

Republic of Iraq
Federal Supreme Court
Ref. 183 / Federal / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 3.1.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Ektifaa Muzher Abdel Kassar Al-Hasnawi - her attorney general, Attorney Mustafa Sahib Saadoun.

The defendant:

The Chairman of the Board of Commissioners of the Independent High Electoral Commission / in addition to his post -His agent, the legal employee, Ahmed Hassan Abd.

The claim:

The plaintiff claimed through her attorney that the Board of Commissioners decided on 10/11/2021 to announce the results of the elections for the Iraqi Parliament for the year 2021 and that she is a candidate in the Baghdad Governorate Rusafa/ the sixth constituency. As article (49/4th) of the Constitution of 2005 stated (The Elections Law: Achieving a representation of women not less than a quarter of the number of members of the Council of Representatives), and as stated in Article (16/Second) of the Iraqi Council of Representatives Elections Law No. (9) for the year 2020 (the representation of

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women shall be no less than (25%)) of the number of members of the Council of Representatives in each governorate) and as stated in Article (15/Third) of the same law above (the order of the candidates in the electoral district is re-arranged according to the number of votes obtained by each of them, and whoever gets the highest votes according to the first winner system is considered the winner And so for the remaining candidates), and since the Board of Commissioners did not replace the fourth male candidate who won the district with the female candidate who follows him (the plaintiff), who won the seventh place and is preceded by two men in the election results. According to the requirements of Articles (14, 15, and 16) of the aforementioned election law, and since the representation of women (at least a quarter of the number of members of the Council of Representatives) was not achieved in the aforementioned constituency, the results violate the Constitution of the Republic of Iraq for the year 2005 on it and all of the foregoing, The plaintiff asked the Federal Supreme Court to call upon the defendant, in addition to his position for pleading and to rule unconstitutional of the representation of women in the 2021 Iraqi Council of Representatives elections in the Sixth Constituency in Baghdad Governorate and to rearrange the candidates in it to achieve the representation of women, and to charge him all fees, expenses, and attorney fees. The case was registered with this court in No. (183/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 informs the defendant of its petition and documents in accordance with the provisions of Article (2/) First) of the aforementioned bylaw, and he responded

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with his answer list (kha/21/1744 on 12/12/2021), which included the following:

1. The Independent High Electoral Commission Law No. 31 of 2019 outlined the legal way to challenge the decisions issued by the Council Commissioners, where Article (18) of it stipulates (First: The Board of Commissioners has the authority to decide on complaints submitted to it, and the Board of Commissioners refers criminal cases to the competent authorities if there is evidence of misconduct related to the integrity of the electoral process. Second - The Board has the exclusive authority to resolve disputes resulting from the preparation and implementation of national elections at the level of a province or the level of governorates, and he may delegate the authority to the electoral administration to resolve disputes the moment they occur) and Article (19) of the same law stipulated (First - the Supreme Judicial Council shall form a body Judicial elections, consisting of three part-time judges, none of whom is of a class of no less than the first class, to consider the appeals referred to it by the Board of Commissioners or submitted by the aggrieved by the decisions of the Board directly to the judicial body. 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) and through these legal texts, the authority competent to consider objections to decisions issued by the Board of Commissioners is the Judicial Commission for Elections, and it is not permissible to appeal before any other party, so the Federal Supreme Court is not competent to hear this case.

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2. Article (16/Third) of the Council of Representatives Elections Law No. (9) of 2020 stipulates (the quota for women is determined for each governorate as specified in the attached table), and concerning the table attached to the law, which is an integral part of it, it appears that the sixth district in Baghdad governorate She is (4) seats, and this table has specified that one woman should be among those seats. Referring to the election results, it appears that there is a female candidate who won her votes in one of the seats in the electoral district, and therefore, that district has exhausted the women's seat with the victory of that candidate, which is consistent with the application of Article (16) of the Elections Law and the instructions for distributing seats issued by the Independent High Electoral Commission.

3. The plaintiff had previously submitted an appeal before the Judicial Commission for Elections against the decisions of the Board of Commissioners related to the preliminary results of the elections. The decision of the Judicial Commission for Elections No. (1336/Judicial Commission for Elections/2021) dated 11/21/2021 was issued, which includes ratification of the contested decision of the Board of Commissioners And since the decisions of the Judicial Commission for Elections are finally based on the aforementioned Article (19/Third), the defendant asked the Federal Supreme Court to reject the plaintiff's suit and charge her with the fees and expenses. After completing the procedures required by the court's 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 was initiated. The plaintiff's attorney repeated the lawsuit's petition and requested the

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judgment in accordance with what was stated in it. The defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons mentioned in the answer list dated 12/12/2021. The attorney of each party repeated his previous statements and requests, and where there was nothing left to say, the Court decided the conclusion of the pleading and the court issued the following ruling:

The decision:

Upon scrutiny and deliberation from the Federal Supreme Court, it was found that the plaintiff's claim that she was one of the female candidates participating in the Iraqi Parliament elections for the year (2021) in Baghdad Governorate - Rusafa within the sixth electoral district and after the announcement of the election results by the Board of Commissioners of the Independent High Commission for the elections on 10/11/2021, it was found that she did not obtain a seat in the aforementioned constituency, because the Board of Commissioners did not replace the fourth winning candidate from among the men in the sixth constituency, as the candidate who won the seventh place in the aforementioned constituency, and since the women who win with their valid votes may not be counted within the women's quota, and since the representation of women by at least (25%) of the members of the Council of Representatives was not achieved within the sixth electoral district in Baghdad - Rusafa, so the results announced by the Independent High Electoral Commission are in violation of the Constitution of the Republic of Iraq, so she requested the ruling unconstitutional representation of women in the elections of the Iraqi Council of Representatives for the year (2021) within the sixth district in In Baghdad - Al-Rusafa and

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re-arranging the candidates in it to achieve the representation of women and upon careful consideration of the plaintiff's requests, according to what was stated in the petition of her case, this court sees that calculating the quota for women is carried out by the Independent High Electoral Commission, and that the decision issued by it in this regard is subject to appeal to the Judicial Authority for Elections formed in accordance with Clause (First) of Article (19) of the Independent High Electoral Commission Law No. 31 of (2019) and the decisions of the Judicial Authority for Elections are final pursuant to the provisions of Clause (Third) of the aforementioned article, and since the competencies of this court are determined by Article (93) of the Constitution of the Republic of Iraq for the year (2005) and Article (4) of the Federal Supreme Court Law No. (30) of (2005) amended by Law No. (25) of 2021, and it was not among them to consider the requests contained in the plaintiff's lawsuit and based on the foregoing, the plaintiff's lawsuit is to be dismissed to lack of jurisdiction, so the Federal Supreme Court decided to dismiss the plaintiff's lawsuit as the sufficiency of Mazhar Abd Kassar Al-Hasnawi and charge her all judicial expenses Including the attorney's fees for the defendant's attorney/in addition to his post, the legal employee, Ahmed Hassan Abd, an amount of one hundred thousand dinars. The judgment was issued by agreement final based on the provisions of Articles (93) and (94) of the Constitution of the Republic of Iraq for the year (2005) and Articles (4 and 5/Second) of Federal Supreme Court Law No. (30) for the year (2005) amended by Law No. (25) for the year 2021 and was publicly understood on Jumada Al-Ula 29/1443 AH corresponding to 3/1/2022 AD.

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Signature of
The president
*Jasem Mohammad
Abbood*

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