

Republic of Iraq
Federal Supreme Court
Ref 110/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khaled Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Thaer Husain Mugheer Salman – His agent the barrister Abdullah Falah Meshaal.

The Defendant: Chairman of the Independent High Electoral Commission / being in this capacity –His agent the legal adviser Ahmed Hassan Abed.

The Claim

The plaintiff claimed through his agent that he had previously run for the provincial council elections for the province of (Babil) in sequence (9) within the (People's Parliament Assembly/174) and as a result of the defendant's failure to apply the text of paragraph (5) of Article (3/3rd) from the system of distributing seats for the elections of irregular governorate councils in Region No. (9) for the year 2023, and approved by the Board of Commissioners by Resolution No. (10) of the extraordinary minutes (52) on 31/10/2023, as paragraph (first) stipulates of the decision that: The system of applying replacement for quotas shall be according to the system (if one seat reserved for women (quota) remains there were lists that obtained three, two seats or one seat and none of them were a winning woman, so the replacement is from the lists that obtained three, two seats or one seat for a candidate who obtained the highest votes among the women in these lists and did not win a seat and is replaced by a winning candidate from among those

Zainab

Republic of Iraq
Federal Supreme Court
Ref 110/ federal/2024



Kurdish text

lists), accordingly according to the distribution of seats for the women's quota in the province of Babil, the quota quota from the (Madar) alliance for the candidate (Abeer Ghaidan Khalaf) and the (Absher Ya Iraq) alliance for the candidate (Enas Amer Abbas) must be the women with the highest votes, and that the two candidates (Wasan Naim Abdul Kazem Aifan Al-Masoudi - for the People's Parliament Gathering) and (Bushra Mohamed Kazem Khudair - for Eshraqat Kanun) have lower votes than them, and accordingly, the application of paragraph (5) mentioned above, by the Commission, changes the result for the plaintiff from loser to winner because the list (People's Parliament Gathering) will win two seats in the province of (Babil), so the second seat will go to the plaintiff, but the Commission relied on a mechanism contrary to what was stipulated in paragraph (5), as the selection method began with the lists that won three seats, and then go down to the lists that obtained two seats, and in the event that the number of women quota required is not completed, it goes down to the lists that have one seat and until the required number is completed, this application led to its unjustified loss, which constitutes a dangerous precedent, a clear violation and a breach of the electoral system, as the constitution enshrines many lofty principles and values, including equality among all Iraqis and the principle of equal opportunities, in addition to freedom of expression, especially political opinion through elections, voters' choice of their representatives, and the adjudication of emerging issues on the application of federal laws, decisions and regulations falls within the competence of the Federal Supreme Court based on Article (93/3rd) of the Constitution, and as a result of appeals submitted by candidates in the governorates of (Anbar), (Qadisiya), and (Diyala) to the Judicial Commission for Elections to challenge the decisions of the Board of Commissioners related to the distribution of seats quota for women and

Zainab

Republic of Iraq
Federal Supreme Court
Ref 110/ federal/2024



Kurdish text

the failure of the Commission to comply applying paragraph (5) of the seat distribution system, which is the same procedure followed by the Commission and caused the loss of the plaintiff in the elections, which issued its decisions in numbers (12, 23 and 71/Judicial Authority/2024) to overturn the decisions issued for the board of commissioners for being in violation of the rules and provisions of the law that requires the application of paragraph (5) of the seat distribution system in force and the decision of the board of commissioners No. (10) for the extraordinary minutes (52) on 31/10/2023, and the plaintiff challenged before the Judicial Authority for Elections on 31/12/2023 the invalidity of the decision of the Board of Commissioners No. (49) of the extraordinary minutes No. (73) which includes the ratification of the final results of the elections of the governorates councils that are not organized in a region for the year 2023, he requested the application of the seat distribution system for the irregular provincial council elections in a region for the year 2023 and the redistribution of women's quota seats in Babil Governorate, so it issued its decision No. (102 / Judicial Authority for Elections / 2024 on 14/1/2024) to dismiss the appeal, so he submitted on (17/1/2024) a grievance to the Chairman of the Board of Commissioners and requested the application of paragraph (5) mentioned above, and no decision was issued regarding that, so the plaintiff asked this court to rule on the application of paragraph (5) of Article (3/III/W) of the Seat Distribution System No. (9) for the year 2023, in the province of Babil and charging the defendant expenses and fees. After registering the case with this court No. (110/Federal/2024) and collecting the legal fee for it, and informing the defendant 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, his agent replied with the reply regulation dated 24/4/2024 Conclusion: The

Zainab

Republic of Iraq
Federal Supreme Court
Ref 110/ federal/2024



Kurdish text

Independent High Electoral Commission Law No. (31) of 2019 has set the legal path to appeal the decisions issued by the Board of Commissioners under Articles (18 and 19) thereof, according to which the competent authority to consider objections to the decisions issued by the Board of Commissioners is the Judicial Authority for Elections, whose decisions are final, and that the constitutional control that the court is competent to do extends to the texts of the laws and regulations in force and not to their application, so the plaintiff's lawsuit is outside the jurisdiction of the court, as the plaintiff has previously Appeal against the decision of the Board of Commissioners to announce the results, and Decision No. (102/Appeal/2024) was issued by the Judicial Authority for Elections to reject the appeal, so the defendant's agent requested to reject the plaintiff's lawsuit and charge him 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 based on Article (21/3rd) thereof, in which the court was formed and the case was considered, the court scrutinized the plaintiff's requests, his supports and the defenses of the defendant's agent, 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 was a candidate for the governorate of Babil in the 2023 provincial council elections in sequence (9) within the (People's Parliament Gathering/174), and he claimed through his agent that he suffered damage, because the defendant / being in this capacity did not apply paragraph (5) of Article (3/3rd/Theh) of the system of distributing seats for the elections of the governorates councils that are

Zainab

Republic of Iraq
Federal Supreme Court
Ref 110/ federal/2024



Kurdish text

not organized in Region No. (9) for the year 2023, so he requested a ruling to apply this paragraph in the governorate of Babil because it matches the distribution of quota seats in the governorate and according to the similar procedures of the Commission in the governorates of (Qadisiya, Anbar and Diyala) and the decisions of the Judicial Commission for Elections attached to the case file, and through scrutiny the court's review of the lawsuit file and the plaintiff's requests therein found that they focus on demanding a ruling to apply paragraph (5) of Article (3/3rd/Theh) of the seat distribution system for the elections of the governorates councils that are not organized in Region No. (9) for the year 2023, because it does not apply to the case of the plaintiff mentioned in the lawsuit petition, similar cases in the rest of the governorates, according to the claim, and where the plaintiff had previously challenged the decision of the Board of Commissioners to announce the results of the elections of the Babil Provincial Council, and the judicial authority issued its decision in the number (102/Electoral Judicial Authority/2024) reject of the appeal, whereas the Independent High Electoral Commission Law No. (31) of 2019 has laid out the legal path to appeal the decisions issued by the Board of Commissioners under Article (18/1st) thereof, and that the decisions issued by the Board of Commissioners shall be challenged before the Judicial Authority for Elections pursuant to the provisions of Article (19/1st) of the aforementioned Commission Law, and that the decisions of the Judicial Authority for Elections are final under item (third) of Article (19) of the same law, since the jurisdiction of this court is determined by articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, and none of those competences are the requests contained in the petition, the plaintiff's lawsuit must be rejected. In view of the foregoing, the Federal Supreme Court decided as follows:

Zainab

Republic of Iraq
Federal Supreme Court
Ref 110/ federal/2024



Kurdish text

1. Ruling on rejecting the plaintiff's lawsuit Thaer Husain Mugheer Salman, for lack of jurisdiction.
2. The plaintiff shall charge the expenses, fees and attorneyship fees of the defendant's agent, the head of the Independent High Electoral Commission, in addition to his job the legal adviser, Ahmed Hassan Abed, an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities in accordance with the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been made clear in the session dated 29/Shawwal/1445 A.H. Corresponding to 8/5/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

Zainab