



The Federal Supreme Court (F.S.C.) convened on 28.12.2021 headed by the Judge Jasem Mohammad Abbood 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, whom are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Abdul Sattar Majid Qader - his attorneys, Zana Saeed Khader and Nasser Madlool Abdul.

The defendant:

The head of the Independent High Electoral Commission / in addition to his position - his deputy legal employee Ahmed Hassan Abd.

The claim:

The plaintiff claimed, through his attorneys, that the defendant issued Resolution No. (26) for the Extraordinary Minutes No.(66) dated (16/10/2021), according to which he approved the final election results for private and public voting, as he applied Paragraph (Third) of Article (16) and the table Annexed to the law on the results for Erbil Governorate / Fourth Constituency, candidate No. (32 – the Plaintiff), who was the fourth winner in his constituency with (14,806) votes, was replaced by candidate No. (31) who lost, with (13,872) votes under the women's quota, even though Erbil governorate met the quota

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of women in the other three constituencies, where four women candidates won their electoral entitlement, and one candidate for the women's quota. Based on Article (93) of the Constitution, therefore, he has taken the initiative to challenge the unconstitutionality of this procedure, which was included in the aforementioned decision, 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, nationality, origin, color, religion, sect, belief, opinion, economic or social status.), Article (16) which stipulates (equal opportunities is a right guaranteed to all Iraqis, and the state guarantees to take the necessary measures to achieve this), Article (20) which stipulates (citizens, men and women, have the right to participate in public affairs and enjoy political rights, including the right to vote and vote and filtration), and Article (49/4), which stipulates that (the election law aims to achieve a representation of women that is not less than a quarter of the number of 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 fulfilling 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, because the required minimum percentage for women's representation at the parliament

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level is no less than a quarter, which the Independent High Electoral Commission has set at (83) seats, and the Erbil governorate's share of them is (4) out of (15) seats distributed among four constituencies, 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 two (second and third) constituencies, and they are each of:

1. Candidate No. (25) Wazera Ahmed Brime 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.

and thus, the constitutional requirement is fulfilled at the Erbil governorate level and it is not justice that the Commission replace the candidate who has less votes than him by (937) votes in contrary to paragraph (Fourth) of Article (16) of the Election Law. Therefore, the plaintiff asked the Federal Supreme Court to invite the defendant to plead and judge the unconstitutionality of his decision to replace Candidate No. (32) from the Fourth constituency in Erbil Governorate with the next candidate The number of votes in the case of the women's quota, and considering him the winner of the elections, and charging him with the costs of the case and attorney's fees. The lawsuit was registered with this court in No. (152/Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005 and

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informs the defendant of its petition and documents in accordance with the provisions of Article (2/First) of the same bylaw above, and he responded with his answer list in the number (kh/1/1712 on 11/29/2021), which stated that the Independent High Electoral Commission Law No. 31 of 2019 had drawn the legal way to appeal against the decisions issued by the Board of Commissioners, where Article stipulates (19) of it on (Second: Decisions of the Board of Commissioners may not be appealed except before the Judicial Commission for Elections in matters related to the electoral process exclusively. Third – The decisions of the Judicial Commission for Elections are considered final.) Therefore, the competent authority to consider objections to the decisions issued by the Council of Commissioners is the Judicial Commission Therefore, the Federal Supreme Court is not competent to consider this case, and the issue before the court is whether the interpretation of the election law by the Independent High Electoral Commission in The proposal to replace the quota in each electoral district, despite the fact that the results at the governorate level are consistent and compatible with the election law, as Paragraph (Fourth) of Article (49) of the Constitution states that (the election law aims to achieve a representation of women not less than a quarter of the number of members The Council of Representatives) as the constitution did not specify the mechanism for determining this percentage and did not specify the electoral system and did not specify whether the quota should be at the level of governorates or districts. Therefore, the decision of the Independent High Electoral Commission to impose replacement procedures at the level of the electoral district is based on the interpretation of the electoral law and does not contradict the constitution, which provides

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a general framework to ensure a minimum level of representation. The election law was consistent with the women's quota with what was stipulated in the constitutional article, where paragraph (first) of Article (16) of it and in general stipulated (the representation of women shall be no less than 25% of the number of members of the Council of Representatives) and it deals with paragraph (Second) of the same article provides more details and defines the quota for women at the governorate level, as it states the following (the representation of women shall be no less than 25% of the number of members of the Council of Representatives in each governorate). Paragraph (Third) of the same article also specifies the final details. Which stipulates (the quota for women is determined for each governorate as specified in the attached table). Therefore, the table provides for the allocation of seats on the basis of the district level, and a minimum of (1) seat is allocated to female candidates in each electoral district of (83) districts, and the attached table of districts The law, which is part of it, unambiguously clarifies the quota at the level of the electoral district. The table reflects the seat of women in each electoral district of (83) districts. It is a continuation of the quota system as stated in the electoral law with a more specific and detailed application of the rule, where the High Commission decided the quota based on the seat distribution system No. (9), issued on (8/September/2021), for the above reasons for the defendant's request to dismiss the plaintiff's lawsuit and charge him the expenses. After completing the procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading in accordance with the provisions of Article (2/Second) of it, and the two parties were informed of it. And the public pleading started, the plaintiff's attorney repeated what was

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stated in the lawsuit's pleading and requested a ruling, according to which the defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons stated in the answer list dated November 29, 2021. The following ruling:

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff's lawsuit focused on challenging the constitutionality of the decision of the Board of Commissioners in the Independent High Electoral Commission No. (26) for the exceptional record (66) on 10/16/2021, which includes the approval of announcing the full results of the private and public voting for the elections of the Council Iraqi Representatives/ 2021 (initial), due to his violation of the Constitution of the Republic of Iraq for the year 2005 in Articles (14), (16), (20) and (49/fourth) thereof, and the Federal Supreme Court finds that considering the appeal against the aforementioned Board of Commissioners decision deviates from its specific competencies under Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and article (4) of the federal supreme court No.(30) of 2005 amended by the Law No. (25) for the year 2021 and falls within the jurisdiction of the Judicial Commission for Elections based on the provisions of Article (19/first, second and third) of the Independent High Electoral Commission Law No. (31) for the year 2019, where it was stated in item (Second) of the aforementioned 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) and the decisions of the judicial authority for elections are considered It is

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completed according to the provisions of Clause (Third) 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 the day following its publication. The appeal is submitted to the National Office or any electoral office of the Commission or directly to the judicial authority based on the provisions of Article (20/First) of the aforementioned law, and the Judicial Commission for Elections shall decide on the appeal submitted within a period not exceeding (10) ten working days from the date of the Board of Commissioners' response to the appeal based on the provisions of Clause (Third) of the same Article, on it and on the foregoing The Federal Supreme Court decided to dismiss the plaintiff's claim for lack of jurisdiction, and to charge him the fees, expenses, and attorney's fees for the defendant's attorney, an amount of one hundred thousand dinars, distributed according to the law. And 5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and publicly understood on Jumada Al-Ula 23/1443 AH corresponding to 12/28/2021 AD.

**Signature of
The president**

***Jasem Mohammad
Abbood***

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Republic of Iraq
Federal Supreme Court
Ref. 152 / Federal / 2021



Kurdish text
