

Republic of Iraq
Federal Supreme Court
Ref. 210 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/2/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, 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: Amal Atiya Abdul Raheem – candidate of the first circle – Dhi Qar – sequence 32/ her agent the Barrister Waleed Khasid Yassir.

The Defendant: the Head of the Independent High Electoral Commission/ being in this capacity – his agent Legal Counselor Ahmed Hasan Abid.

The Claim

The plaintiff claimed through her agent that she had already participated in the elections of the Council of Representatives for the fifth session 2021 in Dhi Qar Governorate / First Constituency, and after the announcement of the final results by the Independent High Electoral Commission on 30/11/2021, it was found that she did not have a seat in the district above, so she challenges the announcement of those results according to the following reasons: first: the electoral law adopted in these elections divided the governorates into several constituencies, and the first constituency in Dhi Qar Governorate included three seats, including one seat reserved for women (quota) according to the table attached to the Electoral Law No. (9) of 2020, which is stipulated in article (16/3rd) of the Act, the quota for women

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is to "give a woman a seat in the electoral district as the highest female loser, even though she did not win a seat in her votes like the men who won their votes." This definition may remove the winning woman from this definition (Quota) and leave another woman in the same constituency with the opportunity to win a seat, as called for by the legislator in election law No. 9 of 2020 in the article (16/3rd), which stipulates that "the quota of women for each province shall be determined as specified in the attached table." Second: The instructions for the distribution of seats issued by the Electoral Commission in the article (3/3rd) stipulate that seats in the constituency shall be held for the highest votes without discrimination by sex (man or woman) and that candidates in the electoral district, whether on an open or individual list, shall be rearranged according to the number of valid votes obtained by each candidate in the upper to lower constituency and be the winner of the highest votes (men or women). Third: according to the foregoing, the distribution of the three seats in the first district in which the plaintiff competed (two seats for the highest votes - a man and a woman who won their votes) and (a third seat for a woman with a seat) should be eligible regardless of the winner of the votes and that the man who won third place according to the table cannot be considered a winner among the highest votes in the district, as this is contrary to the article (16) of the article (16) of the electoral law referred to above. Fourth: Granting men a third seat is a constitutional violation, violating the principle of equality and equal opportunities and the right of citizens to participate in public affairs, including the right to vote, elect and nominate under articles (14, 16, and 20) of the Constitution. The plaintiff, therefore, requested from the Federal Supreme Court to address this in accordance with its powers under

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article (93/1st and 3rd) of the Iraqi Constitution, and challenged the announcement of the final results by the Independent High Electoral Commission on 30 November 2021, and requested that she be able to obtain the third parliamentary seat in the first electoral district of Dhi Qar province. The case was registered with this court in the number (210/federal /2021) and the legal fee for it was met in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and to notify the defendant with its petition and documents in accordance with the provisions of article (2/1st) of the same Bylaw above and he answered with his draft in the number (Kha/1/1799) on 27 December 2021, which included the following: 1- The Independent High Electoral Commission Law No. (31) of 2019 has charted the legal way to challenge the decisions of the Board of Commissioners as the competent body to hear objections to those decisions is the judicial body of the elections and its decisions are now under article (19/3rd) of the above-mentioned law and no other party may be challenged, so the Federal Supreme Court is not competent to hear such a case. 2- Article (16/3rd) of the Council's Elections Law No. (9) of 2020 stipulates that (the quota of women for each province shall be determined as specified in the attached table) and by reference to the table attached to the law, which is an integral part of it, the first district in Dhi Qar Governorate is (3) seats, and this table has determined that one woman should be in those seats and, referring to the results of the elections, it is clear that there is a female candidate who has won her votes in one of the seats of the electoral district and therefore has lost that constituency exhausted the women's seat with the victory of that candidate, which is in line with the application of article (16) of the Electoral Law and the instructions for the distribution of seats issued

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by the Independent High Electoral Commission. 3- The plaintiff has already appealed to the Judicial Electoral Commission against the decisions of the Board of Commissioners concerning the preliminary results of the elections and the decision of the Electoral Judiciary (1147/1569/ Judicial Electoral Commission/2021) dated 29 11/2021, which included the ratification of the challenged decision of the Board of Commissioners to announce the preliminary results of the elections to the Iraqi Council of Representatives on 11 October 2021 and the appeal was dismissed, so he requested that the plaintiff's case be dismissed and to burden her with expenses. After completing the required procedures in accordance with the provisions of the court's Bylaw, the aforementioned court has been scheduled to the argument in accordance with article (2/2nd) of it, and the parties were notified of it. On the appointed day the court was formed, the plaintiff's agent Walid Kasid Yasser, and the defendant, his agent the legal counsel, Ahmed Hassan Abdul attended. The public in presence argument proceeded, the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it by rejecting the case for the reasons listed in the answering draft dated 26/12/2021. Each party repeated his previous sayings and requests, whereas nothing left to be said the Court has made the end of the argument clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs' case Amal Attiya Abdul Raheem had included that she participated in the elections of the ICR for the Fifth Cycle for 2021 as a candidate of Dhi Qar Governorate/ the first constituency, and after announcing the results by the IHEC on

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30/11/2021 it was found that she didn't get a seat in the above-mentioned constituency. Therefore, she challenges the announcement of the final results by the IHEC on 30 November 2021 and requests that it be able to obtain the third parliamentary seat in the first constituency of Dhi Qar Governorate for the reasons mentioned in the lawsuit outlined earlier, which is essential that the three seats should be distributed in the first district in which they competed according to the following, two seats for the highest votes, a man and a woman who won their votes, and a third seat for the woman with the highest votes among the women competing in the district (Quota) because she received the highest votes among the losing women and considers that she is the right to do so, because the candidate from the men who won third place according to the table cannot be considered a winner among the highest votes in the district because this is contrary to paragraph (3rd) of article (16) of the Electoral Law and when considering the applicant's requests in detail In its petition, this court finds that the Quota for women is calculated by the IHEC and that its decision in this regard shall be subject to appeal to the Electoral Judiciary, which is formed in accordance with section (1st) of article (19) of the IHEC Law No. (31) of 2019 and the decisions of the judiciary in this regard are based on section (3rd) of the aforementioned article are decisive. Whereas the jurisdictions of the FSC were determined in article (93) of the Republic of Iraq Constitution for 2005 and article (4) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021, not among its paragraphs what stipulated on trying the requests listed in the lawsuit of the plaintiff. Based on the foregoing reasons, the FSC decided to reject the case of the plaintiff Amal Attiya Abdul Raheem Al-Nasiri and to burden her with all the judicial expenses including the

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advocacy fees of the defendant/ being in this capacity the official jurist Ahmed Hasan Abid amount of one-hundred thousand Iraqi Dinar. The decision has been issued unanimously, decisive according to the provisions of the 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 made clear on 13/Rajab/1443 Hijri coinciding 15/February/2022 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

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