

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 19/federal/2019



Kurdish text

The Federal Supreme Court (F S C) has been convened on 2.7.2019 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff / Amal Mari Hassan Al Bayati her agent Mohammed Akram Ali.

The Defendants / 1- President of the Independent High Electoral Commission/ being in this capacity his agent the jurist Ahmed Hassan Abd .

2- President of the Supreme National Commission for Accountability and Justice/ being in this capacity his agent the jurist Azha Amoury Jabr.

3- President of the House of Representatives/ being in this capacity his agents the jurists Director Salem Taha Yassin and Legal Advisor Haitham Majed Salem

Claim:

The agent of the plaintiff claimed that the (Amal Mari Hassan Al Bayati) that he had lodged an appeal before the House of Representatives for the validity of the membership of MP (Jassim Hussain Mohammed Jbara) and the House of Representatives decided

at its session held on 23/1/2019 paragraph (1) and notified by the letter of the No. (25) of 23/1/2019 (Validity of the membership of the objector (against) above mentioned). Because the mentioned decision is unjust to his client, he initiated proceedings before the FSC No. (19/federal/2019) and the following reasons: **1.** The Council of Commissioners of the Independent High Commission for the elections issued its decision No. (ha/18/1121) on 16/8/2018, announcing the results of the election of the House of Representatives for the year 2018 among the winners is (Jassim Hussain Mohammed Jbara) the candidate of Salah al-Din Governorate (a member of the Al-Baath party (dissolved)), although it was judged not to include in article (6/8th) of the Law on the Supreme national Authority of accountable and justice No. (10) of 2008 under the cassation decision (21/cassation committee/2013) on 25/3/2013, because there is no judicial decision to enrich him at the expense of public funds but that does not negate the validity of membership in the Al-Baath Party (dissolved) which depend on the basis in which participation is determined or not in the elections to the House of Representatives. **2.** The decision of the Council of Commissioners No. (ha/18/1121) on 16/8/2018 is violate with the provisions of articles (7/1st) and (13/1st & 2nd). **3.** Also violates the prohibition provided under the articles (3/1st & 2nd) of the Law on Accountability and justice. **4.** The decision of the elections Commission to announcement of candidate's win (Jassim Hussain Mohammed Jbara) in the elections and the decision of the Accountability and Justice authority not to include it in the proceedings of the Commission despite the fact that he was confirmed as a member of the Al-Baath Party (dissolved) by a previous judicial decision No. (21/cassation committee/2013) on 25/3/2013 referred to above, The mentioned decision included the words ((a phrase not covered by article (6) because it was not proven to be influenced at the expense of public money by final judicial decision)). This is conclusive evidence that he is a member of the Al-Baath Party

(dissolved) and may not be nominated for membership of the House of Representatives in the mentioned capacity because of this violate with the Constitution, the law and the nature of the work in the House of Representatives (political and professional) these include the election of the President of the Republic, his accounting, his exemption, withdrawal of confidence from the Prime Minister, the declaration of a state of emergency, the approval of the appointment of senior officials in the state, civilians, military and security services, in addition to their legislative and supervisory powers, as stated in the decisions of (the cassation committee in consideration. Appeals against accountability and justice commission decisions) in particular, the cassation decision (441/cassation/ accountability and justice/2018) on 10/4/2018, which ruled that ((Exclusion one of the elector should be nominated because he is (a member of the Al-Baath Party (dissolved)) and did not enrich the expense of public money)). Which makes this decision a basis for a legal principle (Exclusion of all members of the dissolved Al-Baath Party and did not include article (6/8th) by resolution No. (21/cassation committee/2013) mentioned above. Thus, the decision of the Council of Commissioners to mean the victory the candidate (Jassim Hussain Mohammed Jbara) is violate to the Constitution and the law because he is a member of the Al-Baath Party (dissolved), even if it is not covered by article (6/8th), which does not deny him the status of a member of the Al-Baath Party as shown above. For the reasons given, the agent of the plaintiff (Amal Mari Hassan Al Bayati) request to judge to (annulment the decision of the Council of Commissioners (ha/18/1121) on 16/8/2018 about the results of the candidate (Jassim Hussain Mohammed Jbara) of the list (National Alliance) No. (185) in Salah al-Din province sequence (6) and write-off the results and annulment the votes obtained restoring the right of his client as the winner of the second place in place in (National Alliance) list and Salah al-Din province.

The first defendant's attorney's (Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity) responded to the petition as following:

1- Based on the provisions of article (8/8th) of Law No. (45) of 2013 (amended) and the system of approving the names of elects , the Independent High Electoral Commission sent all lists of elects for the 2018 parliamentary elections submitted by Alliances and Political Blocs to the Accountability and Justice Commission in the letter No. (1 nun/6/1078) on 1/3/2018 entitled (scrutinizing candidates) among the names in the lists sent to the mentioned committee is the name of the candidate referred to above and on this basis the answer of the Commission received with its letter No. (mim . kha 706) on 19/3/2018 by not including (Jassim Hussain Mohammed Jbara) with its procedures. 2- The plaintiff has already lodged an appeal against the decision of the Board of Commissioners No. (69) of the ordinary minutes No. (41) on 6/8/2018 before the Electoral Judicial Commission. The mentioned committee issued its decision No. (1419/appeal/2018) on 25/8/2018 rejecting the appeal and that the decisions of the Electoral Commission are final and not subject to appeal in any way based on paragraph (7th) article (8), of the IHEC Law No. (11) of 2007 (amended). 3- What the plaintiff objects In the process of candidacy (Jassim Hussain Mohammed Jbara) has no basis in the law. For the reasons given, the agent of the first defendant requested to reject the case. The second defendant's agent replied (President of The National High Commission for Accountability and Justice/ being in this capacity) on the petition as following: 1. The plaintiff has already filed the case No. (174/federal/2018) in which she requested (the annulment of the decision of the Council of Commissioners No. (ha/18/1121) on 16/8/2018 the FSC decided to reject the case, which the decision of mentioned Court decisively and non-negotiable). The judge won the power of the order in which the order was issued and the plaintiff

filed this suit under No. (19/federal/2019) for the same reasons as the first case above, so that the subsequent proceedings by the plaintiff have already been judged out. 2. The National Supreme Commission for Accountability and Justice is not the competent authority to approve the names of the winners of the elections because the Law of the Independent High Electoral Commission No. (11) of 2007 has determined those powers to the Council of Commissioners and has identified a reference to challenge its decisions before the cassation committee stipulated in the article (8/7th) of the mentioned Law. 3- The Accountability and Justice Commission is exposing those covered by its Law No. (10) of 2008 under article (2/2nd) of it. It issued its decision to include the candidate (Jassim Hussain Mohammed Jbara) with the provisions of article (6/8th) of it and challenged the person mentioned before the cassation committee to consider the objections submitted against with decisions of the Accountability and Justice Commission and issued its decision No. (21) of 2013, which includes ((Accepting the objection of the person mentioned and considering it not covered by accountability and justice procedures)). Since the decisions of the cassation committee mentioned are final and decisively which cannot be challenged, his client's committee (Accountability and Justice) followed the cassation decision in the 2018 elections and was granted a non-inclusion. 4- The FSC has approved the results of the general elections to the House of Representatives in accordance with its competence under article (93/7th) of the Constitution. As result the second defendant's agent request to reject the case. The third defendants' agents, the (Speaker of the House of Representatives/ being in this capacity), responded to the petition: 1. Failure to obtain approval from the House of Representatives to approve the validity of membership of Mp (Jassim Hussain Mohammed Jbara) because the challenge to his membership did not focus on the failure of one of the conditions of membership in the House of Representatives or the

violation of the provisions of the law on the replacement of members of the House of Representatives. 2. Verification of the comprehensiveness of the procedures of the Accountability and Justice Law No. (10) of 2008 or not, one of the tasks of the Independent High Electoral Commission, especially since the FSC has approved the results of the elections to the House of Representatives and that this approving related to the completing candidates among them is MP (Jassim Hussain Mohammed Jbara) for the constitutional and legal conditions to fill a parliamentary seat in the House of Representatives, which makes the order to challenge the procedures of nomination and the victory of the mentioned MP is unsupported by the law and that the MP mentioned above did not include the salaries of the Accountability and Justice Commission according to its letter No. (159) on 23/1/2018. For the above the agent of the third defendant requested to reject the case. The plaintiff's agent submitted an answer draft in the case date 1/4/2019 included a repetition of the list of the case and requested the judgment under which. After the case was registered and according to the provision of the paragraph (3rd) of the article (1) of the bylaw of the FSC No. (1) of 2005 after completing the required procedures in accordance with the paragraph (2nd) of article (2) from the mentioned system, day 8/4/2019 has been set as a date for the argument , the court was formed, the plaintiff and her attorney Mohammed Akram attended and the three defendants' agents attended and began the case. The court noted that a request was received from the plaintiff as the case was delayed and on 2/7/2019 he appealed the case at the request of the plaintiff, her agent, Mohammed Akram, attended, and the three defendants' agents attended, and the case began in public and immanence, and the plaintiff's agent distributed a list date 1/7/2019. The defendants' agents were informed they answered we're satisfied with our drafts and we're requesting for reject the case. For scrutiny found that the

case had become updated to the reasons of judgment, the end of argument has been made clearly and the decision had been made clearly.

(Jassim Hussain Mohammed Jbara)

President of the Independent High Electoral Commission
the Council of Commissioners

President of the National Commission for Accountability and Justice
Supreme

The Decision

When scrutiny and deliberation by FSC found that the agent of the plaintiff (Amal Mari Hassan Al Bayati) claimed that has already presented a challenge before the House of Representatives on the validity of the membership of Mp (Jassim Hussain Mohammed Jbara) and the above council decided in its session No. (28) held on 23/1/2019 that ((The vote on his appeal was not approved, the victim has access to the FSC)). Because the above-mentioned decision is unfair to his client, he initiated this case before the FSC, requesting that ((annulled the decision of the Council of Commissioners No. (ha/18/1121) on 16/8/2018 regarding the results of the candidate (Jassim Hussain Mohammed Jbara), the candidate from the (National Alliance) list No. (185) In Salah al-Din governorate sequence (6) and write off its results, annulled the votes it receives and restore the right of its client as a second-place winner instead of him in the list mentioned above)). The plaintiff based her claim on the fact that the objector (against) (Jassim Hussain Mohammed Jbara) was covered by the procedures of the Supreme National Accountability and Justice Commission, as the decision of the Board of Commissioners No. (ha/18/1121) on 16/8/2018 (challenged) violate with the provisions of articles (7/1st) and (13/1st) of constitution. The FSC found that the plaintiff did not challenge the

decision of the judged House of Representatives to reject her application, and if she mentioned it in digression at the beginning of the petition requesting the annulment of the decision of the Council of Commissioners No. (ha/18/1121) on 16/8/2018, and that the judiciary abides by the demands of the petition and therefore the consideration of the validity of this decision is not from the competence of the FSC stipulated in article (93) of the Constitution and article (4) of its law No. (30) of 2005. It was decided to reject the case and charge the plaintiff the expenses and charge the lawyers to the defendants' agents for a sum of (100,000 dinars). The decision was issued decisively on the basis of the provisions of article (94) and article (5/2nd) of the FSC's Law No. (30) of 2005 with unanimously and the decision had made public on 2/7/2019.