

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 103/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 12/11/2019 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: the speaker of Kurdistan region's parliament- Iraq/ being in this post-her general agent the attorney Serdar Sabah Alherky.

The defendant: The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

The claim:

The agent of the plaintiff (the speaker of Kurdistan region's parliament- Iraq/ being in this post) claimed that the I.C.R. has issued the Law No.(14) for 2019 first amendment Law for the Law of electing the governorates and district councils No.(12) for 2018, whereas many of its articles and paragraphs violated some of the constitutional articles, Law, and even the international human rights

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conventions, and it inflict damage to his client (the parliament of Kurdistan-Iraq), as the parliament of Kurdistan-Iraq according to the law No.(1) for 2005 which issued by it, consider as the political and constitutional reference to decide the existential issues of the Kurdistan people- Iraq, the Law No.(14) for 2019 will deprive large amount of the citizen from participating in the election which have direct influence on the future of the disputed regions, therefore his client interest was achieved on challenging the Law No.(14) for 2019 (aforementioned) for the following reasons:

First: The Law didn't earn the formality that was set by the I.C.R.'s Bylaw in articles (128, 129, 131) of it, whereas the speaker of the I.C.R. didn't bind to the submitted bill by the legal committee of the mentioned council, but presented new articles within the original Law bill including articles (12, 16) as it wasn't submitted to the competent committees, these new articles was voted on by these illegal mechanism.

Second: Article (12) of the amendment Law bind the independent high electoral committee to scrutinize and request the electors record in Kirkuk governorate, between the ration coupon and the civil status identity cards and to delete the names that don't match between the two records from the current electoral record of Kirkuk governorate, that will leads to remove the name of many of its native citizen who their names are listed within all statistics including the statistic of (1957), but because they was

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displaced by the former regime therefore their names would not be matched with the ration coupon exclusively Kirkuk governorate, and that violated group of the constitutional articles, the legislative costumes, preservation of human rights agreements, and the judicial proceedings, as the following:

- 1- Article (12) violated the articles (2/1st/b/c) of the constitution as depriving the qualified citizen of voting, contradict with the democracy principles and with rights and freedoms granted to them by the constitution.
- 2- the provision of article (12) is focused on Kirkuk governorate exclusively which violate the provision of article (14) of the constitution, accordingly the amendment -the subject of the case- is discriminate between the electors of Kirkuk governorate between themselves and with other electors of all other governorates.
- 3- Article (12) above contradict the provision of article (16) of the constitution which guarantee the equal opportunities for all Iraqis, while this amendment takes away this right from the electors of Kirkuk governorate exclusively without others.
- 4- Article (12) of the challenged Law violates article (20) of the constitution which guarantee the right of (voting, electing, nominating) for all citizen who are registered in the electoral record, and deleting the citizen names from those records in Kirkuk governorate will prohibited them from the voting right,

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the F.S.C. has a decision about this subject (99/104/106/federal/media/2018 on 21/6/2018).

- 5- The mentioned amendment contradict the content of article (140) of the constitution which was stipulated in first place to treat the arising issues from the politic of citizen change of the bygone regime in the disputed regions, whereas this amendment will cause the deprivation many of the electors from the rights of electing and nominating for election.
- 6- This amendment violated article (46) of the constitution, as the mentioned amendment consider as clear violation to important legal principal which is (principle of the acquired rights), as registering the electors in the electors' records is a right of the citizen, therefore it is an interest that the law must protect, not confiscated it, according to the mentioned constitutional article *restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom.* (the F.S.C.'s decision No.42/federal/2014).
- 7- The mentioned amendment contradicts the principle of the legal position' stability which the electors has earned for participating in many elections of Kirkuk governorate.
- 8- Fact-finding committee's instructions that the legislator has based on is specified for determining who is covered with the

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financial compensation as a result of their displacement.... As many of the damaged electors didn't submitted a compensation request to the mentioned committee.... but article (140) of the constitution mentioned talks about the previous regime's manipulation of the administrative borders of some governorates including Kirkuk and it consider as violation to the constitution the names deletion from the electors records whom have the civil status identity card of one of the deducted districts from Kirkuk under the claim that they are currently affiliated to the governorates which the districts are incorporated with, not taking into consideration that those electors are from native citizens of Kirkuk since the establishment of the Iraqi State and continue to live in it until 1976.

Third: Article (3) of the amendment law -the subject of the case- obligate the adoption of the smart card whether it was long term or short-term or long-term in case that the percentage of distributing the electors cards didn't reach (75%) and that contradicts with the content of article (16) of the same amendment law which obligate the use of the elector card (long-term) only (updated biometrically) for the displaced persons and the evicted persons in their electoral district, the defendant should have used the (long-term) cards to prevent the forgery, as the

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adoption of the (short-term) cards is a violation to articles (14, 16) of the constitution.

Fourth: Article (16/2nd) of the amendment law stipulated the obligation of the commission to (open new update according to the biometric record in Kirkuk and Ninawa governorates without taking into consideration that these governorates are not the only one that has gowned throw exceptional circumstances therefore there are political reasons for this legislation, and that violates the provision of articles (14, 16) of the constitution.

Fifth: Obligating the Ministries, bodies that are incorporated into ministry, the governmental institutions, and the semiofficial bodies to bind their employees to register, update, and receive the electronic elector' card which is biometrically updated (long term) according to article (17) of the amendment law, that consider as violation to number of the constitution articles and the human rights agreements because participating in public affairs such as nominating and voting is a right of the citizen who could use it or not using it, the obligation stipulated in article (17) above contradicts the articles (15, 20, 37, 46) of the constitution.

Sixth: The legislator has fall into many legislative mistakes in this law from the drafting method of some of its articles and the reordering the followed articles in the law text including what listed in articles (17, 19, 20, 21) of the mentioned law.

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Seventh: The law -subject of the lawsuit- didn't included an article to clarify in case of contradicting with other text in which law it shall proceed and how to treat this contradicting, as the common when legislating the laws, which leads to problems in case of contradicting with other laws.

The agents of the defendant (the speaker of the I.C.R./being in this post) responded to the case petition with the following: the challenged law didn't state the (deleting the citizens' names from Kirkuk governorate because their names didn't match with the ration coupon, but stated otherwise in many of its texts that stipulate the right of voting for all citizens. As for the claim of the plaintiff' agent that (the opening of new update period) according to the biometric registration in Kirkuk and Ninawa governorates is violating articles (14, 16) of the constitution, it is unauthentic claim because that was under the consideration that the mentioned governorates are more exposed to special circumstances that require the update. The obligating of the Ministries to bind their employees to register, update, and receive the updated electronic elector' card doesn't include in any status the obligation to participate in the electoral process. And the F.S.C. is not competent to consider the claim related to the drafting of some of the challenged law' text, for the aforementioned the agents of the defendant requested to reject the case. The plaintiff' agent responded to the answering draft with the following:

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1. The answering draft didn't answer what listed in the case petition regard the formality of enacting the law- the subject of challenge.
 2. The Law included deleting the electors' names and that wasn't clarified by the defendant' agents in details but they broach to generalities unrelated to the subject. the answer to the subject of long or short term smart cards that they are legislative choices but these choices must not include exceeding to article (13) of the constitution, as should equalize between the citizens and to bind to the provisions of articles (14, 16) of the constitution, the plaintiff doesn't object on opining new updating period according to the claim of the defendant's agents as showing in the case petition, as it is unusual to focus on Kirkuk and Ninawa under the claim that it going throw exceptional circumstances whereas there are other governorates similar in these circumstances such as Salah Al-dien and Al-anbar governorates, therefore behind the enacting of these texts a political and partial objectives, and the obligation of ministries and bodies that are incorporated into ministry of their employees to register in the electors records doesn't serve the interest of accomplishing electors data base under the claim of the defendant' agents, as the issue is regard the unconstitutionality and not the public interest, the plaintiff repeated the rest of the case petition and requested to judge according to it.

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After the case was registered 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 aforementioned bylaw, the date 12/11/2019 has set to proceed with the case, the court convened and the agent of the plaintiff the attorney Serdar Sabah has attended by the power of attorney linked to the case petition, and the agents of the defendant Salim Taha and Haytham Majid has attended, and continue with the argument in presence and public, the plaintiff agent repeated the case petition and added that he limits the requests of his client to the challenge against articles (3, 12, 16, 17) of the first amendment Law for the Law of electing the governorates and district councils regardless of other challenges, the agents of the defendant repeated the answering draft and requested to reject the case for the reasons listed in it, and they don't mind that the plaintiff limited it challenge against the mentioned articles. The court scrutinized the case petition and found that it is completed for the reasons of judgment, the argument has been closed and the decision is issued publicly in the session.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff the Speaker of Kurdistan region's parliament Iraq/ being in this post has challenged, after limiting her case, the articles (3, 12, 16, 17) of the Law No.(14) for 2019 (first amendment Law for the Law of electing the governorates and district councils No.(12) for 2018). When reviewed the articles the subject of

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challenge we found that article (3) of the mentioned Law has stipulated the conditions of the elector as following ((the clause (4th) of the article (5) shall be amend to be read as the following: registered in the electors record according to this Law provisions and own long-term biometrically updated electoral card (except the new nativities 2000, 2001, 2002), and in case that the percentage of distributing the biometrically electors cards didn't achieve (75%) in any of the electoral districts, the electronic card (long or short term) shall be adopted will showing the official papers count (2), however one of them should be either the civil status identity or the national card)). the F.S.C. regard this challenge finds that it violated the provisions of articles (14, 16, 20) of the constitution because it has deprived amount of percentage (25%) of the electors in the area the that the percentage of distributing the biometrically electors cards achieved (75%), they are the ones who do not possess an biometrics updated electoral card with a long-term while the challenged text gives all voters the right to vote in constituencies that have not reached the percentage of (75%) the distribution of biometric voter cards, as the electronic card is to be approved with two official documents, this regard the submitted challenge against article (3) of the Law. As for the submitted challenge against article (12) of the mentioned Law which stipulate that ((7. The independent high electoral commission is committed to scrutinize the electoral record in Kirkuk governorate with the ration coupon and the civil status

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card no later than (31/12/2020) and to delete the names the didn't match between the two records with the current electoral records of Kirkuk governorate, excepted from this who passed the procedures of Fact-finding committee which was formed under article (140) of the constitution in Kirkuk governorate)), regard this challenge the F.S.C. finds that it didn't concern the demographic changes that the former regime has followed before 2003 regard Kirkuk and other governorates, as a result, civil status departments and records and who registered in it were incorporated within the administrative units deducted from Kirkuk governorate and followed it up with other governorates, while the citizens of the deducted areas remained living in Kirkuk and hold up it ration coupon, by that the electors record of those will differ between the ration coupon and the civil status records, and to delete the names which didn't match between the two records as stipulated in the challenged article, and those who didn't pass the procedures of Fact-finding committee which was formed under article (140) of the constitution in Kirkuk governorate, as the scheduled date for the governorates councils elections will be in 1/4/2020, while the procedures period of the fact-finding committee is until (31/12/2020), and to deprive those who didn't pass the procedures of fact-finding committee before the election, by that article (12) of the mentioned Law violated the provisions of articles (14, 16, 20) of the constitution. As for the submitted challenge against article (16) of the mentioned Law

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which stipulate the allocation of electoral centers or specific stations for the displaced persons in their constituencies of the liberated cities in order to vote using the long-term biometrically updated elector card, and bind the Commission to open new update period in Ninawa and Kirkuk governorates to ensure the electors voting near their new living areas, while this article don't allowed to open new center or station after approving the final distribution and after finishing the update process, the F.S.C. found that the limiting of the text of opining new period of updating according to the biometric record in Nineveh and Kirkuk governorates only, without the other governorates that went through the same exceptional circumstances that these two governorates went through, including Salah alddin, Anbar and Diyala governorates, and depriving the displaced persons and the emigrants to it of exercising their electoral rights, therefore article (16) of the mentioned Law violated the provisions of articles (14, 16, 20) of the constitution. As for the submitted challenge against article (17) of the mentioned Law which bind the ministries, bodies that are not incorporated into a ministry, governmental and semi-official institutions to bind their employees to register, update, and receive the electronic elector' card which is biometrically updated long term, the F.S.C. finds that the citizen participation in practicing the voting, electing, and nominating is a right stipulated in article (20) of the constitution but it didn't bind him to practice this right, therefore article (17) the

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subject of challenge consider as forcing and coercion to practice a right that nether the constitution nor the Law has obligated it practicing throw the official bodies mentioned in it, or else how to explain the obligation to obtain the biometrically updated, accordingly this obligation is a violation to the provisions of articles (15, 37/2nd, 38/1st) of the constitution. For the aforementioned the Court decided the unconstitutionality of the articles (3, 12, 16, 17) of the Law No. (14) of 2019 (first amendment Law for the Law of electing the governorates and district councils No.12 for 2018) for violating the constitutional articles listed towards each of them, and to burden the defendant being in this post the expenses and the advocacy fees for the agent of the plaintiff amount of one hundred thousand Iraqi dinars. The decision has been issued with the agreement of eight members and the disagreement of one member regard articles (12 and 16) of the Law, and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 12/11/2019.

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