

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 185/federal/media/2018



Kurdish text

The Federal Supreme Court (FSC) has been convened on 21.11.2018, headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (Nun. Sad. Lam.). her agent the attorney (Mim. Alif. Ain.).

The Defendant:

1. Head of the Independent High Electoral Commission/being in this post, his agent the legal official (Alif. Ha. Ain.).
2. Head of the High National Commission For Accountability And Justice/being in this post , his agent the legal official (Alif. Alif. Jim.).

THE CLAIM:

The agent of the plaintiff claims that on the date 16/8/2018 the Commissioners Council of the Independent High Electoral Commission issued decision no.(Ha/18/1121) on 16/8/2018 to announce the winners results of the ICR Election for year 2018. Among the winners the candidate (Ain. Yeh. Ha. Lam.) from Al-Nasser Collation in Salah Al-Dien Governorate, as the mentioned decision violate articles (7/first) , (7/second) and (13/second) of the constitution. As the mentioned candidate one of Al-Qaeda Terrorism leader and accused with many cases like Salah Al-Dien governorate council incursions and the assassination of the Lieutenant-Colonel (Alif. Sad. Feh.) and other accidents , while his name has been mentioned in the confessions and arrest warrant was issued against him by name (Ain. Father name unknown). The mentioned candidate work as the Head of Salah Al-Dien Governorate Council, and was removed on year 2013 as he escaped after the orders against him were issued.

The mentioned candidate is wanted for jurisdiction for the attack on Salah Al-Dien governorate council that caused more than (50) martyred; among those martyred the plaintiff's husband the martyred (Sin. Ha. Ain.) that was killed in the attack. Also the mentioned candidate is wanted for jurisdiction for killing the victim (Alif. Sad. Feh.), an arrest warrant was issued against the mentioned candidate according to article (289) penalties for counterfeiting letters and decisions that falsely attributed to the judiciary. And he choose to flee from justice. The Election Judiciary Commission at the Federal Cassation Court already issued decision no.(58/Appeal/2014) on 31/3/2014 to consider the candidate (Ain. Yeh. Ha. Lam.) lacking for the condition of good conduct and morals.

The plaintiff's agent clarified that the membership of the aforementioned person in the ICR grant the candidate the immunities and the privileges such as freedom of movement. Therefore the agent of the plaintiff request to remove the candidate name from the winners lists and not to ratify on his winning.

The defendants were informed with the case petition and its appendixes, the first defendant replied with his draft dated 16/9/2018 that the Commissioners Council decision No.(12) on 16.8.2018 has rejected the claim, as the final decision wasn't issued against the candidate and the Commissioners Council sent the candidates' names to the directorate of Criminal Registration to verify that the candidate is not convicted for a crime which is dishonorable, and his name hasn't been mentioned within the candidates who have a criminal record.

The Commissioner Council decisions are indecisive and contestable before the Judiciary Commission for Elections, so he request to reject the case.

The agent of the second defendant answered by his draft dated on 10.9.2018 which listed in it that the his client Commission is a reviling body on whom covered by the Commission Law, and the law No.(10) for year 2018 Made away to challenge its decisions.

The FSC Isn't competence in this case, and the Commission of his client issued a decision that there are no information mention that (Ain. Yeh. Ha. Lam) is covered by the Law of Justice and Accountability and he requested to reject the case. On the appointed day for the proceeding the court called upon the two parties, the agent of the plaintiff and the agents of the defendants attended. The plaintiff's agent repeated the case draft and requested the judgment according to what listed in it. The agents of the defendants answered : we repeat what listed in the answer draft and request to reject the case. The agents of the two parties repeated their sayings. As the case complete the legal procedures the Court decided to end the proceeding and issued the following judgment decision publicly.

THE DECISION:

During scrutiny and deliberation by the FSC, the Court found that the plaintiff challenge the Commissioners Council of the Independent High Electoral Commission decision no.(Ha/18/1121) on 16/8/2018 that included the announcement of the winners results of the ICR Election for year 2018. Among the winners the candidate (Ain. Yeh. Ha. Lam.) behalf Al-Nasser Collation from Salah Al-Dien Governorate, as the mentioned candidate one of Al-Qaeda Terrorism leader and accused with many cases like Salah Al-Dien governorate council incursions that caused more than (50) martyred; among those martyred the plaintiff's husband the martyred (Sin. Ha. Ain.) that was killed in the attack therefore the plaintiff's agent request to remove the candidate name from the winners lists and not to ratify on his winning, the FSC finds that it's not possible to not to ratify on the candidate winning as the FSC already ratified on the final result of the ICR elections according to the Court competence stipulated on article (93/seventh) of the constitution; the plaintiff could made a challenge on the membership of the winner candidate according to article (52/first) of the Constitution for year 2005 if she want after obtaining the legal reasons for the challenge .

Therefor the plaintiff request shall be rejected and to burden her the expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the Law. The decision has been issued decisively and unanimously on 21.11.2018.