

Republic of Iraq
Federal Supreme Court
Ref. 214 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 13/3/2022 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: Ola Odeh Laeth Shnawah – the candidate of the fourth constituency in the Governorate of Dhi Qar the serial (37) her Barrister Waleed Kasid Yassir.

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

The Claim

The plaintiff claimed through her agent that she competed in the fourth electoral district of Dhi Qar governorate in the elections of the Iraqi Parliament/2021, which allocated to the district four seats in which a woman won the highest votes to the votes of the winning men, while she received the highest votes of women who did not get a seat and (5372) votes, and since her failure to obtain a parliamentary seat was contrary to the Constitution and the Electoral Law No. (9) of 2020, she initiated an appeal to this court for the following reasons: first: The concept of a quota for women means (giving a woman a seat in the constituency as the highest-voting female loser even though she has not won a seat), and since this definition does not include one or more women, they won their votes, while another woman in the same constituency is given the

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opportunity to win a seat, as evidenced by the Iraqi Parliament Elections Law No. 9 of 2020 in article (16/3rd) of it (women's quota for each governorates as specified in the attached table). This matter means that the seats on the table are applicable in order to achieve quotas and have nothing to do with women winning their votes like men. The text never mentioned one or more women who had won the right votes within the electoral district to be counted within the quota according to the table attached to the law - which differs from the provisions of the instructions for the distribution of seats issued by the Independent High Electoral Commission. Second: The instructions for the distribution of seats referred to above in article (3/3rd/Jim) are to hold seats in the electoral district for the highest votes without discrimination by sex (man or woman) which stipulates 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 electoral district from the top to the bottom and is the winner of the highest votes ((men or women)), this arrangement does not legally include women who deserve the quota as an exception to the article (49/4th) of the Iraqi Constitution, as well as the electoral law in section 1 and 3 of the article (16). Third: the inability to obtain the parliamentary seat in the aforementioned district means that only one female candidate has won the seat in the third constituency, because the rest of the women have won their votes, which may be contrary to the item (2nd) of the article (16) of the aforementioned electoral law (women are represented by at least 25% of the number of members of the Council of Representatives in each governorate), as well. Article (2nd/Alif) of the instructions for the distribution of seats, all of this is contrary to articles (14, 16, and 20) of the Constitution, which require that they

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be addressed by the court in accordance with its powers under article (93/ 1st and 3rd) of the Constitution, and finally, the plaintiff requested from the Federal Supreme Court to enable her to obtain a parliamentary seat in the fourth electoral district of Dhi Qar governorate within the feminist quota system. The case was registered and the legal fee was fulfilled in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and notifying the defendant of its petition and documents in accordance with the provisions of article (2/1st) of the same Bylaw above and he replied according to the answering draft in the number (Kha/22/21 on 9/1/2022), 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 and that the competent authority to hear objections to those decisions is the judicial committee of the elections, based on an article (19) of the aforementioned law and may not appeal to any other party, so the Federal Supreme Court is not competent to hear such a case.
2. Article (16/3rd) of the Council of Representatives elections law No. (9) of 2020 stipulates that (the quota of women for each governorate shall be specified as specified in the attached table) and by reference to the table attached to the law, which is an integral part of it, it is clear that the fourth district in Dhi Qar governorate is (4) seats, and this table has determined that one woman should be among those seats and, according to the results of the elections, there is a female candidate who has won her votes in one of the seats of the electoral district and therefore has lost her vote. That constituency exhausted the women's seat with the victory of that candidate, which corresponds with the application of article (16) of the Electoral Code and the instructions for the distribution of

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seats issued by the Independent High Electoral Commission. 3. The plaintiff has already appealed to the Judicial Electoral Committee against the decisions of the Board of Commissioners concerning the preliminary results of the elections and the decision of the Electoral Judiciary (1666/Judicial Electoral Committee/2021) dated 29/11/2021, which includes ratification of the challenged decision of the Council of Commissioners to announce the preliminary results of the elections to the Iraqi Parliament on 11 October 2021 was rejected and the appeal was received, and the decisions of the Judicial Electoral Committee are based on an article (19/3rd) of the Independent High Electoral Committee Law No. (31) for the year 2019, so the defendant requested from the Federal Supreme Court to dismiss the plaintiff's case and to burden her with expenses, and after completing the required procedures according to the Federal Supreme Court Bylaw aforementioned, a date for the argument has been set according to the provisions of the article (2/2nd) and both parties were notified. On a set day, the Court has been convened, the agents of both parties attended, and the public in the presence argument proceeded. The agent of the plaintiff repeated the petition of the case and requested to judge according to it. The agent of the defendant answered and requested to reject the case against his client for the reasons listed in the answering draft dated 9/1/2022, each party repeated his previous sayings and requests. Whereas nothing is left to be said, the end of the argument 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 plaintiff Ola Odeh Laeth Shnawah filed the case before

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this court by her attorney Walid Kassed Yasser, challenging the constitutionality of not obtaining a parliamentary seat (women quota) from the fourth district in Dhi Qar Cunha province. Contrary to the provisions of articles (14, 16, and 20) of the Constitution and article (16/2nd) of Law No. (9) of 2020, the candidate who won a parliamentary seat for the district for which the plaintiff was nominated had won It is because she received the highest votes and that this is not an application of the principle of quotas because winning the highest votes did not indicate from him whether a winner is a man or a woman and therefore the above referred to cannot be calculated to win a parliamentary seat in accordance with the principle of quotas according to what is shown in the adopted seats distribution system according to the article (16) of the Iraqi Council of Representatives elections Law No. (9) for 2020. Moreover, the failure to give the plaintiff an electoral seat means that the constitutionally prescribed quota system will not be applied in Dhi Qar governorate except in one case of a female candidate in the third electoral district and the agent of the plaintiff requested to judge in accordance with the summons, this Court finds that the decisions issued by the Board of Commissioners in the Independent High Electoral Commission should not be challenged but before the judicial committee of the elections according to the article (19/2nd) of the Independent High Electoral Commission Law No. (31) for 2019, especially, in the matters that related to the electoral process exclusively. All the decisions issued by the judicial committee of the elections are decisive according to the provisions of the paragraph (3rd) of the aforementioned article, and the jurisdiction of this Court according to the article (93/7th) of the Republic of Iraq Constitution for 2005 is to ratify the final results of the elections after resolving all

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the challenges that related to the electoral process by the Independent High Electoral Commission and the aforementioned judicial committee. This jurisdiction has been supported as well by the text of the article (4/7th) of the FSC's Law No. (30) for 2005 which was amended by Law No. (25) for 2021. Therefore, the Court is incompetent to try this case for the reasons aforementioned, the FSC decided to reject the case of the plaintiff Ola Ouda Laeth Shanawa for incompetence and to burden her with the fees and expenses and amount of one-hundred thousand Iraqi dinars as advocacy fees for the agent of the defendant/ being in this capacity the legal counselor Ahmed Hasan Abid. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of the articles (93 and 94/7th) 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 9/Shab'aban/1443 Hijri coinciding 13/March/2022 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

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