

Republic of Iraq  
Federal Supreme Court  
Ref 37/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/3/2024 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: Areej Hussain Aliwi - her agent the barrister -  
Junaid Jassim Dawod.

The Defendant: Head of The Independent High Electoral Commission/being in this capacity -his agent the legal adviser Ahmed Hasan Abd.

### **The Claim:**

The plaintiff claimed through his agent that the Independent High Electoral Commission announced on 28/12/2023 the decision of the Board of Commissioners No. (49) of the extraordinary minutes No. (73), which includes the approval of the announcement of the final results of the elections of the governorates councils that are not organized in a region for the year 2023, The plaintiff was among the winners of the (AL-Siyada/Sovereignty) entity that won two seats in the Anbar Provincial Council, and on 21/1/2024, another decision was issued to the Board of Commissioners No. (1) in the ordinary record No. (4), through which the women's quota seats were redistributed to some of the winning candidates, According to it, (Sanaa Abdul Sattar Shehada) was excluded and replaced by the women's quota candidate for the (United Anbar Alliance), which won only one seat, and this is done through the implementation of paragraph (5) of Article (3/3<sup>rd</sup>/Tha) of the system of distribution of seats for the elections of the

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governorates councils that are not organized in Region No. (9) for the year 2023, as they obtained the highest number of votes among the candidates in the winning lists that were not subject to the quota, and that the application of the aforementioned paragraph is contrary to the constitution, and to what was established on the electoral procedures in the elections of 2013, 2014 and 2018, Therefore, I initiated this lawsuit requesting the court to rule that paragraph (5) of Article (3/3<sup>rd</sup>/Dal) of Law No. (9) of 2023 is unconstitutional, And the ruling 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 No. (4) dated 21/1/2024, due to the invalidity of the application of the article "subject to challenge" related to the distribution of women's quota, the defendant shall be charged the fees and attorneyship fees. After registering the case with this court No. (37/Federal/2024) and collecting the legal fee thereon, and informing the defendant 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 in the reply list dated 7/2/2024, its conclusion: that the plaintiff's request has no basis in law, because the law of the Independent High Electoral Commission has set the legal path to appeal the decisions issued by the Board of Commissioners under Articles (18 and 19) thereof, which granted the Board of Commissioners the authority to decide on complaints related to the electoral process, and its decisions are subject to appeal before the Judicial Authority for Elections formed in the Supreme Judicial Council, whose decisions are final, and the plaintiff did not challenge the decisions - the subject of the lawsuit - before the Judicial Authority for Elections, where she could have appealed them in accordance with the law, so he requested the dismissal of the plaintiff's lawsuit and

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charging her expenses. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, in which the court was formed, so the plaintiff's agent attended, the defendant's agent attended, and the public presence pleadings began, and after the court heard their statements and requests and completed 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 noted that the Prosecutor Areej Hussein Aliwi 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, which includes the approval of the announcement of the final results of the elections of the provincial councils that are not organized in the region for the year 2023, and attached to it lists of the names of the winners, and the plaintiff was among the winners of the sovereign entity that won two seats in the Anbar Provincial Council, However, on 21/1/2024, another decision was issued to the Board of Commissioners No. (1) of the ordinary minutes No. (4), through which the women's quota seats were redistributed to some of the winning candidates and the plaintiff was excluded, and the women's quota seat was given to the candidate of the United Anbar Alliance entity (Sana Abdul Sattar Shahada), despite the fact that the said entity holds one seat, through the implementation of paragraph (5) of Article (3/3<sup>rd</sup>/Dal) of Regulation No. (9) of 2023, as it obtained the highest number of votes among Candidates in the winning lists in the

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governorate that have not been subject to the quota, whereas, the application of paragraph (5) the aforementioned is contrary to the provisions of the Constitution and the will of the legislator, as well as to the basis of the previous electoral procedures, Whereas the replacement process that took place was in violation of the principles of the Constitution in Articles 14, 16, 20 and 38/I of the Constitution of the Republic of Iraq of 2005, the failure to follow the gradual application of the paragraphs of Article (3/3<sup>rd</sup>/Dal) of the Law, and the failure to observe their sequence, makes the process of distributing women's quota seats contrary to constitutional principles and the compelling reasons for which the electoral law and the system of distribution of seats were enacted, Also, the text of paragraph (5) of Article (3/3<sup>rd</sup>/Dal) of the Seat Distribution System No. (9) of 2023 was contrary to the provisions and principles of the Constitution and in the aforementioned articles, and for the foregoing, the court requested that the defendant be summoned, being in this capacity, to plead and rule on the unconstitutionality of the said 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) for the ordinary minutes (4) on 21/1/2024 and charging the fees and expenses of attorneyship fees, the court reviewed the answer of the defendant's agent in addition to his position under his regulation dated 7/2/2024, in which he requested to reject of the plaintiff's lawsuit because the decisions of the Board of Commissioners are subject to appeal before the judicial authority formed in the Supreme Judicial Council, and that the decisions of the mentioned authority are decisions that may not be appealed, that the plaintiff did not follow the way laid down by law by appealing those decisions before this judicial authority, The Federal Supreme Court finds that the plaintiff challenges

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the unconstitutionality of the application of paragraph (5) of Article (3/3<sup>rd</sup>/Dal) of the system of distribution of seats for the elections of provincial councils that are not organized in Region No. (9) of 2023, Which states ((If there remains one seat reserved for women (quota) and there are lists that obtained three, two seats or one seat and there is no winning woman among them, 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 is replaced by a winning candidate from among those lists)) whereas the constitutional control over which the Court is competent extends to the provisions of laws and effective systems and not to be applied, therefore, the plaintiff's claim in this regard is outside the jurisdiction of the court and must be response from this authority but the plaintiff's request to rule on the unconstitutionality and validity of the decision of the Board of Commissioners, her request to rule on the unconstitutionality of the aforementioned decision 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 her request to rule the invalidity of the decision of the Board of Commissioners is also outside the jurisdiction of this court as well, because The Independent High Electoral Commission Law No. 31 of 2019, as amended, has 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. Such decisions shall be challenged before the Judicial Commission for Elections formed in the Supreme Judicial Council, whose decisions in this regard shall be final, for all of the above, and with the request, the Federal Supreme Court decided to reject the lawsuit of the plaintiff

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Areej Hussein Aliwi for lack of jurisdiction and charged the fees, expenses and attorneyship fees of the defendant's agent, the head of the Independent High Electoral Commission in addition to his position, 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 on all authorities according to 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 2021. The decision has been made clear on 1/Ramadan/1445 A.H. corresponding to 12/3/2024 AD.

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

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