

Republic of Iraq
Federal Supreme Court
Ref. 151/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 28. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Abd al-Sattar Majid Qader - his attorneys are Zana Saeed Khader and Nasir al-Din Mudlul Abd.

The Defendant: Speaker of the Iraqi Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and the jurist Saman Mohsen Ibrahim.

The Claim:

The plaintiff claimed, through his attorney that the defendant, the Speaker of the Iraqi Council of Representatives/ being in his capacity, issued the Iraqi Council of Representatives Elections Law No. (9) of 2020 and entered into force after it was published in the Iraqi Gazette No. (4603) on (9/11/2020), and the Independent High Electoral Commission (IHEC) implemented it and held elections for the Council of Representatives The Iraqi parliament, according to its provisions on (10/10/2021), the mentioned law included a table attached to the law, which was voted on as part of the law and referred to in Paragraph (3rd)

of Article (16) of the law, which stipulates (determining a quota for women for each governorate as specified in the attached table). Accordingly, the Commission issued Resolution No. (26) of the Extraordinary Minute (66) dated 16/10/2021, where it approved the final election results for private and public voting and applied this paragraph to the final results of the Erbil Governorate, the fourth district, so candidate No. (32) was harmed - the plaintiff) who was the fourth winner over his constituency with 14,809 votes, and although Erbil governorate met the women's quota in the other three constituencies, where four female candidates won their electoral entitlement and another candidate won the women's quota, However, the Commission replaced Candidate No. (32 - Plaintiff), and came with Candidate No. (31) who lost by (13872) votes under the women's quota, and excluded him from winning the fourth seat in the aforementioned constituency. Based on Article (93) of the Constitution, the plaintiff challenged before this court the constitutionality of Paragraph (3rd) of Article (16) and the attached table of the Iraqi Parliament Elections Law No. (9) of 2020 for the following reasons: **First:** Its violation of the Constitution in Article (14), which stipulates that "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." Article (16) which stipulates (Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken) and Article (20) which stipulates (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). And Article (49/4), stipulates that (The elections law shall aim to achieve a percentage of representation for women of not less than one-quarter of the members of the Council of Representatives). **Second:** Violating the second and fourth paragraphs of Article (16) of the Council of Representatives elections law, which stipulate ((Second: - The percentage of women's representation shall be no less than (25%) of the

number of Council of Representatives members in each governorate. Fourth: If it is exhausted the women's quota, according to the results of the elections in the governorate, there will be no replacement process)).

Third: This procedure is a waste of voters' votes and the constitutional rights of candidates for equality, equal opportunities, and enjoyment of political rights, because the required minimum percentage for women's representation at the level of the Council of Representatives is no less than a quarter, which was set by the IHEC at (83) seats, and that the share of Erbil Governorate, including (4) seats out of (15) seats distributed over four districts, and since the number of female candidates who won the highest votes according to their entitlement and without the need for a women's quota in Erbil amounted to (4) winning candidates in the (second and third) districts, and they are: 1. Candidate No. (25) Minister Ahmed Braim Mulla (24626) votes from the second district. 2. Candidate No. (21) Cordo Omar Abdullah Saleh (18370) votes from the second district. 3. Candidate No. (26) Vian Abdul Aziz Abdul Rahman Muhammad (14167) votes from the third constituency 4. Candidate No. (27) Laila Akram Saeed Salim (9306) votes from the third constituency. Thus, the constitutional requirement is achieved at the Erbil governorate level. It is not fair for the commission to replace him with a candidate with fewer votes than him by a difference of (937) votes, other than paragraph (4th) of Article (16) of the Council of Representatives Elections Law, which expressly states that there is no need for replacement if the quota is achieved and exhausted at the county level. For all of the above, the plaintiff requested from the FSC to rule unconstitutional Paragraph (3rd) of Article (16) of the Council of Representatives Elections Law and the table attached to the law. He also requested to rule unconstitutional the commission's decision to replace the plaintiff's seat No. (32) from the fourth district in Erbil Governorate The seat of the candidate next to the number of votes, claiming a quota for women. The lawsuit was registered with this court in No. (151/federal/2021) and the legal fee was collected for it in accordance

with the provisions of Article (1/3rd) of the FSC's bylaw No. (1) of 2005 and informs the defendant of its petition and documents in accordance with the provisions of Article (2/1st) of the same bylaw, and his two attorneys responded with the answer draft dated 30/11/2021, which included that the lawsuit was due to be answered and had no basis in the constitution because the constitutionality of the article under challenge of the Iraqi Council of Representatives Elections Law No. (9) for the year 2020 and the table attached to it was preceded by The FSC by virtue of its decision No. (44/federal/2021), which became an argument with its provisions, and that the decisions of the Commission are not final and the law defines the methods of appealing them and that the consideration of the appeals received against them is outside the jurisdiction of the FSC specified by Article (93) of the constitution, Therefore, the defendant's attorney requested that the plaintiff's lawsuit be dismissed and that he be charged with all court fees, expenses and attorney's fees. The attorney for the plaintiff replied in the answer statement dated 12/5/2021 that the subject matter of the case is within the jurisdiction of the court, and since the case list was submitted to the court on 11/11/2021, that is, before the IHEC announced the final results on 30/11/2021, and a change appeared on the Results of Erbil Governorate after replacing a women's seat with a men's seat in the third constituency, where the commission announced the victory of 5 women, including three women without a quota, and their entitlement to vote in the second and third constituency, and two others with a quota system in the first and fourth constituencies of Erbil governorate, bearing in mind that the women's quota In Erbil Governorate, there are only four female seats. After completing the required procedures in accordance with the provisions of the above-mentioned internal system, a date was set for the pleading in accordance with the provisions of Article (2/2nd) of the bylaw above, and the two parties are informed of it. On the appointed day, the court was formed, so the attorneys of the two parties attended and commenced the conduct of the public pleading. The

defendant/ being in his capacity and a request to dismiss the case for the reasons mentioned in the regulation dated 30/11/2021, the court decided to enter the IHEC as a third person for clarification from it about what is needed to settle the case. (15) seats were distributed to (4) electoral districts, (3) of which to four seats for each district and the other three seats based on the item (3rd) of Article (16) of the Iraqi Council of Representatives Elections Law No. (9) for the year 2020 where it specified a quota Women based on districts for each governorate and according to the table attached to the law as it is an integral part of the law and that the mentioned table set a quota for women in each electoral district. According to the instructions set by the IHEC, if a woman wins her votes, the aforementioned constituency will have fulfilled the quota, and the results of the elections in the Erbil governorate resulted in the victory of (2) women in the second constituency and one woman who also won her votes in the third constituency, and the quota for women in the two constituencies has been exhausted. With the exception of the first and fourth constituencies, where the elections did not result in a woman winning her votes in them, and to implement the legal text and the instructions for distributing seats, the last winning candidate in these two constituencies was excluded and replaced by a woman in each constituency of the female candidates who obtained the most votes, and this is in implementation of the law, and after the court completed its clarification from the third person, it decided to remove him from the case. The plaintiff's attorney answered that there was an expansion of the exception in contravention of the constitution, and each party's attorney repeated his previous statements and requests, and where there was nothing left to be said, the end of the pleading has been made clear, and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff requested to invite the defendant, the Speaker of the Iraqi Council of Representatives/ being in his capacity to plead and rule the unconstitutionality of Article (16/3rd) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 for violating the provisions of Articles (14), (16) and (20) and (49/4th) of the Constitution of the Republic of Iraq of 2005 and the ruling unconstitutional of the decision of the Board of Commissioners of the IHEC No. (26) for the exceptional record (66) on 16/10/2021, which includes the approval of announcing the complete lists of results for private and public voting for the elections Iraqi Council of Representatives/2021 (Preliminary) through the court's review of the plaintiff's claim and requests and the defenses of the defendant's attorneys / being in his capacity, the court reached the following conclusions: 1. Article (16/3rd) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 stipulates (a quota for women shall be determined for each governorate as specified in the attached table) and that this court had previously issued its decision No. (44/federal/2021) in 21/9/2021, which includes the ruling dismissing the case regarding appealing the provisions of Article (16) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 for the absence of a constitutional violation, and since the decisions issued by this court are final and binding on all authorities, based on the provisions of Article (94) of The Constitution has been confirmed by Article (5) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021, which stipulates (the judgments and decisions issued by the FSC are final), so the plaintiff's lawsuit is obligatory to respond. From this point of view, it has already been decided. 2. as for the challenge to the constitutionality of the decision of the Board of Commissioners No. (26) of the Extraordinary Minute (66) dated 16/10/2021, consideration of it is outside the jurisdiction of this court specified under Article (93)

of the Constitution of the Republic of Iraq of 2005 and Article (4) of FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and falls within the jurisdiction of the Judicial Commission for Elections based on the provisions of Article (19/1st, 2nd and 3rd) of the IHEC Law No. (31) of 2019, where it came in Item (2nd) of the mentioned article (it is not permissible to appeal the decisions of the Board of Commissioners except before the judicial authority for elections in matters related to the electoral process exclusively), the decisions of the electoral judiciary are considered final based on the provisions of Clause (3rd) of the same article, and the political party or candidate may appeal the decision of the Board of Commissioners within (3) three days starting from today. After its publication, the appeal request shall be submitted to the National Office or any electoral office affiliated to the Commission or directly to the judicial authority in accordance with the provisions of Article (20/1st) of the aforementioned law, and to the competent judicial authority. The elections shall decide on the grievance submitted within a period not exceeding (10) ten working days from the date of the Board of Commissioners' response to the appeal in accordance with the provisions of Clause (3rd) of the same article, and for all of the above, the FSC decided the following: First: The ruling rejecting the plaintiff's lawsuit regarding the challenge to the constitutionality of Article (16/3rd) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 was previously decided by this court in accordance with its decision No. (44/federal/2021) on 21/9/2021. Second: The ruling rejecting the plaintiff's lawsuit regarding the challenge to the constitutionality of the Council of Commissioners Decision No. (26) of the Extraordinary Minute (66) dated 10/16/2021 due to the lack of jurisdiction of this court. Third: The plaintiff shall be charged with fees, expenses and attorney fees for the defendant's attorneys, an amount of one hundred thousand dinars, distributed in accordance with the law. No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public on 23/Jumada Al-Ula/1443 coinciding with 28/December/2021.