

Republic of Iraq
Federal Supreme Court
Ref. 137 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 23/11/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Requestor of a Challenge: Salah Mujbil Tahir Al-Swaidi – his agents the Barristers Hussam Aldeen Abdul Latif and Ali Nasrat Ali.
Requested to challenge against: the decision of the Board of Commissioners No. (9) for the extraordinary minutes (54) on 19/9/2021.

The Challenge Office

The requestor of a challenge claimed by his agent that on 19 September 2021, the Board of Commissioners issued its numbered decision (9) in the minutes of the special session (54), which included the cancellation of the approval of his client's candidacy and the withholding of votes he receives on the day of public suffrage based on the provisions of article (7/2nd/Jim) of the system of electoral complaints and appeals and since this decision was contrary to the provisions of the Constitution and the law and has violated its rights, therefore he initiated an appeal within the legal period because he did not commit any misdemeanor or felony against honor. He is also accused and not convicted, and the accused is innocent until proven guilty in accordance with the provisions of the law, and the party that filed the complaint against him is not involved in the electoral process and goes out of the scope of article 5 of the above-mentioned law in all its paragraphs because the judiciary (the complainant) is not an electoral body but rather a dispute-resolving body and has nothing to do with the elections at all, and he exercises his judicial rather than

saady

Republic of Iraq
Federal Supreme Court
Ref. 137 / federal /2021



Kurdish text

electoral status because this status is not his. In addition, he has not published or promoted any false, defamatory, or inflammatory allegations about opponents in the electoral process or against any other participant in the electoral process. The judiciary (the complainant) and he is not an electoral opponent and therefore he did not violate the law or his commitment regarding the rules of electoral conduct, and what he said is a right guaranteed by the Iraqi Constitution to express his opinion, and that he did not violate the text of the article (8/3rd) of the Electoral Law No. (9) of 2020 on the one hand, and on the other hand, if the charge is proven against him, It is not fixed because the Iraqi constitution gave the right to express an opinion. It is not a felony or a misdemeanor against honor to be applied to the provisions of article (8/3rd) of the Electoral Code, nor does it apply to the description in article (5) and beyond the aforementioned system or the provisions of the undertaking for not violating the rules of electoral conduct, and he expressed his opinion on a party that is not an electoral candidate or has any electoral status to be contrary to his commitment or the electoral law and that the expression of opinion is a constitutional right that restricts all laws, opinions or systems. The instructions contrary to this right and the mere complaint against the plaintiff do not give the right and do not amount to being deprived of the elections, which is a violation of another right granted to him by the Constitution, namely the right to stand for election. Therefore, for all of the above and the reasons referred to above, and based on the Iraqi Constitution and the laws in force, the appellant requested that the decision of the Board of Commissioners (9) adopted by the extraordinary minutes (54) dated 19 September 2021 be overturned for violating the provisions of the Constitution and the law. The appeal to this court was registered in the number (137/federal/2021) in accordance with article (1/3rd) of the

saady

Republic of Iraq
Federal Supreme Court
Ref. 137 / federal /2021



Kurdish text

Bylaw of the Federal Supreme Court No. (1) of 2005 and after informing the office that issued the decision in question (Independent High Electoral Commission/Board of Commissioners) According to the article (2/1) of the aforementioned system, the Chairman of the Board of Commissioners replied under the numbered letter (Kha/21/1412) dated 29 October 2021 that the Central Monitoring Committee of the Independent High Electoral Commission On 15 September 2021, had noticed the violation of the candidate (Salah Mujbil Tahir Al-Swaidi) in addition to the complaint filed by the Legal Representative of the Supreme Judicial Council, he appeared in a television interview on the satellite channel "I-News" and included his talk on the program "Fifth Parliament" which hosted the candidates for the Iraqi Parliament elections, whereas he assaulted the Iraqi Judiciary system and spelt some words which deform the Judicial authority by addressing charges to the courts and Judges without any legal evidence by the candidate (Salah Mujbil Tahir) and the aforementioned appellant had support and confirmed the interview and added another charges without any legal evidence. According to the provisions of the penalty law No. (111) for 1969 (amended) and according to the electoral conduct bases, the action of the candidate aforementioned regarded a violation of the texts of the penalty law which incriminated the actions of insult, defamation, and the crimes of infringing the Judiciary process, he also violated the provisions of the Electoral Conduct Law and the commitment signed by him to the candidate's obligation to refrain from publishing or promoting false, promotional or instigative allegations against opponents or any other participant in the electoral process, as well as his failure to respect the electoral law and all relevant civil and penal laws. The Board of Commissioners issued its decision to revoke the approval of the candidate (Salah Mujbel Taher Al-Suwaidi) and

saady

Republic of Iraq
Federal Supreme Court
Ref. 137 / federal /2021



Kurdish text

withhold the votes he receives on the day of voting based on the provisions of article (7/2nd/Jim) of the Electoral Complaints and Appeals Order No. (7) for 2020, where he stipulated (the Council imposed the following punitive measures in the event of a particular violation) (annulment of the ratification of the alliance, political party or candidate) for violating the provisions of the legal texts and the provisions of the rules of electoral conduct and the undertaking signed by it. For these reasons and reasons that the Federal Supreme Court considers. He requested to reject the challenge.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the appellant Salah Mujbel Taher Al-Suwaidi claimed that the Board of Commissioners issued its decision No. (9) in the minutes of the extraordinary session (54) on 19 September 2021, which included the cancellation of the ratification of his candidacy and the withholding of votes obtained on the day of the general ballot based on the provisions of article (7/2nd/Jim) of the Electoral Complaints and Appeals Order No. (7) of 2020, Since this decision violated his rights. He is not the perpetrator of any misdemeanor or felony against honor, therefore, he did not violate the rules of electoral conduct and did not violate the text of the article (8/3rd) of the Electoral Law No. (9) of 2020 requested by his agent to overturn the decision of the Council of Commissioners referred to above for

saady

Republic of Iraq
Federal Supreme Court
Ref. 137 / federal /2021



Kurdish text

its violation to the provisions of the Constitution and the Law. The court placed the appeal under scrutiny and found it necessary to reject it for the following reasons: 1. The subject matter of the appeal is considered outside the jurisdiction of this Court, provided for, in the article (93) of the Constitution of the Republic of Iraq 2005 and article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021. 2. Trying of the appeal is the prerogative of the judiciary committee formed under section (19) of the Independent High Electoral Commission Law No. (31) of 2019. Accordingly, the Federal Supreme Court decided to reject the case for incompetence and to burden the challenge requestor with the fees and expenses. The decision has been made decisive and binding for all powers according to the provisions of articles (93) and (94) of the Republic of Iraq Constitution for 2005, and articles (4,5) of the Federal Supreme Court Law No. (30) for 2005 which amended by the Law No. (25) for 2021. The decision has been issued unanimously on 17/Rbea'a Al-Awal/1443 Hijri coinciding 23/November/2021 A.D.

**Signature of
The president**

**Jasem Mohammad
Abbood**

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Republic of Iraq
Federal Supreme Court
Ref. 137 / federal /2021



Kurdish text
