

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 204/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 15. 2 .2022 headed by Judge Jasem Mohammad Abod 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, Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Sadeq Madloul Hamad Jassem - candidate for the second constituency - Babil Governorate, sequence (29) - his representative, attorney Dr. Walid Kased Yasser.

The Defendant: Chairman of the Board of Commissioners of the Electoral Commission/ being in his capacity His agent is legal counsel Ahmed Hassan Abd.

The Claim:

The plaintiff claimed by his agents that he had already participated in the elections of the Council of Representatives for the fifth session 2021 / Babil Governorate / the second electoral district, and after announcing the final results by the Independent High Electoral Commission, it was found that he did not obtain a seat in the above district, he submitted an appeal to the Electoral Commission against the decision of the Board of Commissioners of the Independent High Electoral Commission regarding the announcement of the results on 10/10/2021. On 15/11/2021, the judiciary issued a decision No. (1631/Judicial Commission/2021) including the acceptance of his

appeal, Related to the continuation of the work of stations after the scheduled time, it canceled two polling stations and returned the appeal to the Commission to follow the necessary measures in this regard, and according to the letter of the General Secretariat of the Council of Commissioners / Complaints and Appeals Section No. (Qaf/21/8) on 17/11/2021, it instructed The Commission cancels polling stations No. (4) of the electoral center (162310) and No. (2) of the electoral center (162304), in implementation of the decision of the judicial authority for the above-mentioned elections, Which led to him being ahead of his nearest competitor, who had declared victory in the electoral district and secured a seat there. Then the commission reverted and canceled its previous decision after the judicial authority for elections realized that it retracted its decision with a new decision dated 25/11/2021 after it justified that by receiving clarification from the commission by the decision of the Board of Commissioners No. (shin.mim./1 exceptional 73) on 22/11/2021 about the reasons for delaying the closure of stations after the scheduled time, and that this came in contravention of what was stipulated in the (2nd and 3rd) paragraphs of Article (20) of the aforementioned Commission Law, that the judicial authority would request clarifications from the Commission when considering appeals and before issuing decisions regarding them, and if the judiciary later retracts its decision issued on 11/15/2021, with a subsequent decision on 5/11/2021, it is considered a constitutional violation that lies in the failure to apply clear and binding legal texts in implementation stipulated in Articles (18-19-20) of the Law The Independent High Electoral Commission No. (31) of 2019, and since what was stipulated in the Electoral Commission's decision of the extraordinary record (73) on 11/22/2021, constitutes a constitutional breach, as it violates the principle of equality and equal opportunities and the citizen's right to participate in public affairs, including the right to vote Election and nomination are the rights stipulated in Articles (14, 16, 20) of the Constitution. Therefore, the plaintiff asked the FSC to address this in

accordance with its powers stipulated in Article (93/1st and 3rd) of the Constitution, by canceling the decision of the Board of Commissioners of the Elections Commission No. (shin.mim./1 exceptional 73) on 11/22/2021, and maintaining the decision to cancel the two stations referred to above in order to retain the votes he obtained after the cancellation. The lawsuit was registered with this court in No. (204/federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the internal system of the FSC No. (1) of 2005, and the defendant is informed of its petition and documents in accordance with the provisions of Article (2/1st) of the same bylaw, and he replied according to the letter numbered (Kha/21/1781 on 12/19/2021), which included the following:

1. The Independent High Electoral Commission Law No. (31) for the year 2019 has drawn the legal way to appeal the decisions issued by the Board of Commissioners, as the competent authority to consider objections to those decisions are the judicial body for elections, and its decisions are considered final according to Article (19/3rd) of the aforementioned law. It is permissible to appeal before any other party, so the FSC is not competent to consider this case. **2.** The plaintiff had previously submitted an appeal against the decisions of the Board of Commissioners related to the preliminary results of the elections, and the decision of the Judicial Commission for Elections No. (1631/Judicial Commission for Elections/2021) was issued on 15/11/2021, which contained the appealed decision of the Board of Commissioners related to the announcement of the preliminary results of the elections of the Council of Representatives Al-Iraqi on 11/10/2021 and canceling the results of the two stations mentioned in the lawsuit petition in order to exceed the closing time set by the commission at six in the evening and obliging the Commission to amend the polling results in light of that, and the judicial authority issued a decision to cancel the results of those two stations. **3.** The Board of Commissioners issued its Resolution No.

(1) for the Extraordinary Minutes (73) on 11/22/2021, which included assigning the Chairman of the Board of Commissioners to send a clarification to the Judicial Commission for Elections regarding the appeal submitted by the candidate (Sadiq Mudoul Hamad) regarding the closing time of the two stations referred to above. After clarification, the Judicial Commission for Elections issued a decision on 25/11/2021 following its previous decision with the same number (1631/ Judicial Commission for Elections/ 2021), including ratification of the decision of the Council of Commissioners related to the announcement of the preliminary results of the elections for the Council of Representatives 2021 on 11/10/2021, the appeal was received, and the results of the two aforementioned stations are as they were, and the decisions of the Judicial Authority for Elections are final based on Article (19/3rd) of the Independent High Electoral Commission Law No. (31) of 2019, for the reasons presented for the request to dismiss the plaintiff's lawsuit and charge him the expenses. After completing the required procedures in accordance with the provisions of the aforementioned bylaw, a date for the pleading was set in accordance with Article (2/2nd) of it, and the two parties were informed of it. The pleading was commenced in public and attendance. The plaintiff's attorney repeated what was stated in the lawsuit petition and requested the judgment according to what was stated in it. The defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons mentioned in the answer draft dated 16/12/2021. The pleading concluded and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the case of prosecutor Sadiq Mudoul Hamad Jassem included a request to cancel the decision of the Board of Commissioners of the Independent High Electoral Commission No. 2) Affiliated to the Electoral Center (162304) within the second electoral district in the province of Babil. When this

court closely examines the requests contained in the plaintiff's petition, it finds that the consideration of them deviates from its specific competencies under Article (93) of the Constitution of the Republic of Iraq for the year (2005) And Article (4) of the amended FSC Law No. (30) of (2005). As the Independent High Electoral Commission Law No. (31) of (2019) outlined the mechanism to be followed in appealing the decisions of the Board of Commissioners, as Article (19/2nd) of it stated that the decisions of the Board of Commissioners may only be appealed before the Judicial Commission for Elections in matters related to the process And that paragraph (3rd) of the aforementioned article considered the decisions issued by the electoral judiciary final, and since the plaintiff took the legally prescribed path to challenge the decisions of the Board of Commissioners, and that the electoral judiciary had rejected his appeal. Therefore, his claim lacks its support from the Constitution and is free to respond. Therefore, the FSC decided to dismiss the claim of the plaintiff, Sadiq Madaloul Hamad Jassim, and to charge him all judicial expenses, including the attorney's fees for the defendant's attorney/ being in his capacity as a legal employee, Ahmed Hassan Abd, an amount of one hundred thousand dinars to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year (2005) and Articles (4 and 5) of the FSC Law No. (30) of (2005) as amended by Law No. (25) of 2021 and the decision had made clear public on 13/Rajab/1443 coinciding with 15/February/2022.

Signature of
The president
Jasem Mohammad Abod