petition that article (9) of the law No. (14) of 2019 (first amendment law to the law of electing the councils of governorates, districts and sub-districts No.(12) for 2018) contradicts the principles of democracy, the right of the elector to choose who represent him, principle of equality and the equal opportunities which makes it nullified under the provision



of article (13/1st, 2nd) of the constitution, therefore he challenged it, in order to prove the mentioned contradiction he listed the following calculations evidence:

First: First: the electoral divider (1.9) is more than the lower price with ratio that is more than (13%), the electoral divider (1.9) prevents the small lists that obtain more than half of the votes numbers obtained by the lists who won two seats, from winning one seat, because the price of the first lowest electoral seat is minimum number of votes, is sufficient to get the first seat) is more than the price of the second lowest electoral seat by more than (13%) and that is big ratio that prevent small lists that obtains enough votes to represent its electors in the council of representatives as shown in the attached chart.

Second: Elevating the electoral divider to more than (1.5) contradicts the constitution: the council of representatives has adopted Sainte-Laguë system which enable the small lists to inter the council of representatives, throw reducing the price of the first lowest seat to less than half the price of the second lowest seat, so that the large lists will not rule solitary, the legislator could amend the electoral divider if he desire under the condition that he don't exceed the electoral divider that will achieve balance and equity between the price of first and second seat in accordance with the attached chart.



Third: The electoral divider (1.5) and less doesn't prevent the higher list from its entitlement: in case that there are five entities competing for three seats, and the amended (St. Lego system) (1.5) is applied, then the higher entity has won by a percentage that does not exceed (45%) of votes, so it won two seats, and this constitutes a percentage of (17%) of the number of seats, this means that the higher entity was not affected by the amendment of the electoral divider to the divider of balance and equality (1.5) the evidence to that is its obtaining a representation percentage in the elected council that exceeds the percentage of the votes it obtained, as shown in the attached chart. In case of amending the first electoral divider to (1.5) the higher list acquires all the seats, despite obtaining a percentage that does not exceed (45%), so this does not represent the largest percentage of the electorates, any of the opposition parties or small parties, and this contradicts the principles of democracy, as shown in the attached chart. From the judicial proceedings the judgment of the F.S.C. No.(15/federal/2018 unified with 16, 17, 19, and 20/federal/2018) to reject the plaintiff's challenge against the constitutionality of amending the first electoral divider from (1.6) to (1.7) under the claim that it effects on the electoral alliances, noting that the plaintiff in that lawsuit didn't mentioned the contradicting of that amendment with the principle of democracy and the right devoted and protected by the constitution, such as



the right of people to choose who represent him in article (5) of the constitution, equality principle in article (14) of it, equal opportunities in article (16) of it, knowing that the estimated court didn't assigned an experts to clear the complex technical aspects that won't be achieved without applying mathematical formulas. For the aforementioned the agent of the plaintiff requested to (rule the unconstitutionality of article (9) of the first amendment law to the law of electing the councils of governorates No.(14) for 2019, and to compile the defendant to amend first electoral divider to (1.5) and less.

The agent of the defendant (the speaker of the I.C.R./ being in this post) responded to the case petition with the following: the amendment –subject of challenge- which was approved by the I.C.R. of dividing the votes came as legislative choice in accordance to it stipulated jurisdictions in paragraph (first) of article (61) of the constitution and doesn't contradict its provisions, and the request of the plaintiff agent to compile the I.C.R. to amend the electoral divider in the law –subject of challenge- (1.5) and less is out of the F.S.C. jurisdiction according to article (93) of the constitution, for the listed reasons the agents of the defendant requested to reject the lawsuit. The agent of the plaintiff submitted additional draft on (10/10/2019) repeated in it what stated in the case petition. After registration the case before this court according to paragraph (3rd) of article (1) of the F.S.C. Bylaw No.(1) for 2005 and completing the



required procedures according to paragraph (2nd) of article (2) of the mentioned Bylaw, a date was scheduled for the argument, the court convened and call upon the parties, the agent of the plaintiff, the plaintiff himself and the agent of the defendant all has attended and continue with the argument in presence and public. During scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the agent of the plaintiff challenged in his case petition article (9) of the law No.(14) for 2019 first amendment law to the law of electing the council of governorates and it followed district and sub-district No.(12) for 2018, as it contradict with the principle of democracy and the elector right to choose who represent him, also contradict the principle of equality and equal opportunities listed in articles (14, 16) of the constitution which makes it annulled according to the provision of article (13/1st , 2nd) of the constitution, and requested to judge it unconstitutionality , and to compile the defendant to amend the electoral divider stipulated in it from (1.9) to (1.5) and below. The F.S.C. finds that enacting article (9) of the law No.(14) for 2019 first amendment law to the law of electing the council of governorates and it followed district and sub-district No.(12) for

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2018 came as legislative choice practiced by the I.C.R. in accordance with it stipulated jurisdiction in article (61/1st) of the constitution therefore it doesn't violate the constitution, as for the plaintiff's agent request to amend the electoral divider stated in article (9) above from (1.9) to (1.5) includes an amendment to the mentioned law, and amending the law is not within the jurisdiction of the F.S.C. that are stipulated in article (93) of the constitution and article (4) of it law No.(30) for 2005. for the aforementioned, the court decided to reject the lawsuit and to burden the plaintiff the expenses and advocacy fees for the agent of defendant amount of one hundred thousand Iraqi dinars. This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5/2nd) of the F.S.C. law No.(30) of 2005 and issued publicly on 27/1/2020.