

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 173/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Shatha Yassin Abdul Karim Al-Azzawi, the candidate for the Fifth Constituency / Baghdad Governorate, and her attorney, Walid Kased Yasser.

The Defendant: Head of the Independent High Electoral Commission (IHEC) /being in his capacity as his deputy, the legal employee Ahmed Hassan Abd.

The Claim:

The plaintiff claimed, through her attorney, that she had previously participated in the elections for the Council of Representatives, the fifth session 2021, in the Baghdad governorate / the fifth electoral district. The distribution of governorates into districts, and in the fifth district in which I participated, four seats were allocated, one of which is allocated to women (a quota) according to the text contained in the instructions for distributing seats for the elections of the Iraqi Parliament issued by the Electoral Commission where the distribution of the four seats is as

follows: 1- Three seats for the highest votes (without mentioning the gender of a man or a woman) and one seat for a woman (quota). The table attached to the election law includes the numbers of women in each governorate without mentioning that there is a woman who won her valid votes (the third on the constituency) and cannot be calculated as a quota according to the table attached to the aforementioned seat distribution system. The fourth seat in the Fifth Constituency / Baghdad is the right of the woman who obtains the highest votes from the women in the constituency, and it is from her (the plaintiff's) share. The highest votes come from a single constituency, as the quota is also counted at the constituency level according to the amended law. Therefore, the aforementioned constituency includes four seats, while the presence of one woman equals 20%, which is contrary to what the constitution stipulates in Article (49), provided that it is not less than For a quarter, therefore, the fourth seat is the woman's share in this constituency, and the man who won the fourth place according to the table cannot be considered a winner among the four candidates who obtained the highest votes in the constituency, and it violates Article (16/3rd) of the Elections Law, which stipulates (3rd) A quota for women is determined for each governorate, as specified in the attached table. And since the foregoing constituted a constitutional violation of Articles (14, 20, and 38) of the Constitution, the plaintiff asked the FSC to grant her the fourth seat in her constituency. The lawsuit was registered with this court in No. (173/federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the FSC's bylaw No. (1) of 2005, and the defendant is informed, in addition to his job, of its petition and documents in accordance with the provisions of Article (2/1st) of the same rules of procedure, and he responded by the answer with the number (Kha/21/1740 on 9/12/2021), which included the following: 1- The IHEC Law No. (31) of 2019 has drawn the legal way to challenge the decisions issued by the Board of Commissioners, as Article (18) of it stipulates (First - The Board of Commissioners has the authority to decide on complaints submitted to

it, and the Board of Commissioners refers criminal cases to Competent authorities if there is evidence of misconduct related to the integrity of the electoral process. Second, the Council has the exclusive authority to resolve disputes arising from the preparation and implementation of national elections and at the level of a region or the level of governorates, and it may delegate the authority to the electoral administration to resolve disputes as they occur) and Article (19) stipulates From him to (**First** - The Supreme Judicial Council shall form a judicial body for elections consisting of three part-time judges, none of whom is of less than the first category, to consider the appeals referred to it by the Board of Commissioners or submitted by the aggrieved by the decisions of the Council directly to the judicial body. **Second** - The decisions of the Board of Commissioners may not be appealed except before the Judicial Authority for Elections in matters related to the electoral process exclusively. **Third** - the decisions of the Elections Judicial Authority are considered final. Therefore, the competent authority to consider objections to the decisions issued by the Board of Commissioners is the Judicial Authority for Elections, and it is not permissible to appeal before any other party, therefore, the FSC is not competent to consider this case. 2 - Article (16/3rd) of the Council of Representatives Elections Law No. (9) of 2020 stipulates that the quota for women for each governorate is determined as specified in the attached table, and with reference to the table attached to the law, which is considered an integral part of it, the fifth district in Baghdad governorate She is (4) seats, and this table specified that one woman should be among those seats. By reference to the election results, it was found that a female candidate had won her votes in one of the electoral district's seats, and therefore that district had exhausted the women's seat with the victory of that candidate, which is consistent with the application of Article (16) of the Elections Law and the instructions for distributing seats issued by the IHEC. 3- The plaintiff had previously submitted an appeal before the Judicial Commission for Elections against the decisions of the Board of Commissioners related to

the preliminary results of the elections, and the Judicial Commission for Elections' Decision No. (1392/ Judicial Commission for Elections/2021) dated 21/11/2021 was issued, which includes the rejection of the appeal in form as it is not relevant, as the decisions of the Judicial Authority for Elections are finally based on Article (19/3rd) of the IHEC Law No. (31) of 2019. Therefore, the defendant requested that the plaintiff's lawsuit be dismissed and that she be charged with the expenses. After completing the procedures in accordance with the provisions of the aforementioned internal system, a date was set for the pleading in accordance with the provisions of Article (2/2nd) of the aforementioned system, and the two parties were informed of it. On the appointed day, the court was formed. The plaintiff's attorney, Walid Kased Yasser, attended and attended on behalf of the defendant /being in his capacity as his agent, the legal employee Ahmed Hassan Abd and Bushar pleaded in his presence and public. The plaintiff's attorney repeated what was stated in the lawsuit's petition and requested a ruling, according to which the defendant's attorney responded, requesting that the lawsuit be rejected for the reasons stated in the answer draft dated 12/9/2021. The court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC it was found that the plaintiff 's lawsuit included that she was one of the participants in the Iraqi Parliament elections for the year (2021), where she was nominated in the Baghdad governorate within the fifth electoral district, and after the results were announced by the IHEC, it was found that she did not obtain a seat within the aforementioned district and since the electoral law approved in the elections of 2021 is the distribution of governorates into districts, and that the fifth district includes four seats, including a seat reserved for women within the women's quota, and that a woman's victory according to the valid votes she obtained within the said district may not be counted

within the women's quota, and that the claimant's district is counted. He must, in addition to his position, the winning candidate with her valid votes within the quota for women constitute a constitutional violation of Articles (14, 20 and 38) of the Constitution of the Republic of Iraq for the year (2005), so she asked the FSC to grant her the fourth seat in her constituency. This court finds that the plaintiff's request to grant her the fourth seat in the fifth electoral district within the Baghdad governorate deviates from its competencies specified in Article (93) of the Constitution of the Republic of Iraq for the year (2005) and Article (4) of the FSC Law No. (30) of (2005) as amended (25) of 2021 and therefore her claim is free to respond. Therefore, the FSC decided to reject the claim of the plaintiff, Shatha Yassin Abdul Karim Al-Azzawi from the competent authority, and charge her all judicial expenses, including attorney fees for the defendant's attorney /being in his capacity, the legal employee Ahmed Hassan Abd, an amount of one hundred thousand dinars, and the decision was issued in agreement definitively based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5) of the FSC Law No. (30) of (2005) amended by Law No. (25) of 2021 on 22/Jumada Al-Ula /1443 coinciding with 27/December/2021.