

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 57/federal/media /2013



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28. 8. 2013 headed by 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 and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (mim. feh. ain.) attorney's agent (yeh. kaf. jim.).

The Defendant: 1- Speaker of Higher Judicial Council/ being in this capacity- his jurist (feh. shin. lam.).

2- Speaker of Independent High Electoral Commission/
being in this capacity his jurist (alif. ha. ain.)

The Claim:

The deputy prosecutor claimed before the FSC in the case No. (57/federal/2013) that his client carried out an autopsy on the provincial councils in 2013 for Muthanna province in the list of rally for Muthanna No. (485). The Independent High Electoral Commission accepted her candidacy, and the plaintiff participated in the elections in Muthanna province, spent money for the purpose of electoral propaganda, received (1,373) votes and won the confidence of the people of Muthanna it received the highest votes in terms of women and many men and its sequence in

terms of the number of votes (fifth) and the commission announced its victory in the elections among the winners. His client was surprised by the decision of the Judicial Electoral Commission, where the said body issued its numbered decision (1283/appellate/2013) on 29/5/2013 to cancel the approval of his client's candidacy from the list mentioned above and cancel the votes it received and consider it invalid based on inaccurate information and exceed its powers because the judiciary does not have the power to consider the eligibility of the candidate or not, and the decision of the judiciary was not correct on the basis that it gave false information and thus lost one of the conditions of nomination, which is good conduct this did not happen as the pledge signed by the winning candidate requests a statement that the candidate was not convicted of a serious crime or a major offence against honour, and this was proved by the same decision of the judiciary and that she did not hide information leading to the nullity of her candidacy or prevent her from nominating and that the decision of the commission was contrary and inconsistent with the FSC's decision No. (12/federal/2012) in which he prevented the confiscation of the votes of the voters or those whose will is directed towards him and that the decision of the authority considered the votes of the voters invalid and this is not legally permissible and is considered to exceed its powers, for other reasons cited by the deputy prosecutor, he asked the court to unconstitutional the decision of the Judicial Electoral Commission, No. (1283/appellate/2013) on 29/5/2013 for violating the text of articles (20 and 38/1st) of the Constitution of the Republic of Iraq for 2005 and its abolition and the resulting denial of his client's victory in the 2013 provincial council elections from Muthanna province and the obligation of the defendants to the wages of lawyers. After completing the legal fee for the case and completing the required procedures in accordance with paragraph (2nd) of article (2) of the rules of procedure of Court No. (1) of 2005, an appointment was set for the case and the deputy prosecutor, Lawyer (yeh. kaf. sin.), attended under his attached public agency a copy of it in the case file, and the first deputy defendant, jurist (feh. shin. lam.), director of the Legal Affairs Department of the

Supreme Judicial Council, attended under his official agency No. (89/ain. qaf. cases/2013) on 26/5/2013(feh. shin. lam.) The second defendant, his deputy jurist Ahmed Hussein Abdul, argument immanence and public commenced. The deputy prosecutor reiterated the petition and requested a verdict, with the defendants charging the expenses. The defendant's deputy repeated what was stated in his written answer draft on 11/6/2013 requesting that the case be rejected because the case is not the prerogative of the FSC. In addition, his client/ being in this capacity is not an opponent in the case because the electoral judiciary formed in the Federal Court of Cassation based on the provisions of article (8/3rd) of the Independent High Electoral Commission Law No. (11) of 2007 amended not subject to the presidency of the Judicial Council as requested by the second defendant under his answer draft on 12/6/2013 No. (kha/13/1824) submitted by the Chairman of the Board of Commissioners where he requested that the case be dismissed because the plaintiff challenges the decision of the judiciary No. (1283/appellate/2013) on 29/5/2013. The mentioned decision based on Item (7th) of Article (8) of the Independent High Electoral Commission Law Amended No. (11) of 2007 is not subject to appeal in any way and that the plaintiff has already been sentenced by the Muthanna Criminal Court to one year in simple imprisonment in accordance with article (245) sentences with a three-year suspended sentence and that the plaintiff did not tell the Commission this when she signed the pledge, which is considered to be false news, and this contradicts the first part of item (3rd) of Article (5) of the Electoral Law, which requires the candidate to be of good conduct, reputation and behavior. The court has seen the mutual regulations between the parties and the documents of the case and the decision of the judiciary referred to above and therefore where there is nothing left to say the end of argument has been made clearly, the decision had made clear public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent in his petition, he requests the unconstitutionality of the Judicial Electoral Commission's decision against his client No. (1283/appellate/2013) on 29/5/2013 for violating the text of articles (20 and 38/1st) of the Constitution of the Republic of Iraq of 2005 and cancel this judicial decision and the resulting denial of his client from winning the membership of the provincial council elections for 2013 from Muthanna province with the defendants charging the wages of lawyers. the FSC found that the its terms of reference are specified in Article (4) of FSC law No. (30) of 2005 and article (93) of the Constitution of the Republic of Iraq for 2005, not including the jurisdiction to annul judicial decisions gained the degree of decisions. Accordingly, this court is not competent to hear the plaintiff's case, which requires that it be rejected form incompetence, and the court decided to reject the case of plaintiff (mim. feh. ain. ha.) form incompetence, while charging the expenses of the case and the fees of the lawyers to the legal defendants jurists (feh. shin. lam.) and (alif. ha. ain.) amount one hundred thousand Iraqi dinar between them and the decision was immanence decisively according to the article (94) of the Constitution and had made clear public on 28/8/2013.