

Republic of Iraq
Federal Supreme Court
Ref. 16 / federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19/2/2024 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: Hasan Turan Bahaa Adeen Saeed – President of the Iraqi Turkmen Front/ being in this capacity – his agent the barrister Mahmood Akram Taha.

The Defendant: : Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity – his agent the legal counselor Ahmed Hasan Abid.

The Claim

The plaintiff claimed through his agent that on 18/12/2023, provincial council elections were held throughout Iraq, including Kirkuk Governorate, based on the provisions of Article (5/Alif) of Law No. (4) of 2023, the third amendment to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, and since Article (13) thereof, concerning the elections of Kirkuk Governorate, stipulated that: ((Article (35) of the law and its amendments in Law No. (14) of 2019 shall be repealed to be read as follows: First: The Independent High Electoral Commission, in coordination with the competent ministries (Interior, Health, Justice, Trade, Planning) and a representative of each component of the Kirkuk

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Social Governorate from the members of the Council of Representatives from the province to audit the voter records in the province on the following bases: Alif) Citizens registered in the census (1957), with the exception of citizens of the Zab district and Sarkaran district, who are included in the Kirkuk governorate election register approved in the elections of the Council of Representatives or provincial councils; B. Returning deportees who have exceeded the fact-finding committee of Article (140) of the Constitution or who will skip its procedures in accordance with the applicable legal conditions and controls, c. Citizens from the province of Kirkuk whose residence is proven through the ration card before 2003) whereas the defendant / being in this capacity and the ministerial committees referred to did not It accomplishes the work entrusted to it by auditing the voter register in accordance with the requirements of Article (13/1st), and he did not see any procedures or actions from the defendant that imply that the Commission checks the voter register, especially since Iraq is about to hold the elections for the Iraqi Council of Representatives, and failure to scrutinize the voter register will challenge the validity of the election results and weaken voter confidence in electoral participation, which will open the door to manipulating voters' votes again and falsifying their will, as happened in the recent provincial and district council elections, where many irregularities and violations were detected, including, but not limited to, some voters voting twice and in two electoral centers within the same governorate, or voting in two different governorates and centers, or voting in two governorates and two electoral centers once by special voting, and once other by public vote, all because the individual owns two or more cards, and the defendant has previously admitted before the court that he did not scrutinize the voter register in the lawsuit No. (256 and its unified 264/federal/2023), which clarified the non-application of

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the aforementioned Article (13) regarding the elections of Kirkuk governorate, and the elections were held without checking the voter registers, despite the demand to do so in all forums, note that Iraq has witnessed since 2003 the holding of three local elections, where it was held in 2005, elections for local provincial councils in difficult circumstances and boycotted by a large part of the Turkmen and Arab component as a result of the addition of more than (125) thousand ration cards without requesting their documents, and there are many letters of correspondence to the Ministry of Commerce in this regard, which confirmed the presence of more than (260) thousand people registered in the voter register of Kirkuk province are not from the province, and thus the boycott was on the impact of the appeal in In 2008, when Law No. 36 was enacted, the Turkmen and Arab components objected to the holding of local elections in the event of non-audit of the voter register, and Article 23 of the Law on the Election of Provincial Councils, Districts and Sub-districts No. 36 of 2008, as amended, was enacted, as a result of 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 on provincial council elections, it was decided to postpone the elections in Kirkuk governorate until the register is checked, and during the Council of Representatives' legislation of the Council of Representatives, Provincial Councils and District Councils Elections Law No. (4) of 2023, it canceled Article (35) and its amendments in Law No. (14) of 2019, and replaced it with Article (13) of Law No. (4) of 2023, and since the committee was unable to complete its work by checking voter records, the IHEC and the relevant ministries did not did not perform its work as required by law, which in this case leads to the use of the same records that are

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contested in the elections for the next Council of Representatives Therefore, any elections held without checking the voter records are considered a violation of Law No. (4) and Article (13) and are 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, therefore, any elections conducted without checking the voter records are considered a violation of Law No. (4) and Article (13) and are 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 what is stated in the constitution, and violates the principle of equal opportunities stipulated in Article (16) of the constitution, and therefore the holding of any elections in Kirkuk is considered dependent on the current register without Correction is a dedication to demographic change that affects societal peace, and does not represent the will of the original inhabitants of Kirkuk, knowing that ministerial and parliamentary committees have been formed for the purpose of checking the voter register for those who do not have the identity of Kirkuk, but without feasible solutions, as the voter register in Kirkuk is not accurate, therefore, in order to achieve fair, fair and transparent elections, and the prosecutor had previously reviewed the Independent High Electoral Commission and asked it to audit the voter register before the provincial council elections, but he did not find the will or intention to do so, which will lead to the failure of the elections in Kirkuk governorate and the loss of the rights of candidates, including candidates who will enter the parliamentary elections through the list of the plaintiff's party, so he asked this court to rule to oblige the Independent High Electoral Commission to audit Voter register in Kirkuk Governorate before

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holding the elections of the Iraqi Council of Representatives in accordance with the provisions of Article (13) of Law No. (4) of 2023 The third amendment to the Law on Elections of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, and after registering the case with this court No. (16/Federal/2024) and collecting the legal fee for it, and notifying the defendant of its petition and documents in accordance with the provisions of Article (21/I and II) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his agent replied with the reply list dated 31/1/2024 to summarize: The Independent High Electoral Commission has started implementing Article (13) of the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (4) of 2023, immediately after the publication of the law in the Official Gazette, and the Diwani Order was issued by the General Secretariat of the Council of Ministers No. (23556) on 7/7/2023, and the letter of the Council of Representatives was issued Issue (998) on 20/7/2023, which includes the nomination of members of the committee from the members of the Council of Representatives representing the components of Kirkuk Governorate, and the committee began to hold several meetings, and there were recommendations that had been submitted to the Board of Commissioners for approval, and the relevant authorities were approached for the purpose of completing the tasks entrusted to the committee in accordance with the law, and therefore the committee is continuing to audit those records, as for the violations and violations that occurred in the provincial council elections, the Commission has already responded to the complaints submitted to it in the same as the plaintiff, after conducting the investigation and audit and it was found that they were not correct, and the Judicial Authority for Elections issued its decision No. (290 / Judicial Authority). for the elections/2023)

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to dismiss the appeals related to these allegations, and the court has previously issued a decision to dismiss the lawsuit numbered (256 and consolidated 264/federal/2023), which is the same subject in this lawsuit, this is because it violates the text of Article (23) of the Rules of Procedure of the Federal Court, as the jurisdiction of the Court is specified under Article (93) of the Constitution and there is no reason for the subject matter of the lawsuit to institute it, there is no decision or constitutional violation in a law, system or constitutional issue, so he requested the dismissal of the plaintiff's lawsuit and charging the expenses, and after completing the procedures required by the Court's Rules of Procedure, a date was set to consider the case without pleading in accordance with Article (21/3rd) of the Court's Rules of Procedure, in which the court was formed and began to consider Case. The court examined the plaintiff's requests, his substantiations, 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's lawsuit is focused on demanding a ruling to audit the voter register in Kirkuk Governorate before the Iraqi Council of Representatives elections are held in accordance with the provisions of Article (13) of Law No. (4) of 2023 Third Amendment Law to the Council of Representatives, Provincial Councils and Districts Elections Law No. (12) of 2018, for the reasons stated by the plaintiff in his petition through his agent and the list submitted by him during the pleading sessions, and because any elections are held without checking records Voters in Kirkuk Governorate are considered a violation of the

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provisions of Article (16) of the Constitution of the Republic of Iraq for the year 2005, and the Federal Supreme Court finds that Article (13) of Law No. (4) of 2023 mentioned above has included that the Independent High Electoral Commission must coordinate with the relevant ministries, a representative of each component of the social province of Kirkuk from among the members of the Council of Representatives shall check the voter records in the province on the following bases: Citizens registered in the 1957 census, with the exception of citizens of the Zab district and Sarkaran district, shall be included in the election register of the province of Kirkuk approved in the elections of the Council of Representatives or provincial councils. Returning deportees who have exceeded the fact-finding committee of Article 140 of the Constitution or who will skip its procedures in accordance with the applicable legal conditions and controls. C- Citizens from the governorate Kirkuk who are proven to have lived through the ration card before 2003.)) whereas the conditions contained in the aforementioned article are enforceable before the elections of the Council of Representatives for the next session are held as it consolidates the principle of equal opportunities stipulated in Article (16) of the Constitution, and embodies the will of the residents of Kirkuk Governorate, in order to ensure societal peace in it, and despite the fact that the Independent High Electoral Commission had begun to implement Law No. (4) of 2023 and the Third Amendment Law to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, in particular Article (13) thereof, it is necessary to complete the audit of voter records in Kirkuk Governorate in accordance with the principles contained in Article (13) referred to above before holding the next Council of Representatives elections,

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therefore, and in view of the foregoing, the Federal Supreme Court decided as follows:

First: Ruling obliging the defendant, Chairman of the Board of Commissioners of the Independent High Electoral Commission, in addition to his job, to complete the audit of voter records in Kirkuk Governorate before holding the upcoming Council of Representatives elections in accordance with the provisions of Article (13) of Law No. (4) of 2023 Law of the Third Amendment to the Law on Elections of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018.

Second: The defendant / being in this capacity shall be charged with the expenses, fees and attorney fees of the plaintiff's agent, lawyer Mahmoud Akram Taha, an amount of one hundred thousand dinars.

The decision has been issued unanimously, final, and binding for all authorities 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 edited on the session dated 8/Shaaban/1445 Hijri coinciding 19/February/2024 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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