

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 91/federal/media /2013



Kurdish text

The Federal Supreme Court (F S C) has been convened on 27.11.2013 headed by 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 AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (mim. jim. ain.) his agent (ain. beh. ra.).

The Defendant: Chairman Independent High Electoral Commission
/being in this capacity his juristic (alif. ha. ain.).

The Claim:

The plaintiff claimed before this court that his client has already been nominated for the Baghdad Provincial Council - elections 2013 - on the list of the state of law, the list won (20) twenty seats and his client (the plaintiff) was among the winners and handed over (15) fifteenth and did not get a seat on the mentioned council because of a legal and constitutional error committed by the Independent High Electoral Commission by making the women winners in the list (6) six women instead of (5) five women, the number of women on the list exceeded (25%) unjustifiably, which is contrary to the system of distribution of seats No. (12) for 2013 issued by the Independent Electoral

Commission, since the rule of law stipulates that "no effort in the supplier of the text" the Commission violated the provisions of the Constitution in articles (2/1st/beh), (13/2nd) and (14,16,20,28/1st and 49/4th) of it. Because the decision of the Independent Electoral Commission referred to above, it violated the application of paragraph (3rd) - the calculation of the quota of women - to exceed the required percentage of (25%) on it, the prosecutor requests the rule of unconstitutionality of the application of the system of the Independent High Electoral Commission No. (12) for 2013 by calculating the quota of women and recalculating it in accordance with the constitution and the system for the distribution of seats. The plaintiff reiterated his claim and requested his answering draft dated 21/10/2013, which is linked to the case file, and the defendant answered the petition with his list dated 9/10/2013, stating that the system of distribution of seats No. (12) for 2013 aims to achieve a quota for women at least (25%) of the number of seats allocated to the province by applying it to all participating lists without cassation. According to the paragraph (alif) from the third step of the system (one of the seats won by the list is allocated to women at the end of each of the three winners regardless of the male winners) if this step achieves (25%) for women, the next step in the system will stop and many lists get only paid or lower than that and therefore no seats will be allocated from these lists to women, so the (25%) percentage for women will not be achieved based on paragraph (alif) mentioned in the advanced paragraph. Therefore, paragraph (jim) of the third part of the seat distribution system is applied, and this procedure is applied to distribute seats to the winning entities in Baghdad province, and it is not permissible in any way to exclude the plaintiff's list from this procedure because it applies to all. For all of the above, the defendant requested that the case be rejected and after registration with the court in accordance with article (1), paragraph (3rd) of the Bylaw of the FSC No. (1) of 2005, and to complete the required procedures in accordance with article (2), paragraph (2nd) of the mentioned regulations. On 24/11/2013,

a court was set, in which jurist (ain. beh. ra.) was present as an agent for the plaintiff, and the civil servant (alif. ha. ain.) as an agent for the defendant/ being in this capacity. The plaintiff's attorney repeated what was mentioned in the petition and requested the verdict, the defendant's agent/ being in this capacity repeated what is contained in his answer list and asked to dismiss the case for the reasons in which it was stated, both parties repeated his previous statements and where there is nothing left to say the end of argument has been made clearly and public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff has nominated himself for membership of the Baghdad Provincial Council - elections 2013 - on the list of the state of law and No. 419, the list mentioned has won (20) twenty seats and he did not get a seat on the list mentioned because of a legal and constitutional mistake committed by the Commission by applying paragraph (jim) of the third step of the system of distributing electoral seats No. (12) for 2013 instead of paragraph (alif), thus exceeding the percentage of the quota of women (25%) required. The result is that he was deprived of his seat, which he deserved, as one of the winners on the list mentioned above. This court found that this case is in fact related to the obsolete distribution of electoral seats to the winning candidates in the list of the State of Law of the Baghdad Provincial Council, as the plaintiff claims that there was an error in the application of the third step of the system of distribution of electoral seats No. (14) of 2013, paragraph (jim) was submitted on paragraph (alif) of the mentioned step, where the percentage of women's quota exceeded 25%, thus depriving him of his seat in the council referred to above as he was among the winners and his sequence (15) fifteenth. The FSC found that the Law of Independent High Electoral Commission No. (12) of 2013 may include ways to challenge the procedures and decisions taken by them, including the mechanism used to distribute electoral seats to the winning candidates in the provincial

council elections, this shall be done by submitting a complaint or appeal to the mentioned Commission in accordance with article (4/5th) of its law mentioned above, and it decides to close the complaint or appeal and its decision is subject to appeal before the Discriminatory Electoral Commission formed by the Federal Court of Cassation and in accordance with article (8/3rd) of the law mentioned above (the Law of Independent High Electoral Commission No. (11) of 2007) of the Cassation Body considers the appeals referred to it by the Board of Commissioners or submitted by those affected by the decisions of the Council and its decision is final and not subject to appeal in any way (mim 8/7th) of the Law of Independent High Electoral Commission referred to above. The challenge to the mechanism used by the Independent High Electoral Commission in the distribution of electoral seats to the winners of the provincial council elections is outside the jurisdiction of the FSC specified in Article (93) of the Constitution and Article (4) of its Law No. (30) of 2005. The court decided to reject the case from the jurisdiction and charge the plaintiff the attorney of the defendant's agent/ being in this capacity the jurist (ailf. ha. ain.) amount (100,000) one hundred thousand Iraqi dinar. The decision was made decisively according to the article (94) of the Constitution and article (5/2nd) of the FSC's Law No. (30) of 2005 and made clear in 27/11/2013.