



Republic of Iraq
Federal Supreme Court
Ref. 256 unified with 264 / federal /2023

Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/12/2023 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 in the case No. (256/federal/2023): Najah Hasan Ibrahim – candidate of Kirkuk Governorate Council elections, her agent the barrister Ghassan Dawood Rasheed.

The Plaintiff in the case No. (264/federal/2023): Safwat Salih Sabir Banaa – candidate of Kirkuk Governorate Council elections, his agent the barrister Akram Taha Mohammed.

The Defendant: Head of the Independent High Electoral Commission/ being in this capacity – his agent, the legal counselor the jurist Ahmed Hasan Abid.

The Third Party besides the Defendant: the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed, through her agent, that Law No. (4) of 2023 had previously been issued, the third amendment to the Law on Elections for the Council of Representatives, Governorate Councils, and Districts No. (12) of 2018, which is included in Article (13) thereof (“Article (35) of the law and its amendments in the law shall be repealed.” No. (14) of 2019 to be read as follows: First: The Independent High Electoral Commission, in coordination with the relevant ministries (Interior, Health, Justice, Trade, Planning) and a representative of each component of the Kirkuk Social Governorate: a member of the Council of Representatives from the governorate, will audit the records. Voters in the governorate are based on the following principles: A - Citizens registered in the 1957 census, with the exception of citizens of the Al-Zab district and the Sarkaran

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district, will be included in the Kirkuk Governorate election register approved in the elections for the Council of Representatives or the provincial councils. B - Returning deportees who bypassed the fact-finding committee under Article (140) of the Constitution or who will bypass its procedures following the applicable legal conditions and controls. C - Citizens of Kirkuk whose residence is proven through the ration card before 2003), and since the defendant, in addition to his job, and the ministerial committees referred to above did not complete the work entrusted to them by auditing the voter register following what was required by Article (13/1st), that is, before the deadline of conducting provincial council elections in Kirkuk, and holding them without checking the voter registry constitutes a major violation of the work of the Independent High Electoral Commission, and is considered a legal violation of the text of the aforementioned article. Failure to complete them constitutes a challenge to the validity of the election results and weakens the voter's confidence in electoral participation, which will open the door to tampering with voters' votes, and falsifying their wills, bearing in mind that since 2003, Iraq has witnessed the holding of three local elections in 2005, local governorate council elections were held in difficult circumstances, a large portion of the Arab component boycotted the elections as a result of adding more than (125 thousand) ration cards without requesting their documents under direct pressure from the coalition forces at the time. There are many letters of correspondence from the Ministry of Commerce in this regard, which confirmed the presence of more than (260 thousand) registered people. In the Kirkuk Governorate voter registry, they are not from the governorate. In 2008, when Law No. 36 was enacted, the two components (Arab and Turkmen) objected to holding local elections if the voter registry was not audited. Article 23 of the Law on Elections for Provincial, District, and Sub-District Councils was enacted No. (36) of 2008 as amended, after which it was decided to form committees to audit the voter register, but they did not complete their work either, which led to the postponement of the elections when the Council of Representatives legislated Law No. (45) of 2013 regarding governorate council elections, it was decided to postpone the elections in Kirkuk Governorate until the record is scrutinized when the Council of Representatives legislated Law No. (4) of 2023, it abolished Article (35) and its amendments from Law No. (14) of 2019, and replaced it with Article

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(13) of Law No. (4) of 2023, and since the committee was unable to complete its work by auditing the records of Voters, the Commission and the ministries concerned with this did not complete their work in the manner required by law, which led to the use of the same records under challenge - in the upcoming governorate council elections on 12/18/2023. Based on the above, any elections held without auditing voter records are considered a violation of Law No. (4), and Article (13) is also considered a constitutional violation, as the survival of citizens who hold civil status identities from outside Kirkuk Governorate and who were added to the voter register in 2005, illegally, constitutes a demographic change according to the Constitution, and violates the principle of equal opportunities stipulated in Article (16) of the Constitution, and therefore holding any elections in Kirkuk is considered based on the current record without correction, it is a dedication to demographic change that affects societal peace and does not represent the will of the indigenous people of Kirkuk, noting that ministerial and parliamentary committees have been formed to audit the register of voters who do not have an ID regarding the conditions of Kirkuk, but without feasible solutions, as the voter register in Kirkuk is not accurate and it cannot be relied upon in conducting the electoral process, so to achieve fair, impartial, and transparent elections, the plaintiff requested a ruling obligating the defendant to postpone the provincial council elections in Kirkuk until the audit of voter records is completed. The case was registered with this court under the number (256/Federal/2023) and the legal fee was paid for it. The defendant was notified of its petition and documents in accordance with Article (21/First and Second) of the internal regulations of the Federal Supreme Court No. (1) of 2022. His representative responded with the answer statement dated 19 /11/2023, in which it was stated that the Independent High Electoral Commission had begun implementing Law No. (4) of 2023 immediately after its publication in the Official Gazette, and as a result, Cabinet Resolution No. (23320) of 2023 was issued regarding approval of the requirements for implementing governorate council elections. On 12/18/2023, including forming a committee to audit the voter registry in Kirkuk Governorate according to the principles stated in Article (13) of the aforementioned law, the Diwani order was issued by the General Secretariat of the Council of Ministers No. (23556) on 7/6/2023, and the Council of Representatives letter numbered

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(Mim.Ra./998) was issued on 7/20/2023, including the nomination of members of the committee from the members of the Council of Representatives, representatives of the components of Kirkuk Governorate. After completing the nomination of the members of the committee, it began holding its meetings, including the first meeting in the Iraqi Parliament building on 8/12/2023, then successive meetings in Kirkuk Governorate for the period from 8/20/2023 until 8/24/2023, the committee recommended several recommendations and were submitted to the Board of Commissioners for approval. The recommendations were approved by the Board of Commissioners' decision number (2) of the regular minutes (33). On 9/17/2023, the Commission approached the Ministry of Interior with its letter No. (Kh/23/934) on 9/21/2023 to verify the names of voters in Kirkuk Governorate, as they were registered in the census of 1957, except for citizens of Al-Zab district and Sarkran district, and provide it with the names of voters who were found to be not registered or one of their ascendants in the aforementioned census and did not receive an answer. The Commission also approached the General Secretariat of the Council of Ministers/Implementation Committee of Article (140) of the Constitution by letter No. (K/23/790) on 8/17/2023 to provide the Commission with a database that includes the names and details of the deportees who bypassed the committee's procedures mentioned above, or who will bypass them, so that the committee can verify these names or approve them in the Kirkuk Governorate voter registry. The answer was not received and the Commission also approached the Ministry of Commerce with the letter (Kha/23/935).) On 9/21/2023 to provide it with the names of citizens who were proven not to be residents of Kirkuk Governorate before the year (2003) according to the approved ration card, and the answer was not received, the committee formed pursuant to the aforementioned court order continued to carry out the tasks assigned to it, and work is underway to submit the required recommendations, noting that the law did not specify a specific period for submitting these recommendations, nor did the law make failure to submit recommendations a reason for postponing the elections for the Kirkuk Provincial Council, although The plaintiff's request to issue a court decision obliging the Commission to postpone the Kirkuk Provincial Council elections has no basis in law, as the Independent High Electoral Commission Law No. (31) of 2019 has laid

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out the legal path to appeal the decisions issued by the Board of Commissioners, as Article (18) thereof stipulates. (First - The Board of Commissioners has the authority to decide on complaints submitted to it, the Council of Commissioners refers criminal cases to the competent authorities if it finds evidence of misconduct related to the electoral process. Second: The Council has the exclusive authority to resolve disputes resulting from the preparation and implementation of national elections at the regional or governorate level, and it may delegate the authority to the electoral administration to resolve disputes the moment they occur. Article (19) stipulates (First: The Supreme Judicial Council shall form a judicial body for elections consisting of three part-time judges, none of whom shall have a rank lower than the first category, to consider appeals referred to it by the Board of Commissioners and submitted by those aggrieved by the Council's decisions directly to the Judicial Board for Elections. Secondly: It is not permissible to appeal the decisions of the Board of Commissioners except before the judicial body on matters related to the electoral process exclusively. Third: The decisions of the judicial body for elections are considered final. By reviewing these legal texts, the competent authority to consider objections to the decisions issued by the Board of Commissioners is the judicial body for elections and it is not permissible to Appeal to any other party, therefore, the Federal Supreme Court is not competent to hear the case because its jurisdiction is specified following Article (93) of the Constitution, and among those jurisdiction is not postponing elections, whether they are elections for the Council of Representatives or the provincial councils, and there is no provision in the Law on Elections for the Council of Representatives, the Provincial Councils, and Districts No. (No. 12) For the amended year 2018, the Commission is allowed to postpone the elections, whether they are elections for the Council of Representatives or the provincial councils for all of Iraq or a specific governorate, in addition to the fact that the plaintiff did not refer to any constitutional article or constitutional violation in her lawsuit, and requested that the lawsuit be dismissed for lack of jurisdiction and that she be charged the expenses. After completing the procedures required by the court's internal regulations, a date for the pleading was set and the parties were notified of it in accordance with Article (21/Third) thereof. The court was formed and the representative of each party was present and the public pleading process began.

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The court noted that the case (264/Federal/2023) was filed before it by the plaintiff. Safwat Saleh Saber Bana (candidate for the Kirkuk Provincial Council elections) and his representative, Lawyer Mahmoud Akram Taha, according to which he requested ((The defendant is required to oblige the head of the Independent High Electoral Commission/in addition to his job to audit the voter register in Kirkuk before holding the provincial council elections in Kirkuk based on Article (13) From Law No. (4) of 2023, he requested that the elections in Kirkuk Governorate be postponed until the defendant being in this capacity completed checking the voter registry)) Its subject is the same as the subject of this lawsuit numbered (256/Federal/2023). For the unity of the subject and to shorten time and effort, the court decided, and based on Article (76/2) of the Law Civil Procedures No. (83) of 1969, amended, unifying the two lawsuits and considering the lawsuit (256/Federal/2023) as the original, the plaintiff and his agent appeared and the public in-person argument proceeded. The court heard the requests of the plaintiffs' agents, their substantiations, and the defenses of the defendant's agent. After completing its scrutinies, the end of the argument has been made clear and the court issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, the court noted that the lawsuit of the plaintiff, Najah Hassan Ibrahim, registered under No. (256/Federal/2023), as well as the lawsuit of the plaintiff (Safwat Saleh Saber), registered under No. (264/Federal/2023), were unified and requested a ruling to bind the defendant. In addition to his job as head of the Independent High Electoral Commission, he postpones the Kirkuk Provincial Council elections until the audit of the voter registry in this governorate is completed, based on Article (35) of Law No. 12 of 2018 - the Elections Law for the Council of Representatives, Provincial Councils, and Districts, amended by Law No. (4) of 2023 - and that Because the defendant and the ministerial committees referred to in this article did not complete the work entrusted to them in auditing the voter register following the amendment mentioned in the introduction to this decision, and since the court heard and reviewed the defenses of the defendant's agent in addition to his position, who requested the dismissal of the lawsuit for the reasons

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stated in his regulations dated 19 /11/2023 in the case No. (256/Federal/2023) as well as his list on the same date in the case No. (264/Federal/2023), the court also reviewed the response statement of the plaintiff's agent, Najah Hassan Ibrahim, lawyer Ghassan Daoud Rashid, dated 11/26/2023, as well as the response statement of the plaintiff's agent, Safwat Saleh Saber, the lawyer, Mahmoud Akram Taha, dated 11/27/2023, and the court rejected the request of the plaintiff's agent, Ghassan Daoud. Which included the inclusion of the Minister of Interior, the Minister of Commerce, the Minister of Planning, and representatives of Kirkuk components (third persons) in this lawsuit; For clarification, this is because what was stated in the request is not conducive to resolving this case, and also because the court rejected the request of lawyer Ghassan Dawoud, dated 12/3/2023, which included a ruling that holding the elections in Kirkuk, scheduled to be held on 12/18/2023, was unconstitutional, due to conflicting It is conducted following Articles (1, 5, 14, 16 and 20) of the Constitution, because this request is considered a fundamental change to what was stated in the subject of the case and the court's response to the requests of the two plaintiffs' representatives who requested the inclusion of the Prime Minister/in addition to his position (a third person) joining the defendant's side in full. To the dispute, and for the third person's representative to be present and for the court to review the list submitted by him on 12/11/2023, in which he requested to dismiss the case for the reasons stated in the list in detail, for all of the above, this court finds that Article (23) of the bylaws of this court No. (1) of 2022 stipulates: "The constitutionality of the Election Law and the provisions contained therein shall not be challenged less than six months before the date specified for holding the elections in each electoral cycle or From the date an official date was set for her in the early elections), and since the plaintiff Najah Hassan's lawsuit was filed on 10/23/2023, while Safwat Saleh's lawsuit was filed on 10/26/2023, and both dates are within a period not exceeding two months from the specified date. To hold the elections on 12/18/2023, that is, contrary to the text of Article (23) of the aforementioned internal regulations, and thus there is freedom to respond to it, the Federal Supreme Court decided to rule as follows:

First: The claim of the plaintiffs, Najah Hassan Ibrahim and Safwat Saleh Saber was dismissed based on the form. To establish it in violation of the period

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stipulated in Article (23) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Al-Waqa'i newspaper, issue (4679) on 6/13/2022.

Second: The plaintiffs charged Najah Hassan Ibrahim and Safwat Saleh Saber the fees, expenses, and attorney fees of the defendant's two agents and the third person/being in their capacity, an amount of one hundred thousand dinars, distributed according to the law.

The decision has been issued unanimously, final, and binding according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 27/Jamada Al-Oula/1445 Hijri coinciding with 12/December/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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