

Republic of Iraq
Federal Supreme Court
Ref. 45 / federal / 2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 22.6.2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Monther Ebraheem Husain who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff:

Amer Dawood Ibrahim Al-Faili - attorney- From the Faili component.

The Defendant:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official director Saman Muhsen Ebraheem.

The Claim:

The agent of the plaintiff claimed that the I.C.R. has voted on article (13/3rd) of the I.C.R. election law No. (9) of 2020 which stated that ((the seats allocated from the quota for Christians and Sabean-Mandaeans are within one electoral district)) this text differs between minor components in contrary to the valid Iraqi Constitution, as this law granted the Sabean component (a quota) of one seat for Baghdad

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governorate within one electoral district, and the Christian component (a quota) of five seats for the governorates of (Baghdad, Nineveh, Kirkuk, Dohuk and Erbil), as well as within one electoral district. the aforementioned law restricted the voting right of the Faili component to Wasit Governorate only and not within an electoral district at the level of Iraq similar to the Sabean and Christian component, by that it harms the candidate as well as the Faili component in other provinces from exercising their right as a component to enjoy political rights, including the right to vote, elect and be nominated, and since the Faili component are scattered throughout Iraq, (Baghdad, Diyala, Wasit, Babylon, Basra, Maysan, Nasiriyah Kirkuk, Erbil, Sulaymaniyah), accordingly, this law will deprive most of the people of the Faili component of participating in choosing their representative whom they see fit to occupy this seat in Parliament. And this law contradicts the provision of the article (14) of the Constitution and violates the principle of equality between the Faili component with their brothers of the Sabean and Christian component, as the I.C.R. obliged itself that the legislative choice of his competencies granted by article (61/1st) of the Constitution must not violate the Constitution and that what the I.C.R. law No. (13) of 2018 goes with, according to the article (14/1st) which stated ((the Council exercises its powers contained in the legislation in force in accordance with the Constitution, this law and the bylaw)), as article (13/2nd) of the Constitution stated that ((no law that contradicts this Constitution shall be enacted. Any text in any regional constitutions

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or any other legal text that contradicts this Constitution shall be considered void)) paragraph (1st) of the same article stipulated that ((this Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception)), and also contradicts with article (20 of the Constitution which stated that ((Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office)), therefore, he requested to call upon the defendant for argument, and to rule to repeal and unconstitutionality of clause (3rd) of article (13) of the I.C.R. election law No.(9) of 2020 for contradicting articles (14, 20) of the Constitution, and to notify the legislative authority to enact new text to be in accordance with the provisions of articles (14 and 20) of the Constitution considering that the seat allocated by quota for the faili component within one electoral district. Under the provision of the article (1/3rd) of the F.S.C. bylaw No. (1) of 2005 this lawsuit was registered before this court by the number (45/federal/2020), the defendant was informed of the case petition according to the provision of the article (2/1st) of the mentioned bylaw, his agent responded with the draft submitted to this court on 21.12.2020 which included that clause (3rd) of the article (13) of the I.C.R. election law No. (9) of 2020 didn't stipulate that the allocated seat of quota for the faili component within one electoral district doesn't make clause (13) of the mentioned article of the law unconstitutional on the basis that it is a legislative choice of the I.C.R., also the request of the plaintiff to

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obligate the I.C.R. to enact new provision is out of the jurisdictions of the federal Supreme Court that are listed in the article (93/1st) of the Constitution, therefore he requested to dismiss the plaintiff lawsuit and to burden him the expenses and fees. After completing the required procedures under article (2/2nd) of the F.S.C. bylaw, a date was scheduled for the argument. On that day the court convened, the plaintiff in addition to his post has attended, the agents of the defendant in addition to his post has attended, and started the argument in presence and public, the plaintiff repeated the case petition requesting to rule according to it, the defendant agents submitted answering draft on 27.4.2021 attached to it the decision of this court No. (7/federal/2010) become part of the lawsuit dossier. The court found that the lawsuit acquired its ruling reasons so decided to close the argument, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff challenged the constitutionality of article (13/3rd) of the I.C.R. election law No. (9) of 2020 for contradicting the provisions of the articles (14, 20) of the Constitution, and to notify the legislative authority to enact new text that is in accordance with the provisions of articles (14 and 20) of the Constitution. the court finds that the mentioned article doesn't contradicts the constitutional provision, also making Iraq one electoral district for the Faili Kurd or not is legislative option under the estimation of the I.C.R. according to its

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stipulated jurisdictions in article (61/1st) of the Constitution, it exercise that jurisdiction regard officially recognized religious denominations in Iraq under the amended Religious Denominations Care System No.(32) of 1981 in regard of Christians and Sabean-Mandaeans. in addition, the plaintiff requested to notify the legislative authority to enact new text that is in accordance with the provisions of articles (14 and 20) of the Constitution, this request is out of the F.S.C. jurisdictions that are stipulated in article (93) of the Constitution of 2005, and article (4) of its law No.(30) of 2005 amended by the law No.(25) of 2021, therefore, it decided to dismiss the lawsuit and to burden the plaintiff the expenses and advocacy fees of the defendant agents in addition to his capacity amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final and binding on all authorities according to the provisions of articles (93) and (94) of the Constitution of 2005, and articles (4) and (5) of the F.S.C. law no. (30) for 2005 amended by law No. (25) of 2021, issued publicly on (11/Dhu'lqa`da/1442) A.H., 22.6.2021 A.D.

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