

Republic of Iraq
Federal Supreme Court
Ref. 180/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16. 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 who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Ala Tahseen Habib Ali Talabani - her two attorneys are Muhammed Majid Rasan Al-Saadi and Ahmed Mazen Makiya.

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

The Claim:

The plaintiff claimed through her attorney that she had previously participated in the elections of the Iraqi Council of Representatives for the fifth session / the first electoral district No. (50) for Kirkuk governorate for (the Kurdistan Alliance bloc) within the conditions stipulated by the High Elections Commission, for the elections, there were defects and violations in the electoral mechanism used by the electoral centers in the above-mentioned constituency and in the process of announcing the results and determining the winners and losers, as the system in force in these elections is the system of distributing the

governorate into multiple electoral districts according to the last amendment to the election law. She was nominated for five seats, so the proportion of women in it is supposed to be no less than 25%, as the aforementioned law gave each constituency the right to enjoy this percentage, bearing in mind that the five seats specified for this constituency were won by four men and one woman with the number of votes they obtained in competition. Thus, the aforementioned ratio was not achieved, and in order to achieve it, the seats must be (three for men and two for women). And since the winning candidate, Mrs. (Dylan Ghafour), had obtained a number of votes that qualified her to win an original seat without resorting to the women's quota system, as the quota share of seats is not considered a precautionary case for compensation, but rather is a constitutional conditional condition and that Mrs. (Dylan) obtaining a seat from the seats of the constituency in the usual way of competition outside the scope of the quota share requires division in line with the laws and constitutional texts as follows: ((Four seats for the contenders with the number of votes are each of (Mr. Shakhwan, Mr. Abdullah, Mr. Amid Muhammad, Mrs. Dylan Ghafoor, Mr. Sabah Habib) and one seat for the quota share that is supposed to be entitled to it (the plaintiff) within the framework of the constitutionally stipulated quota system.) As the woman who received the highest number of votes from women after Ms. Dylan Ghafour, who won the contest by the number of votes and not by the number of votes related to the quota share, and the law does not prevent the presence of two or more women in one district, provided that the presence of a woman who won the votes in her favor in that list does not prevent from The presence of another woman by securing the women's quota on her side (quota). And that Kirkuk governorate consists of (13) parliamentary seats distributed over three electoral districts and a seat for the Christian quota according to the schedule of Elections Law No. (9) for the year 2020 and based on what was stated in Article (16/2nd) thereof, that the percentage of women's representation in the parliament should not be fewer

Representatives represent 25% in the governorate, and paragraph (5th) of the same article referred to the mechanism for distributing the quota for women in the event that it is not achieved, that a virtual seat is added to each electoral district, then the number of winning women in the district is divided by the number of seats in that district and a seat is added to the district with the lowest representation of women,

Applying this, the results of the elections in Kirkuk governorate, according to the announcement of the final results by the IHEC, showed that only three women won, which means that the percentage of women's representation constitutes the equivalent of 23% of the governorate, which contradicts the text of Article (16/2nd) mentioned above, and by applying the text of Article (16/5th): Another woman must be added to the first constituency in Kirkuk governorate, which consists of five winning seats, in which one woman (Dylan Ghafour) obtained an original seat by obtaining the highest number of votes, and her access to the parliamentary seat was not according to the women's quota system, Therefore, the plaintiff was supposed to be granted a quota seat for women, as she obtained the highest number of votes after Mrs. (Dylan Ghafour), in order to achieve the constitutional ratio affirmed by the constitution in Article (49/4th) of it. Therefore, the plaintiff asked the FSC to fulfill her constitutional and legal right by granting her a quota seat for women in order to achieve the constitutional ratio of 25%. If not granted that seat, the ratio would be 23%, and this is a constitutional violation, and she requested that the defendant be charged with all fees, expenses, and attorney fees. The case was registered with this court in No. (180/federal/2021) and the legal fee was paid for it in accordance with Article (1/3rd) of the FSC's Bylaw No. (1) of 2005. The defendant/being in his capacity is informed of its petition and documents based on the provisions of Article (2) /1st) from the same bylaw, he replied with the answer draft No. (Kha/21/1737 on 9/12/2021) and 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 the authorities Secondly - the council has the exclusive authority to resolve disputes arising from the preparation and implementation of national elections and at the regional or governorate level, and it may delegate the authority to the electoral administration to resolve disputes as they occur) article (19) of it 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 aggrieved by the decisions of the Council directly to the Judicial Commission for Elections Second - The decisions of the Board of Commissioners may not be appealed except before the judicial authority in matters related to the electoral process exclusively. Third - the decisions of the Judicial Authority for Elections are considered final. Therefore, the authority competent 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, so the FSC is not competent to consider this case.

2. Article (16/3rd) of Parliament Elections Law No. (9) of 2020 stipulates (a quota for women is determined for each governorate as specified in the attached table), and with reference to the table attached to the law, which is considered an integral part of it, it appears that the first district in Kirkuk governorate they are (5) seats, and this table has specified that one woman should be in those seats, and by reference to the election results, it appears that a female candidate has won her votes in one of the constituency seats, and therefore that constituency has exhausted the women's seat with the victory of that candidate, this 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. The Judicial Commission for Elections' Decision No. (1630 / Judicial Elections Commission / 2021) dated 10/11/2021 was issued containing the ratification of the contested decision of the Board of Commissioners Related to the announcement of the preliminary results of the Iraqi parliamentary elections on 11/10/2021, and that the candidate (Dylan Ghafour) won the contest for a seat from the first constituency in Kirkuk governorate and thus fulfilled the full electoral entitlement in this constituency, and since the decisions of the Judicial Commission for Elections are finally based on Article (19/ 3rd) of the IHEC Law No. (31) of 2019. Therefore, he requested that the plaintiff's lawsuit be dismissed and that it be charged with the expenses. After completing the required procedures in accordance with the provisions of the above-mentioned bylaw, a date was set for the pleading in accordance with the provisions of Article (2/2nd) of it, and the two parties were informed of it. The defendant's attorney attended the legal employee, Ahmed Hassan Abd, and the pleading was initiated in his presence and in public. The plaintiff and her two attorneys repeated what was stated in the lawsuit petition and requested the ruling according to what was stated in it. The defendant's attorney responded, asking for the lawsuit to be dismissed for the reasons stated in the answer draft dated 9/12/2021. Each attorney repeated a party to his previous statements and requests, and since what remains to be said, the end of pleading has been made clear, and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff (Ala Tahsin Habib Al-Talabani) filed this lawsuit, through her two attorneys, lawyers Muhammad Majid Al-Saadi and Ahmed Mazen Makiya, she is challenging the procedures of the IHEC regarding calculating the quota seats for women in Kirkuk governorate in the 2021 elections and requesting that the defendant invited the head of the IHEC / being in his capacity to plead and perform her constitutional and legal right by granting her a quota seat women to achieve the constitutional quota of (25%). This court finds that decisions issued by the Board of Commissioners of the IHEC may not be challenged except before the Electoral Judicial Authority under Article (19/2nd) of the IHEC Law No. (31) of 2019 especially in matters related to the electoral process exclusively. Decisions issued by the judicial authority for elections are finally based on the provisions of Paragraph (3rd) of the aforementioned article the jurisdiction of this court under Article (93/7th) of the Constitution of the Republic of Iraq for the year 2005 is to ratify the final results of the general elections for the membership of the Council of Representatives after they were sent by the IHEC after all appeals related to the electoral process have been resolved by the IHEC and the Judicial Authority The aforementioned and that this jurisdiction has also been supported by the text of Article (4/7th) of the FSC Law No. (30) for the year 2005 as amended by Law No. (25) for the year 2021 and thus this court is not competent to hear this case for the aforementioned reasons. Therefore, the FSC decided to reject the plaintiff's lawsuit, Alla Tahsin Habib Ali Al-Talabani, for lack of jurisdiction and to charge her fees and expenses, and an amount of one hundred thousand dinars as attorney fees for the defendant's attorney/ being in his capacity as legal advisor Ahmed Hassan Abd. The decision was issued in agreement, conclusive and binding on all authorities, based on the provisions of Articles (93/7th and 94) of the Constitution of the Republic of Iraq of

2005 and Articles (4/7th and 5/2nd) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2005 2021 and the decision had made clear public on 12/Jumada al-Thani/1443 coinciding with 16/January/2022.

Signature of
The president
Jasem Mohammad Abod