

Republic of Iraq
Federal Supreme Court
Ref. 185/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 4. 1 .2022 headed by the Judge Jasem Mohammad Abod 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 Munther Ibrahim Hussein whom are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Abbas Hussein Saleh - his attorney, Ali Karim Eidan.

The Defendant: Head of the Board of Commissioners of the High Electoral Commission /being in his capacity - his deputy, the legal employee Ahmed Hassan Abd.

The Claim:

The plaintiff claimed, through his attorney that the defendant had previously taken measures that did not rise to the level of decisions, represented by changing the election result in the sixth district - Baghdad governorate, and considering the candidate Khaled Mutaib Yassin Al-Obeidi as the winner with the highest votes, instead of (the plaintiff Abbas Hussein Saleh), who, before the contested commission procedures, was the winner vote higher than the aforementioned candidate. Since these procedures were contrary to the law and erroneously and in violation of his rights, he took the initiative to challenge them before this court based on the provisions of Article (93)

of the Iraqi constitution in force for the year 2005 for the following reasons: **1.** The loss of transparency in the procedures and decisions of the Independent High Electoral Commission made it a violation of the compelling reasons stated in its formation law No. (31) of 2019, which stipulated (in order to conduct free and fair elections that reassure the voter of their results, and to ensure greater transparency and in line with the reform trends demanded by him people) since the commission did not announce all its procedures on its website, and it had to verify the procedures of the electoral process and then give the appropriate decision, because the law did not contain any text related to the procedures, but rather the decisions, **2.** The invalid papers that were previously checked by manual counting and sorting when calculating the preliminary results were identical and according to the electronic and manual auditing, and therefore it is not permissible to adopt other than the previous results of the decision of the judicial authority. **3.** The Commission did not comply with the provisions of Article (38) of the Iraqi Parliament Elections Law No. (9) of 2020 regarding the procedures related to the electoral process, which made all its procedures subject to challenge, and its representatives were not provided with a copy of the ballot papers so that it could check the correct and invalid papers. Also, the Commission did not provide him with the right to appeal the measures taken on the pretext of the end of the appeal period, and for all of the above, the plaintiff requested the FSC to cancel the measures taken by the Commission, which caused the cancellation of its results. The case was registered with this court in No. (185/federal/2021), and the legal fee for it was collected in accordance with the provisions of Article (1/3rd) of the FSC's bylaw No. (1) of 2005, and the defendant is informed of its petition and documents in accordance with the provisions of Article (2/1st) from the same bylaw, and his two attorneys responded with the answer draft dated 12/12/2021, which included the following:

1. The Independent High Electoral Commission Law No. (31) of 2019 has drawn the legal way to appeal the decisions issued by the Board of

Commissioners, as 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 electoral process. Second: The Council has the exclusive authority to resolve disputes arising from the preparation and implementation of national elections and at the level of a region or at the governorate level, and it may delegate the authority to the electoral administration to resolve disputes the moment they occur) and Article (19) stipulates from him on (First: The Supreme Judicial Council shall form a judicial commission for elections consisting of three part-time judges, none of whom is of a rank of no less than the first rank, to consider the appeals referred to it by the Board of Commissioners or submitted by those affected by the decisions of the Council directly to the Judicial Commission for Elections. Second: Decisions of the Board of Commissioners may not be appealed except before the judicial body in matters related to the electoral process exclusively. Third: The decisions of the electoral judiciary are final. Therefore, the body competent to consider objections to decisions issued by the Board of Commissioners is the judicial body for elections, and it may not be appealed before any other party, so the FSC is not competent to hear this case 2. The decisions of the Judicial Commission for Elections are stronger and higher than the decisions issued by the Board of Commissioners, and they are obligatory to follow and implement, although the plaintiff's appeal against the decisions of the Judicial Commission for Elections is a violation of the Law of the Independent High Electoral Commission No. (31) for the year 2019, which considered that the decisions issued by it are final decisions based on to Article (19/3) thereof, so the defendant/ being in his capacity, requested that the plaintiff's lawsuit be dismissed and he be charged with the expenses and after completing the required procedures in accordance with the provisions of the aforementioned rules of procedure of the court. A date was set for the pleading in accordance with the provisions

of Article (2/2nd) of it, and the two parties were informed of it. On the appointed day, the court was formed. The plaintiff's attorney, Ali Karim Idan, attended, and the defendant's attorney, the legal employee Ahmed Hassan Abd, and started the public pleading procedure. The plaintiff's attorney repeated what was stated in the petition the case and request for judgment in accordance with what was stated in it, the defendant's attorney answered, requesting that the case be rejected for the reasons mentioned in the answer draft dated 12/12/2021. The attorney of each party repeated his previous statements and requests, and since there is nothing left to be said, the end of the pleading has been made clearly, and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff Abbas Hussein Saleh appeals the decision of the Independent High Electoral Commission to consider the candidate Khaled Mutaib Yassin al-Obeidi as the winner of the highest number of votes as a substitute for the aforementioned plaintiff in the 2021 Iraqi Parliament elections in the Sixth Constituency / Baghdad Governorate, and requesting the cancellation of the measures taken by the Independent High Commission elections in this regard. The FSC finds that the Independent High Electoral Commission was established according to Law No. (31) of 2019, which is an independent and impartial professional body that enjoys legal personality and financial and administrative independence and is subject to the oversight of the Council of Representatives. The Supreme Judiciary is a judicial body for elections consisting of three part-time judges, none of whom is of less than the first category, to consider the appeals referred to it by the Board of Commissioners or submitted by the aggrieved by the decisions of the Council directly to the judicial body). Paragraph (2nd) of the same article stipulates that (it is not permissible to appeal the decisions of the Board of Commissioners except to the electoral judiciary body in matters related to the electoral

process exclusively), and paragraph (3rd) of the same article considered the decisions of the electoral judiciary to be final, and therefore it is not permissible to appeal the decisions of the commission the mentioned in relation to the electoral process, except before the judicial body exclusively, and that the role of this court is to ratify the final results of the general elections for membership of the Council of Representatives, pursuant to the provision of paragraph (7th) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 the consideration of this case is outside the jurisdiction of this court, so the FSC decided to reject the claim of the plaintiff, Abbas Hussein Saleh, for lack of jurisdiction and to charge him the fees, expenses and attorney fees of the defendant's attorney /being in his capacity, the legal employee Ahmed Hassan Abd, an amount of one hundred thousand dinars. And it is binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (5 and 4) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public on 30/Jumada Al-Ula/1443 coinciding with 4/1/2022.