

Republic of Iraq
Federal Supreme Court
Ref. 176/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 5. 1 .2022 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Haitham Abdul-Jabbar Muhammad Fahd Al-Zarkani - his attorney, Alaa Hadi Faraj.

The Defendants:

- 1- The Head of the Supreme Judicial Council /being in his capacity - his deputy, the legal employee, Labib Abbas Jaafar.
- 2- The Head of the Independent High Electoral Commission /being in his capacity - his deputy, the legal employee Ahmed Hassan Abd.

The Claim:

The plaintiff claimed, through his attorney, that the Board of Commissioners of the Independent Electoral Commission issued a decision approving the results of the elections for the Iraqi Council of Representatives, which was in violation of the law, regulations, instructions, and procedural rules issued by the Commission and included a serious error, and unfair to his rights and the rights of thousands of voters, as it violated the Iraqi Parliament Elections Law

No. (9 of 2020, in which Article (38/1st) did not stipulate canceling votes in stations and centers in the event of a mismatch of votes, but rather that the results of manual counting and sorting would be approved instead of the results of electronic counting and sorting. invalid) and the percentage of its acceptance or rejection and its impact on the electoral results of 2021, rather, it was extensively exposed to the impact of the mismatch in the results by (5%) or more of the votes, and an arithmetic equation was developed to find the percentage of mismatch, and the Judicial Authority for Elections made material, interpretative and procedural errors, including what was stated in its decision of different and unreal percentages of invalid papers in the stations, according to the results reports, the percentage of invalid papers in Station No. (1) in the electoral center (193602) is (4.9%), and in Station No. (2) in the electoral center (293701) it is (4.1%) and not (5%).) as stated in the resolution. The Judicial Commission for Elections expanded on the subject matter of the appeal and its subject matter submitted by the appellant, in the letter No. qaf/21/986 on 11/22021. Station No. (7) in the electoral center (263701) was not included in the appeal list, while its receipt and its impact on the results were included in the content of the decision, as the Board of Commissioners had previously issued its decision (34) No. shin.mim/34/ordinary/48 dated 4/11/2021, including in the first paragraph of it (a response to the appeal submitted by the appellant in the light of the results of the re-counting and manual counting of the contested stations, which came to its results are identical with the results of the electronic counting and sorting announced by the Commission). For the foregoing reasons, and to clarify the state of confusion and confusion in the interpretation, procedures, and material and legal errors in which the judiciary in the Independent High Electoral Commission (according to the claim) occurred, the plaintiff requested the FSC to review all the priorities in order to determine the truth and preserve the votes of the voters and their legal and constitutional rights Issuing the decision not to certify the results until the grave error that

was affected is corrected, as well as issuing the state order to stop the result of the candidate, Rafiq Hashem Shanawa, until this case is resolved. The case was registered with this court in No. (176/federal/2021) and the legal fee was collected for it in accordance with Article (1/Third) of the FSC's bylaw No. (1) of 2005 and informs the defendants of its petition and documents in accordance with the provisions of Article (2/1st) of the same bylaw as above. The first defendant's attorney (the head of the Supreme Judicial Council / in addition to his position) responded with the answer list dated 12/13/2021, which included the following: 1- What was stated in the lawsuit's petition, referring to the fact that the electoral judicial authority is formed in the Independent High Electoral Commission, is inaccurate, as it is proven that the electoral judicial authority was formed by the Supreme Judicial Council based on what was stated in the provisions of Article (9/1st) The Law of the Independent Supreme Commission for Elections No. (31) for 2019, which stipulated (the Supreme Judicial Council shall constitute a judicial body consisting of three part-time judges, which are not less than one of them from the first category to consider appeals referred to by the Board of Commissioners or submitted by those affected by the Committee the council directly to the judicial authority). In addition, the decisions of the Board of Commissioners may only be before the judiciary for elections concerning matters relating to the electoral process exclusively, according to the provisions of Article (19/2nd) of the Act, as noted as article (19/3rd) of the same law on (decisions The Judicial Commission for final elections) as its decisions may not be challenged before any court or other judicial authority. 2- The plaintiff did not indicate what the constitutional violation he alleges is that the competencies of the FSC were determined by Article (93/1st) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/1st) of FSC Law No. (30) of (2005) and operating systems, Oversight of the constitutionality of the laws and regulations valid, in addition to the provisions of Article

(93/7th) of the Constitution and Article (4/7th) of the aforementioned FSC Law and their text (ratifying the final results of the general elections for membership in the Council of Representatives). Accordingly, the plaintiff's requests are outside the jurisdiction of the FSC and for the foregoing, and since the decisions of the Judicial Commission for Elections are final and there is no violation of the provisions of the Constitution, the lawsuit will be void of its proof, as well as the unsubstantiated claim and the first claim against him. The second defendant answered according to the letter of the Independent High Electoral Commission No. Kha/21/1739 on 9/12/2021, which included the following: 1. The Independent High Electoral Commission Law No. (31) of 2019 charts the legal way to challenge the decisions issued by the Board of Commissioners, as Article (18) thereof states: (First: The Board of Commissioners has the authority to decide on complaints submitted to it, and the Board of Commissioners refers criminal cases to the competent authorities. If there is evidence of misconduct related to the electoral process, Secondly - the council has the exclusive authority to resolve disputes arising from the preparation and implementation of national elections at the level of a region or the governorate level, and it may delegate the authority to the electoral administration to resolve disputes the moment they occur) and Article (19) of the same Law on (First: The Supreme Judicial Council shall form a judicial body for elections consisting of three part-time judges, none of whom is of a class of no less than the first class, to consider the appeals referred to it by the Board of Commissioners or submitted by those affected by the decisions of the Council directly to the Judicial Commission for Elections. Second: It is not permissible to appeal The decisions of the Board of Commissioners are only made before the Judicial Commission for Elections in matters related to the electoral process exclusively. Third: The decisions of the Judicial Commission for Elections are considered final). Therefore, the body competent to consider objections to the decisions issued by the Board of

Commissioners is the Judicial Commission for Elections, and it is not permissible to appeal before any other party. The FSC is not competent to hear this case 2. The decisions of the Electoral Judicial Authority are stronger and higher than the decisions issued by the Board of Commissioners, and they are obligatory to be followed and implemented, even if the plaintiff's appeal against the decisions of the Judicial Authority for Elections violates the Independent High Electoral Commission Law No. (31) of 2019, which considered that the decisions issued by the Elections Judicial Authority They are final decisions based on Article (19/3rd) of it, so the second defendant requested that the plaintiff's lawsuit be dismissed and he is charged with the expenses. And after completing the procedures required by the aforementioned bylaw of the court, a date was set for the pleading, in accordance with Article (2/2nd) of it, and the two parties were informed of it. On the appointed day, the court was formed, so the plaintiff and his attorney, Alaa Hadi Faraj, attended. On behalf of the first defendant (the head of the Supreme Judicial Council /being in his capacity), his attorney, the legal employee, Labib Abbas Jaafar, attended. On behalf of the second defendant (the head of the Independent High Electoral Commission /being in his capacity) and his representative, the legal advisor, Ahmed Hassan Abd, and Bushra attended the public pleading procedure contained in its answer draft dated 12/12/2021, the second defendant's attorney answered and requested that the case be dismissed for the reasons stated in the answer draft dated 12/12/2021:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's lawsuit is focused on reviewing all the priorities related to the electoral process that took place on 10/10/2021 and filed with the Independent High Electoral Commission in order to determine the truth and preserve the votes of the voters and their legal and constitutional rights and not to neglect them and not to allow the citizen's confidence in his institutions

to be undermined, as stated in the petition. As well as the demand not to ratify the results until the grave mistake that was harmed by the plaintiff is corrected according to his claim, as well as the issuance of a state order to suspend the result of the candidate (Rafik Hashem Shanawa) until the outcome of this case is resolved relevant to the merits of the case, it was found that, as far as the request for the writ was submitted, there is no constitutional and legal justification for responding to it, because this is a prior sense of the court's opinion regarding the origin of the case, and because the case, including the adequate regulations submitted by the two parties, is ready for settlement, so he decided to refuse to issue the submitted custodian order. As for the origin of the case, the court finds that the law of the Independent High Commission For Elections No. (31) of 2019 is clear in its drawing the mechanism and procedures for complaint and appeal related to the electoral process and the party to which the complaint and appeal are submitted, as Article (18) of the aforementioned law 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 the competent authorities if there is evidence of misconduct related to the integrity of the electoral process. At the governorate level and may delegate the authority to the electoral administration to resolve disputes as they occur), while Article (19) of the same law stipulates (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 person affected by the decisions of the Board directly to the judicial authority. Second: 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 Judicial Authority for Elections are final) as indicated in Article (20) of the same law, the legal periods during which appeals and complaints are submitted and the mechanism for that, and

that the electoral complaints and appeals system No. (7) of 2020 and in articles (3-9) of it have specified the validity, mechanism, and conditions Submitting complaints to the Independent High Electoral Commission, all this on the one hand, and on the other hand, the jurisdiction of this court specified in Article (93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the FSC Law No. (30) of 2005 as amended does not include consideration in appeals and complaints related to the electoral process, for which the law defines a special method of appeal, and as indicated above, and that the jurisdiction of this court contained in Article (52) of the Constitution is to consider appeals contained in decisions of the Council of Representatives in accordance with the mechanism outlined in that article. Appeals against the decisions of the Board of Commissioners and the Judicial Commission for Elections, which by their nature precede the ratification of the election results, are not final and the decisions of the Judicial Commission, as mentioned above, are final and not subject to appeal before this court or any other. The decision by agreement is final and binding on all authorities 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 FSC Law No. (30) of 2005 as amended by Law No. (25) of 2021 and the decision had made clear public in 1/Jumada Al-Akhirah/1443 coinciding with 5/January/2022.

Signature of
The president
Jasem Mohammad Abod