

Republic of Iraq  
Federal Supreme Court  
Ref. 131 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/6/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Amir Dawood Ibrahim Al-Fayli.

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

### **The Claim**

The plaintiff claimed that the Iraqi Parliament had already voted on article (13) paragraph (Alif) of item (2<sup>nd</sup>) of the Iraqi Parliament Elections Law No. 9 of 2020, where item (2<sup>nd</sup>) provided for (the following components shall be granted a share of quota for seats allocated seats, but not to affect their percentage if they participated in the national lists and as follows: Alif- The Christian component (5) five seats distributed to the provinces of Baghdad, Nineveh, Kirkuk, Dohuk and Erbil) and that this text distinguished between the Christian component and the Fayli component contrary to the iraqi constitution in force, where the Christian component was granted a share (Quota) five seats, while the aforementioned law allocated In article (13) paragraph (Heh) of item (2<sup>nd</sup>) the component of the Fayli Kurd (1) seat in Wasit province, which thus harms the Fayli component in other provinces and distinguishes them from the

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Christian component in equal opportunities, knowing that the children of the component Al-Fayli is scattered throughout Iraq (Baghdad, Diyala, Wasit, Babil, Basra, Maysan, Nasiriyah, Kirkuk, Erbil, Suleimania). Therefore, this law does not achieve the principle of equality and give equal opportunities to legislate federal laws through the full representation of the sons of the components in the Council of Representatives and the selection of their representative, and the allocation of one seat to the Fayli component is not commensurate with the number of souls of its sons, since the Republic of Iraq, based on article 1 of the Constitution of the Republic of Iraq (2005), is one independent and fully sovereign federal State, and the system of government has a democratic parliamentary republic, this constitution guarantees the unity of Iraq, which included the preamble to the Constitution (atonement and terrorism did not dissuade us from moving forward to build the state of law and we did not stop sectarianism, racism from marching together to promote national unity, the peaceful transfer of power, adoption of a fair distribution of wealth, and equal opportunities for all), also, the federal authorities, under article 109 of the Constitution of the Republic of Iraq, are obliged to preserve Iraq's unity, its safety, independence, sovereignty and federal democratic system, and this constitutional obligation to preserve Iraq's unity requires the application of the provisions of articles (14), (16) and (20) of the Constitution, which affirmed the principles of equality and equal opportunities among Iraqis and the right to participate in public affairs, and to enjoy political rights. Since the Council of Representatives, as the first federal authority based on an article (47) of the Constitution, which represents all components of the Iraqi people and where it assumes the terms of reference provided for in

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article (61) of the Constitution, which concerns all Iraqi people, including the legislation of federal laws and control of the performance of the executive branch, requires the full representation of the people in the Council of Representatives, where the State is built based on the existence of constitutional institutions that carry out their functions and duties in accordance with their constitutional obligations and based on their obligations. The basis of the principle of separation of powers, cooperation, and integration to achieve the goals of the Iraqi people. Thus, since paragraph (Heh) of article (13) item (2<sup>nd</sup>) stipulates (the component of the Fayli Kurds (1) one seat in Wasit province), this is contrary to the provisions of articles (14, 16, and 20) of the Constitution, which requires that the Fayli component be treated like the rest of the Iraqi people since the provision does not give the Filli component equal opportunities, which violates the principle of equality, in accordance with the powers of the Federal Supreme Court under the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq 2005 and articles (4 and 5) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, and in the same number as the Decision of the Federal Supreme Court (43/Federal/2021), in order to prevent the jurisprudence and interpretation that may be wrong for the Council of Representatives to believe that the aforementioned Federal Supreme Court decision is solely specific to the Yazidi component, the plaintiff asked this court (to rule that paragraph (Heh) of paragraph (2<sup>nd</sup>) of the item (2<sup>nd</sup>) of the Electoral Law No. (13) for 2020 was repealed and the Council of Representatives was notified of alternative legislation to ensure the principle of equality and equal opportunity between the Christian component and the Fayli component. The case was registered with this court in the number

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(131/federal/2022) and the legal fee for it was collected based on the provisions of article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and notify the defendant of its petition and documents in accordance with article (2/1<sup>st</sup>) of the same Bylaw mentioned above, the defendant's agent replied in the answer list of 5 June 2022 that the Federal Supreme Court had already ruled on the case by its decision in number (43/Federal/2021), which became a plea with its rulings and that such a case should be rejected and unsubstantiated by the Constitution and the law. Therefore, they requested to reject the case and to burden the plaintiff with fees, expenses, and advocacy fees. After completing the procedures stipulated in the aforementioned Bylaw, a date has been set for the case, in accordance with the provisions of article (2/2<sup>nd</sup>) of it, and all parties were notified with it. On a set day, the Court has been convened. The plaintiff by himself attended the Barrister Amir Dawood Ibrahim Al-Fayli, and on behalf of the defendant, his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim attended. The public in presence argument proceeded, and the plaintiff repeated what was listed in the petition of the case and requested to judge according to it. The agents of the defendant answered and requested to reject the case for the reasons listed in the answering draft dated 5/6/2022. The plaintiff and the agents of the defendant repeated their previous sayings and requests, whereas nothing was left to be said; the end of the argument has been made clear and the Court issued the following decision:

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**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the summary of the plaintiff's case was to request a ruling that paragraph (Heh) of item (2<sup>nd</sup>) of article (13) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 was unconstitutional for the reasons contained in his petition. The Court noted after the public argument and hearing the statements of the agents of the parties that the subject matter of this case has already been decided by the decision of the numbered judgment (43/federal/2021) on 22 February 2022, which ruled Unconstitutional paragraphs (Beh, Dal, and Heh) of item (2<sup>nd</sup>) of Article (13) of the Council Elections Law No. (9) of 2020 and its repeal as of the date of this decision after it amended its previous decision in number (45/federal/2020) dated 22 June 2021 for the seat of the Component of the Elephant Kurds and the notice of the Council of Representatives to legislate alternative provisions to ensure equality between the components mentioned in the above paragraphs with the Christian and Sabian components in accordance with the provisions of section (3<sup>rd</sup>) of the article (13) of the Same Law. Since the decisions of the Federal Supreme Court are final and binding on all authorities and since the aforementioned decision has been adjudicated in the case, therefore, it is not legally permissible to bring the matter before this court in this case or in another case, and the plaintiff's case should be dismissed before it has been decided. Therefore, the Federal Supreme Court decided to reject the case of the plaintiff Amir Dawood Ibrahim Al-Fayli and to burden him with the fees and the judicial expenses, including the advocacy fees for the agents of the defendant, the Speaker of the ICR/ being in this

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capacity, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount of 100 thousand Iraqi dinars; to be divided according to the legal proportions. The decision has been issued unanimously, and decisive according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4,5) of the FSC Law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 26/Dhul Qaeda/1443 Hijri coinciding 26/June/2022 AD.

**Signature of  
The president  
Jasem Mohammad  
Abbood**

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