

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 96/federal/media /2013



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 27.11.2013 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: (ha. ain. kaf.) her agents (alif. mim. ain.) and (lam. ain. lam.)

The Defendant: Chairman Independent High Electoral Commission  
/being in this capacity his juristic (alif. ha. ain.).

The Claim:

The plaintiff claimed before the FSC in the case No. (96/federal/2013) that his client won in the provincial councils / Anbar provincial council and the judiciary approved the results and that she held her seat and practiced her primitive work he was surprised by the FSC's decision to transferring paragraph (heh) of the system of distribution of seats No. (12) for 2013 issued by the High Electoral Commission and that the Commission applied this decision applied a binding consideration to it, it initiated the appeal of the decision within the legal period requesting its revocation for the following reasons:

1- The provincial councils have been formed and the elections of governors and the formation of committees and executive positions, and the replacement of the names of candidates in this way are contrary to the provisions of law No. (36) of 2008 amended The system of amending seats No. (12) for 2013 and thus leads to distrust of the Electoral College and the waste of the public interest and imposes the meaning of the approval of the judiciary from its content.

2- The FSC's decision does not apply retroactively and does not affect the results of the elections in the province, especially since the judiciary has approved the results and what the judiciary has settled in the FSC on previous occasions by supporting this opinion, since it has already issued resolution (67) for 2012 and made it clear that it does not affect the results of the previous elections and added to many other points. For all of the above reasons, he asked the FSC to rule against the decision of the Commission's Board No. (2) of the minute (118), and to keep the situation as it is and the decision of the FSC referred to does not apply to the results of the past elections but it's going to take effect for the next election, with the defendant charging the expenses and fees and after the case was registered with this court in accordance with paragraph (3<sup>rd</sup>), article (1) of the Bylaw of the FSC No. (1) of 2005, and after the court has completed the required procedures in accordance with paragraph (2<sup>nd</sup>) ,article (2) of the bylaw of the court referred to above. The argument date was set for the case, the plaintiff's attorneys (alif. mim. ain.) and (lam. ain. lam.) were present at the agency that was tied up in the case, and the defendant's attorney jurist (ailf. ha. ain.) under the official agency attached to the case file, and the public and public argument, and the public argument was started the plaintiff reiterated the plaintiff's claim and requested a ruling, with the defendant charging the defendant the costs of the lawsuit and the fees of the lawyers and the Court was briefed on the answer draft on 9/10/2013 submitted by the Chairman of the Board of Commissioners, requesting that the case be rejected because the Commission made its decision on the basis on the

implementation of the FSC's Decision No. (36/federal/2013) it was able to amend the seat system No. (12) for 2013 after it formed a specialized committee and made recommendations to amend the mentioned system. The plaintiff has already filed an appeal for the same reason before the Judicial Election Commission and the mentioned body rejected the appeal, the agents of the parties repeated their previous statements and request a verdict on them and therefore where there is nothing left to say the end of argument has been made clearly and public.

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent requested in his petition to the FSC ruling to by overturning the Decision of the Council of The Commission No. (2) of Minute (118) and maintaining the status quo and the failure of the decision of the FSC No. (36/federal/2013) on 26/8/2013 on the results of the last elections, it applies to the upcoming elections and since the terms of reference of the FSC are specified in Article (93) of the Constitution of the Republic of Iraq of 2005 and in Article (4) of the FSC Law No. (30) of 2005 it is not among them to consider the plaintiff's request for a ruling to overturn the decision of the Board of Commissioners of the Independent Electoral Commission concerning the distribution of seats among the winners of the provincial council elections. This is the prerogative of the Independent High Electoral Commission and its decision is subject to appeal to the discriminatory body formed in the Federal Court of Cassation. The decisions of the FSC are decisively and obligating on all authorities on the basis of the provisions of Article (94) of the Constitution and they apply from the date of their issuance to the results of the elections and may not be postponed unless they are mentioned in the resolution. For advanced reasons, the plaintiff's case is outside the jurisdiction of the FSC, which requires its rejection from the point of view of non-jurisdiction, so the FSC decided to reject the plaintiff's claim on the one hand of non-conformity, with all the costs of the

lawsuit and the fees of the lawyer to the defendant's attorney, jurist (aif. ha. ain.) amount (100,000) one hundred thousand Iraqi dinar. The decision was made unanimous according to the article (94) of the Constitution and made clear in 27/11/2013.