



The Federal Supreme Court (F S C) has been convened on 26.8.2013 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff / Mohammed Kamal Salih Hasan. The Member of Kirkuk Governorate Council – his agent the Barrister Khalid Nafea Ameen.

The Defendant / the Speaker of the ICR/ being in this capacity/ his agent
The director Salim Taha Yaseen.

The Claim

The agent of the plaintiff claimed that the Iraqi Parliament issued the law of governorates, districts, and sub-districts councils' elections law No. (36) For 2008 and included in article (23) and its six paragraphs a clear violation of the decision of the FSC No. (45) On 2 July 2009 because it provides for the division of Kirkuk into four electoral zones distributed equally among its main components. (This division is considered racist) and the decisions of the FSC are now binding on all authorities and add to the above article (23) of the aforementioned law and its six paragraphs are contrary to the content of the FSC's decision as well as its decision (15/Ta/2006), (12/federal/2010) which is violating the provisions of articles (2/1st/Jim), (7/1st), (13/3rd) and article (20) of the Constitution of the Republic of Iraq for 2005, the most important of which is its violation of the provisions and content of article (140) of the Constitution, which is a basic article designed to resolve the problems in Kirkuk Governorate and the disputed areas which inherited by the former dictatorial regime. He requested the defendant/ being in this capacity to argument and to judge

by annulling the Article (23) of Law No. (36) Of 2008 with all its paragraphs for violating the provisions of the Constitution and the decisions of the FSC and to burden him the fees. After registering this case at the FSC and pay the legal fees, the defendant/ being in this capacity was notified by the petition of the case and its documents and requested to answer it. The plaintiff answered that the plaintiff didn't present the evidence of Kirkuk dividing into four electoral regions as a racial division, and this matter occurred because of disagreement on a base of census for the Governorate, moreover to create a type of national compatibility between the components until resolving the subject of census. The decisions of the FSC cited by the plaintiff have no relation with the case and concern the elections of the ICR, and no reference was made to the violation of article 23 of the provisions of the constitutional articles and he requested to reject the case. After the answer and based on the provisions of article (2/2nd) of the FSC's Bylaw No. (1) For 2005, a date was set for the case and the plaintiff attended as well as an agent for the defendant/ being in this capacity director Salim Taha Yaseen and director Haitham Majid. The public in presence argument proceeded, and the agent of the plaintiff repeated the petition of the case and he requested to restrict the case by the paragraphs (1st, 2nd) of article (23) of governorates, districts, and sub-districts councils elections law No. (36) For 2008 because they violates the provisions of the constitution. As well as, the agents of the defendant repeated their previous sayings, they added that the origin of the law bill had been presented by the cabinet. Both parties repeated their sayings. The end of the argument and the decision has been made clear.

The decision

During scrutiny and deliberation by the court found that the plaintiff requested in the petition of the case to judge by annulling the article (23) of the governorates, districts, and sub-districts elections law No. (36) for 2008, and on the session dated on 16.7.2013 the agent of the plaintiff restricted the case of his client by requesting to annul the paragraphs (1st and 2nd) of article (23) of the aforementioned law and ignoring the other five paragraphs of the aforementioned law. The paragraph (1st) stipulates ((the elections of Kirkuk governorates, its districts and sub-districts shall take place after executing the sharing of the administrative, security, and

public employments power, including the post the governorate council Head, the Governor and his deputy between the components of Kirkuk governorate with an equal proportion between the major components. The component with majority has the choice to select one of three posts, the Governor, his deputy or the Head of the governorate council)). The FSC finds that the aforementioned had obliged the administrative, security, and public employment in the aforementioned governorates shall be shared equally between the major components. Therefore, this text had missed the opportunity and deprived those who weren't from the major components of occupying the aforementioned employments, including the public employments. This matter is violating the provisions of article (16) of the Republic of Iraq Constitution for 2005 which stipulates ((equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken)). Therefore, restricting the aforementioned text by assuming these employments (the public employments) by the major components not the other individuals, and not listing the text of paragraph (1st) of article (23) above-mentioned as definite, it will violates the provisions of article (16) of the constitution. Moreover, the aforementioned text is somehow opaque, whereas the phrase (major component) had been listed in it, and the text didn't determine these components or the criteria for determining it. As well as, this text conflicts with the article (14) of the constitution which stipulates (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status). Therefore, requesting of annulling the aforementioned text of assuming the tasks and the public employments (by major components) is violating the text of article (14) of the constitution above-mentioned. Besides, the governorate of Kirkuk hadn't carried out the census, and the number of each major component in the governorate. Thus, the text of authority sharing, including the public employments equally is violating the text of article (16) of the constitution, whereas this equality will restricts equal opportunities for all Iraqis which had been listed in the above-mentioned article. The FSC finds that the constitutional violations listed in paragraph (1st) of article (23) of the aforementioned law is also listed in paragraph (2nd) of it, whereas it stipulated in its preamble (to form a committee consist of two representatives of each component of the governorate three major components...). The aforementioned article

had restricted the tasks by the three major components, and this matter will not achieve equal opportunities which guaranteed by article (16) of the constitution for all Iraqis. Accordingly, the text of paragraphs (1st and 2nd) of article (23) of governorates, districts, and sub-districts councils' election law No. (36) for 2008 are violating the provisions of articles (14 and 16) of the Republic of Iraq Constitution for 2005, whereas it's not permissible to enact a law may conflicts with the basic rights and freedoms listed in the constitution (article 2/1st/Beh and Jim) of it. The Court decided to judge by unconstitutionality of paragraphs (1st) and (2nd) of article (36) of governorates, districts, and sub-districts election law No. (36) for 2008 and annulling them, and to reject the case for the rest of article (23) paragraphs of the aforementioned law because the agent of the plaintiff limited his case by paragraphs 1st and 2nd of the aforementioned law, and to burden the both parties the proportional fees and each party shall burden his barristers' fees. The decision has been issued by majority of 8 members, and the ninth member had dissented, he sees that the case must be rejected formally for change of its subject. The decision has been made clear on 26.8.2013.