

Republic of Iraq
Federal Supreme Court
Ref. 317/ federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/1/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the lawyer Jabbar Shati Abdul Hasan.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents, the official jurists Saman Muhsin Ibrahim and Aseel Sameer Rahman.

2. The Prime Minister/ being in this capacity – his agent, the legal counselor Qassim Suhaib Shakoor.

3. President of the Independent Higher Electoral Commission – Board of Commissioners/ being in this capacity – his agent, the legal counselor Ahmed Hasan Abid.

The Claim

The plaintiff claimed that the Council of Representatives had previously enacted the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, to determine the administrative organization of those governorates as they operate according to the system of administrative decentralization, and enjoy broad administrative and financial competencies, and that the election of provincial councils and their powers by law based on the text of Article (122/2nd and 4th) of the Constitution, and that the Provincial and District Councils Elections Law No. (12) of 2018, amended three times, referred to the governorate

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of (Baghdad) in articles (15/1st/Alif) and (26/1st). The Third Amendment Law No. 4 of 2023, as amended in Article 5/3rd thereof, also indicated that elections for provincial councils that are not organized in a region shall be held in one day throughout the Republic of Iraq, and that these texts contradict the provisions of the Constitution of the Republic of Iraq for the year 2005, where the constitutional description of the capital Baghdad was determined through Article 116 of it, as well as Article 124/2nd of the Constitution clarified that it regulates the status of the capital by law, and to include Baghdad in provincial council elections, which contradicts the provisions of the Constitution that characterized the capital Baghdad and its inequality with the governorates that are not organized in a region due to the existence of constitutional texts that require the organization and legislation of a law for the capital Baghdad because it is the heart of the Iraqi state and the seat of the federal authorities, and that the elections that took place previously for the province of Baghdad were under unstable conditions and the imposition of a fait accompli the Council of Representatives omitted to legislate a law regulating the administrative, financial and legislative status of the province of Baghdad from the rest of the provinces that are not incorporated into a region, where the Council of Ministers set in its session (25) for the year 2023 Monday, December 18, as the date for holding the provincial council elections for the year 2023, and the Independent High Electoral Commission issued instructions to hold the elections and organize their implementation on the scheduled date, so the plaintiff asked this court to issue binding judicial rulings to ensure the proper application of the constitution based on Article (93/1st and 3rd) of the constitution, and not to include the capital Baghdad in holding the elections even if they could not be invalidated, and to charge the defendants the expenses. The lawsuit was registered with this court No.

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(317/Federal/2023) and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the first defendant's agent replied with the reply statement dated 24/12/2023, which concluded: that the plaintiff has no current, direct and influential interest in his legal status as required by Article (20) of the Court's Rules of Procedure, and that his request not to include the capital Baghdad in holding elections for provincial councils is outside the jurisdiction of the court, so they requested to dismiss the plaintiff's lawsuit and charge him fees, expenses and attorney's fees, and the second defendant's attorney responded with the reply dated 24/12/2023, which included: Repeating what was stated in the list of the first defendant's agents, he added that the plaintiff filed his lawsuit contrary to the period stipulated in Article (23) of the Court's Rules of Procedure, so he requested that the case be dismissed and that the plaintiff be charged fees, expenses and advocacy fees. The third defendant's agent replied with the draft dated 27/12/2023, which concluded: Based on Article (1) of the Independent High Electoral Commission Law No. (31) of 2019, which stipulates that the Commission is an independent and impartial body with legal personality and financial and administrative independence, and is subject to the control of the Council of Representatives, and it is responsible for setting the approved regulations and instructions, organizing and implementing the types of elections, and federal referendums, and it is an executing body for electoral laws issued by the legislative authority, these laws determine the conditions for the candidate based on the text of Article (49/3rd) of the Constitution, which stipulates (regulated by the law of the conditions of the candidate and voter and everything related to the election) and therefore the Commission is not valid to be a litigant

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in the lawsuit, and Article (23) of the Rules of Procedure of the Federal Supreme Court stipulated that (the constitutionality of the Elections Law and the texts contained therein shall not be challenged less than six months before the date specified for holding the elections), so a request to dismiss a lawsuit of the plaintiff for not directing the litigation and charging the expenses. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading, in which the court was formed and the case began to be considered, the court checked the plaintiff's requests and his arguments and the defenses of the defendants' agents, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

The Decision

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit is focused on demanding a ruling that the capital Baghdad should not be included in the 2023 elections, even if it was not possible to invalidate them, and the court finds through reviewing the lawsuit petition and its attachments and the requests and defenses of the parties that the plaintiff's request for a ruling not to hold elections in the capital, Baghdad, has become futile, because the provincial council elections were held on time on 18/12/2023 in all governorates of Iraq, including the capital, Baghdad, and the results were announced. His request for the annulment of the results of those elections, and the plaintiff's claim is thus subject to dismissal, and in view of the foregoing, the Federal Supreme Court has decided as follows:

First: Ruling on dismissing the plaintiff Jabbar Shati Abdul Hassan's lawsuit regarding the claim that the capital Baghdad should not be

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included in holding the elections for the provincial councils for the year 2023, because there is no point in holding them.

Second: Ruling to dismiss the lawsuit of the plaintiff Jabbar Shati Abdul Hassan regarding the claim to invalidate the results of the 2023 provincial council elections in the capital, Baghdad, for lack of necessity.

Third: The plaintiff shall burden the fees, expenses and advocacy fees of the defendants' attorneys in addition to their jobs in an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued final, and binding for all authorities according to the articles (93 and 94) of the Republic of Iraq Constitution for 2005 and articles (4/5/2nd) of the FSC's Law No. (30) for 2005 which amended by the Law No. (25) for 2021. The decision has been edited in the session dated 25/Jamada Al-Akhira/1445 Hijri which coinciding 8/January/2024 A.D.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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