

Republic of Iraq
Federal supreme court
Ref. 215/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16.3.2022 headed by the 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: Nora Hikmat Al-Juhaishi/ candidate for constituency 14/ Baghdad governorate Sequence (92)/ her attorney, Dr. Walid Kased Yasser.

The Defendants:

- 1- Speaker of the Iraqi Council of Representatives / being in his capacity his deputy, legal advisor, Haitham Majed Salem, and jurist Saman Mohsen Ibrahim
- 2- The Chairman of the Independent High Electoral Commission / being in his capacity - his deputy, Legal Counsel Ahmed Hassan Abd.

The Claim:

The plaintiff claimed, through her attorney, that she competed for an electoral seat in the Parliament elections 2021 for the electoral constituency (14) Baghdad governorate/sequence (92), and since the Iraqi Parliament Elections Law No. (9) of 2020 published in the Iraqi

Gazette No. (4603) On 9/11/2020) and the instructions for distributing seats issued by the Independent High Electoral Commission included a number of articles and legal provisions that violate the constitution, and they directly affected her not obtaining a parliamentary seat, so she took the initiative to challenge them as follows:

First - The Elections Law: The electoral law enacted by the Iraqi Council of Representatives that voted on 29/10/2020 and published in the Iraqi Gazette (4603) on 9/11/2020, as well as the instructions for distributing seats based on it, have been marked by constitutional violations that led to the damage. These violations were referred to in the initial report of the European Union Election Observation Mission in Iraq 2021, when competing in the electoral process, on the first page of it. Whereas, the most important constitutional violations that marred the law are as follows:

1. The definition of the term (open list) contained in Article (1) of the law, the subject of the lawsuit, is that it is the list that contains the names of the announced candidates, and what is stated in Article (14) of the law, which stipulates that “it is required when submitting the open list that the sequencing of women is taken into account by a percentage of A woman after every three men”, and this provision has no place in this law after the adoption of (83) middle electoral districts instead of (18) electoral districts at the governorate level, which he has worked in since the 2005 Parliament elections. The European Union Election Observation Mission in Its initial report this loophole in the electoral law and the instructions for the distribution of seats.
2. Article (15/1st) stipulated that “multiple electoral districts shall be divided in the same governorate,” and since this division was made within the personal judgments of a number of deputies, and no administrative basis was adopted for the city division maps, but

rather on the basis of ensuring the achievement of “women’s quota by a woman.” One in each of the (83) electoral districts throughout Iraq.

3. Clause (2nd) of Article (15) of the law stipulates that “the candidacy shall be individual within the electoral district,” and clause (3rd) of it stipulates that “the order of the candidates in the electoral district shall be re-arranged according to the number of votes obtained by each of them. On the highest number of votes according to the first-winner system, and so on for the remaining candidates. And since this definition of the new electoral system does not concern the (first-past-the-post system), which is defined as “the simplest plurality/majority system, as it is used within single-representation electoral districts, where the voter selects only one candidate from the total of candidates listed on the ballot paper.” The winner is the candidate with the highest number of votes.

Second - Quota for women: Article (16) of the law, which deals with the quota for women in items (5th, 6th, 7th, and 8th), contradicted what was stipulated in the aforementioned Article (14), which stipulated that “it is required when submitting the open list that the hierarchy of women is taken into account after the proportion of women after Every three men,” because this provision means that there should be women in all electoral districts, and if there is even one woman in each district, it will meet the constitution’s goal of reaching at least a quarter of women in the Council of Representatives at least 25% in the Council of Representatives and at the governorate level. Texts contrary to the constitution have been applied to the instructions for distributing seats issued by the Electoral Commission because these instructions are based on the election law. The aforementioned preliminary report of the European Union mission identified the defect in the quota for women in the electoral law.

Third: These contradictory texts have caused significant confusion and imbalance in the female candidates and candidates in the distribution of electoral seats, and the plaintiff was included in them as she competed as a candidate within a constituency of five seats. It means that the percentage of women's representation in this constituency has reached only 20%, contrary to the constitution, the election law, and the instructions for distributing seats. This resulted in a violation of the text of Article (16) of the Elections Law and the attached schedule for distributing the women's quota. As long as a woman wins without quota assistance, the quota seat is from her entitlement (the plaintiff), as Article (3/1st/jim) of the above instructions stipulates that the seats in the electoral district should occupy the highest votes without discrimination by gender (men or women), and the negative aspects that marred the Elections Law No. (9) of 2020 and the instructions for distributing seats, especially in Article (3/1st/alif and jim), when he repeated the mistakes of the electoral law by repeating vocabulary (first winner, open list, etc..) that represented violations and violations Therefore, the plaintiff asked the FSC to address it in accordance with the powers granted to it in Article (93 / 1st and 3rd) of the Constitution, as these violations affected her not obtaining her real votes within her constituency and then obtaining an electoral seat in the Iraqi Council of Representatives, which It violates the principle of equality and equal opportunities and the citizen's right to participate in public affairs, including the right to vote, elect and be nominated, those rights stipulated in Articles (14, 16, 20) of the Iraqi constitution in force. Enable her to obtain a seat within the quota for women in the electoral district (14) in Baghdad governorate the case was registered with this court in No. (215/federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the bylaw of the FSC No. (1) of 2005, and the defendants were notified of its petition and documents in accordance with Article

(2/1st) of the same bylaw, so the attorney of the first defendant responded with the answer draft dated 12/1/2022, its summary is that the texts under appeal came in accordance with what was required by Article (49) of the constitution and represent a legislative option for the Council of Representatives, none of which contradicts the provisions of the constitution, which it legislated in accordance with its competencies under Article (61/1st) of the constitution, the definitions and validity are only provided by the legislator in order to facilitate the understanding and interpretation of the legal texts and are not suitable for appeal because they translate terms that are contained in other texts within the law. The law also made it clear that in the event of a woman winning, the electoral district would have met the women's quota, which is an exception to the original, and that the instructions for the distribution of seats is issued by the Board of Commissioners, so the litigation is not directed, and when the request is submitted to dismiss the case, the plaintiff shall be charged with fees, expenses and attorney fees. The second defendant replied with the answer statement dated 9/1/2022, in summary, that the Independent High Electoral Commission Law No. (31) of 2019 outlined the legal way to appeal against the decisions issued by the Board of Commissioners, The competent authority to consider objections to those decisions are the judicial authority for elections, in accordance with what was stated in Article (19/2nd) of the aforementioned law, and it is not permissible to appeal before any other authority. Therefore, the FSC is not competent to hear the case, and Article (16/3rd) stipulates in the Parliament Elections Law No. (9) for the year 2020, provided 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 fourteenth district in Baghdad governorate is (5) seats. This table specified that one woman should be in those seats. With reference to the election results, there is a female candidate who

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. 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. (1511/ Judicial Commission for Elections/2021) dated 11/17/2021 was issued, which includes ratification of the contested decision of the Board of Commissioners related to the announcement The preliminary results of the Iraqi Council of Representatives elections on 11/10/2021 were appealed, and the decisions of the Judicial Authority for Elections are final based on Article (19/3rd) of the Independent High Electoral Commission Law No. (31) of 2019. Therefore, the second defendant requested that the plaintiff's lawsuit be dismissed and that she be charged with the expenses, and after completing the procedures stipulated in the aforementioned court bylaws, the court was formed. The second defendant or his representative, despite being notified in accordance with the law, and the conduct of the public fundamentalist pleading was initiated. The plaintiff and her attorney repeated what was stated in the pleading of the case and requested the judgment in accordance with what was stated in it. The attorneys of the first defendant responded and requested that the case be dismissed for the reasons mentioned in the regulation dated 9/1/2022. The plaintiff, her agent, and agent repeated the first defendant made their previous statements and requests, and since there is nothing left to be said, the end of the pleading has been made clear, and 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 is one of the candidates in the 2021 Parliament elections in the electoral district No. (14) in Baghdad governorate and that there are a number of articles and legal provisions in the Iraqi Parliament Elections Law No. (9) of 2020 and the instructions for distributing seats issued by the High Commission Independent elections are in violation of the constitution and have had a significant impact in not obtaining a parliamentary seat and have requested to invite the defendants to plead and address these violations and to veto those articles and clauses in the election law and the seat distribution system and enable her to obtain a seat within the quota for women in her constituency No. (14) in Baghdad province, this court finds that the plaintiff's lawsuit focuses on a request to grant her a seat within the women's quota in constituency No. (14) in Baghdad governorate, and that the plaintiff's request is outside the jurisdiction of the FSC 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 by Law No. (25) of 2021, and accordingly her claim is free to respond. Therefore, the FSC decided to dismiss the claim of the plaintiff, Noura Hikmat Al-Juhaishi, for lack of jurisdiction and charged her with fees and expenses, and an amount of one hundred thousand dinars, attorney fees for the defendants are distributed among them in accordance with the law (4 and 5/2nd) of the FSC Law No. (30) of 2005 as amended by Law No. (25) of 2021 and the decision had made clear public on 13/Shab'ban/1443 coinciding with 16/March/2022.

Signature of

The president

Jasem Mohammad Abod