

Republic of Iraq  
Federal Supreme Court  
Ref 36/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Dyar Mohammed Ali and Munther Ibrahim Hussain ,who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Faisal Hussain Jabbar – His agent the barrister Junaid Jassim Dawood.

The Defendant: Head of The Independent High Electoral Commission/being in this capacity –His agent the legal advaiser Ahmed Hassan Abed.

**The Claim:**

The plaintiff claimed through his agent that on 28/12/2023, the Independent High Electoral Commission announced the decision of the Board of Commissioners No. (49) of the extraordinary minutes No. (73) approving the announcement of the final results of the provincial council elections, the plaintiff was among the winners of the entity (Anbar United Alliance) that won one seat in the Anbar Provincial Council, and on 21/1/2024, another decision was issued to the Board of Commissioners No. (1) in the regular record (4), through which it redistributed the women's quota seats to some of the winning candidates, and it was found after the publication of the recent final results that the name of the referred to was replaced by the female quota candidate (Sanaa Abdul Sattar Shahada) through the implementation of paragraph (5) of Article (3/3<sup>rd</sup>/Tha) of Regulation No. (9) of 2023, as she obtained the highest number of votes among the

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candidates in the winning lists that were not subject to the quota, and that the application of the above paragraph is contrary to the constitution, when the electoral procedures were settled on him in the elections of 2013, 2014 and 2018, the plaintiff agent asked this court to rule on the unconstitutionality of paragraph (5) of Article (3/3<sup>rd</sup>/Tha) of Regulation No. (9) of 2023, in accordance with the application and interpretation currently in force, and to rule on the unconstitutionality and validity of the decision of the Board of Commissioners of the Independent High Electoral Commission No. (1) and the ordinary record (4) dated 21/1/2024, through the invalidity of its application of the article - the subject of the challenge - related to the distribution of women's quota, and charges the defendant fees and attorneyship fees. The case was registered with this court No. (36/Federal/2024) and the legal fee was collected for it, and the defendant shall be informed of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his agent replied with the dated 7/2/2024, conclusion: that the plaintiff's request is not supported by law; the Independent High Electoral Commission Law has laid the legal path to appeal the decisions issued by the Board of Commissioners under Articles (18 and 19) thereof, before the Judicial Authority for Elections, and whereas the system of distributing seats for the elections of governorate councils that are not organized in Region No. (9) for the year 2023, which was issued by the decision of the Board of Commissioners No. (10) for the extraordinary minutes (52) on 31/10/2023, as well as the decision of the Board of Commissioners No. (1) for the ordinary minutes (4) on 21/1/2024, the plaintiff did not challenge them before the Election Judicial Commission as he could have challenged them in accordance with the law. Therefore the defendant's agent requested to

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reject the plaintiff's claim and charges him the expenses. After completing the procedures required by the rules of procedure of the court, set a date for the consideration of the lawsuit without pleading, in which the court was formed and began to consider the case, the court scrutinized the plaintiff's requests and his supports and the defenses of the defendant's agent and after completing its scrutinies 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 the plaintiff Faisal Hussein Jabbar filed this lawsuit against the head of the Independent High Electoral Commission in addition to his job, claiming that on 28/12/2023, the Independent High Electoral Commission announced the decision of the Board of Commissioners No. (49) of the extraordinary minutes No. (73) approving the announcement of the final results of the irregular provincial council elections in the region for the year 2023, and attached lists of the names of the winners, and the plaintiff was among the winners of the Anbar United Alliance entity that obtained One seat in the Anbar Provincial Council, but on 21/1/2024, another decision was issued to the Board of Commissioners No. (1) of the regular minutes (4), through which the women's quota seats were redistributed to some of the winning candidates and excluded and a seat (women's quota) was given to the candidate of the same entity (Sanaa Abdul Sattar Shehada) despite the fact that the aforementioned entity holds one seat, through the implementation of paragraph (5) of Article (3/3<sup>rd</sup>/Tha) of Regulation No. (9) of 2023, As the highest number of votes among the female candidates in the winning lists in the governorate that were not subject

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to the quota, whereas the application of paragraph (5) referred to is contrary to the provisions of the Constitution and the will of the legislator, as well as to what was settled by the previous elections, Whereas the replacement process that took place was a violation of the principles of the Constitution in Articles (14, 16, 20 and 38/1<sup>st</sup>) of the Constitution of the Republic of Iraq for the year 2005, and the failure to follow the gradual application of the paragraphs of Article (3/3<sup>rd</sup>/Tha) of the Law and the failure to observe their sequence makes the process of distributing women's quota seats contrary to constitutional principles and with the compelling reasons that were legislated. For the electoral law and the system of distribution of seats, also, the text of the paragraph - the subject of the challenge - was contrary to the provisions and principles of the Constitution and in the articles mentioned above, and when the request to invite the defendant in addition to his job to plead and rule on the unconstitutionality of the aforementioned paragraph in accordance with the application and interpretation applied by the Independent High Electoral Commission and the ruling on the unconstitutionality and validity of the decision of the Board of Commissioners No. (1) of the ordinary record (4) on 21/1/2024, and charging him fees and expenses attorneyship fees, the defendant's agent replied in addition to his job under his regulation dated 7/2/2024, which he requested to reject of the plaintiff's claim that the decisions of the Board of Commissioners are subject to appeal before the Judicial Authority for Elections formed in the Supreme Judicial Council and that the decisions of the mentioned authority are not subject to appeal, the plaintiff did not follow the path laid down by law by appealing those decisions to the competent judicial authority. After reviewing the regulations exchanged between the two parties, the Federal Supreme Court found that the plaintiff had challenged the unconstitutionality of

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the application of paragraph (5) of Article (3/3<sup>rd</sup>/Tha) of the seat distribution system for the elections of the governorates councils that are not organized in Region No. (9) for the year 2023, which states, ((If there is one seat reserved for women (quota) and there are lists that obtained three, two seats or one seat and none of them is a winning woman, the replacement shall be from the lists that obtained three seats, two seats or one seat for a candidate who obtained the highest votes among the women in these lists and did not win a seat and shall be replaced by a winning candidate from among those lists)) whereas the constitutional oversight of the Court is competent extends to the provisions of the laws and regulations in force and not to their application, therefore, the plaintiff's claim in this regard is outside the jurisdiction of the court and is subject to reject from this authority. As for the plaintiff's request to rule on the unconstitutionality and validity of the decision of the Board of Commissioners, this request is also outside the jurisdiction of this court, as its jurisdiction in constitutional control extends to the laws and regulations in force only and not to the decisions issued by the authorities or independent authorities, and his request to rule the invalidity of the decision of the Board of Commissioners is outside the jurisdiction of this court considering that the Independent High Electoral Commission Law No. (31) of 2019, as amended, having established the legal mechanism for appealing the decisions of the Board of Commissioners related to elections and the related distribution of seats or others in accordance with the provisions of Article (19) thereof, and the appeal against such decisions shall be before the Judicial Authority for Elections formed in the Supreme Judicial Council, whose decisions in this regard shall be final, for all of the above and by request, the Federal Supreme Court decided to reject the plaintiff Faisal Hussein Jabbar's lawsuit for lack of jurisdiction and to charge the fees, expenses

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and advocacy fees of the defendant's agent, the head of the Independent High Electoral Commission, being in this capacity, the legal adviser, Ahmed Hassan Abed, an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously, final and binding according on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of the year 2021. The decision has been made clear on 13/Ramadan/1445 A.H. Corresponding to 24/3/2024 AD.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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