



The Federal Supreme Court (F.S.C.) has been convened on 27.11.2013 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

The Plaintiff:

(sad.nun.kaf.) his agent the attorney (mim.sin.jim).

The defendant:

The President of the Independent High Electoral Commission – in addition to his post his agent the legal official (alif. ha.ain).

The claim:

The agent of the plaintiff claimed that the F.S.C. decided the unconstitutionality of third step (women' quota calculation) of seats disrupting system of the councils of governorate, district, sub-district for violating the provisions of articles (14, 16, 20, 28/1st) of the constitution, and the provisions of fourth amendment for the law of governorates of

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the councils of governorate, district, sub-district no.(114) for 2012. The legislator intent was that the elector right is granted legally to choose who represent him, therefore the defendant seeking to grant the votes of the plaintiff to a woman who obtained less votes which wasted the principle of equal opportunities and injustice the one with more votes, the followed mechanism has no legal substantiation and doesn't achieve the constitutional principles. Obtaining the quota of women must start from the lists that obtained the majority of seats in the required ratio, the including of list with two seats in the quota of women before the bigger lists makes the ratio over achieved in obtaining what they don't have the right in, as it reaches (50%) which is not allowed in comparing with the bigger lists that its ration don't reaches (25%) of the votes which affected the electors interest and their freedom. As the plaintiff is member of Islamic Dawa Party (branch of Iraq) was injured from the decision of the Board of Commissioners no.(1) regular minutes (115) on 1.9.2013 which stated to add the following text so that paragraph (d) of the third step (calculating women's quota) to be (if the required seats for women is not achieved according to what stated above, then a seat for them shall be allocated from the lists that obtained two seats, the winner candidate of the second seat shall be

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replaced with woman candidate). As this text didn't commune with the decision of the F.S.C. of granting the candidates full right to preserve the will of their electors who votes for them and won, what was happened is acquired right that can not be affected in order to maintain the stability of the situation, the above text of the Board of Commissioners is indirect rotation on the F.S.C. decision no.(36/federal/2013) that came clear in accordance with the constitution. accordingly his client requests to revoke the mentioned text, and to refer to the soul of law, and to implement the principle of justice, as it is not allowed that the replacement reaches (50%) of the votes, as his client obtained more votes than the other candidates in other lists and more than the woman to replace him, and to maintain the stability of the situation by make him enjoy the right stipulated in the constitution and law and the elections results, he request to implement the decision issued by the F.S.C., revoke paragraph (3) of the decision not just the amendment of paragraph (d) of it but what stated in decision no.(1) minutes (115) on 1.9.2013 which came to equity the wining lists of one seat, he request to equity the list of two seats for the same reasons, he request to issue in rush decision to keep his client in his position to save his right until the issuance of the Court's decision. After registering the lawsuit

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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 same bylaw, a date for the argument was appointed, the agent of the plaintiff and the defendant agent attended and started the in presence public session, the plaintiff agent repeated the case petition requesting to rule according to it and to burden the defendant the expenses and fees, the defendant agent repeated the answering draft dated on 13.10.2013 requesting to dismiss the lawsuit and to burden the plaintiff the expenses and fees. whereas nothing left to be seed, the argument is closed, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff agent requested in the case petition the F.S.C. to revoke paragraph (d) of the Board of Commissioners decision no.(1) regular minutes (115) on 1.9.2013, equity the list of two seats regard distributing the seats on the candidate of the governorate council. The F.S.C. jurisdictions are stipulated in article (93) of the constitution of 2005 and article (4) of the F.S.C. law no. (30) for 2005, it don't includes what the plaintiff requested of considering the challenges against distributing the seats on the winners as that is competent of

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the Independent High Electoral Committee, its decision submits to challenge before the cassation body formed in the Federal Cassation Court, therefore the plaintiff lawsuit is out of the F.S.C. jurisdiction, then it is binding to be dismissed from the aspect of jurisdiction. The court decided to dismiss the plaintiff lawsuit from the point of jurisdiction and to burden him the expenses and advocacy fees for the defendant agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final and publicly on 27.11.2013.

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