

Republic of Iraq
Federal Supreme Court
Ref 38/ 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, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab , Ayooob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussein ,who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Saleem Jameel Shakir – 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's agent claimed in the petition that on 28/12/2023 the Independent High Electoral Commission announced on 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 a region for the year 2023, and the plaintiff was among the winners of the entity (Absher Ya Iraq), which won one seat in the Qadisiyah Governorate Council, and on 21/1/2024, another decision was issued to the Board of Commissioners No. (1) in the regular record No. (4), through which the women's quota seats were redistributed some of the winning candidates, and after the publication of the latest final results, it was found that his name was replaced by the female quota candidate (Raghad Hamid Mahdi) through the implementation of paragraph (5) of Article (3/3rd/Dal) of Law No. (9) of 2023 as the highest number of votes among the candidates in the winning lists that were not subject to quota, and the application of the aforementioned paragraph is contrary to the Constitution and to the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 38/ federal/2024



Kurdish text

basis of the electoral procedures established in the 2013, 2014 and 2018 elections, by considering the system of distribution of electoral seats and the contents of the article - the subject of the challenge - in its first five paragraphs, in which it deals with the distribution of women's quota seats, the wisdom of distributing women's quota seats is that they should be distributed to the winning entities in proportion and proportionality between the number of entity seats and the number of quota seats in the electoral district, as the system guarantees a fair distribution that achieves a proper application of the quota system without marginalizing small entities that have one or two seats, and with reference to the text of the paragraph - subject to challenge - the process of replacing a winning candidate with a candidate for the women's quota is a violation of the Constitution in the articles (14, 16, 20 and 38/1st) and violates the principles of democracy, and the failure to follow the gradual application of the paragraphs of the article - the subject of the challenge - and not to observe its sequence, makes the process of distributing quota seats contrary to the aforementioned constitutional principles the reasons for which the electoral law and the seating distribution system were enacted, and their conflict with the previous electoral procedures represented in the parliamentary elections of 2014 and 2018 and the local elections of 2013, especially since the decision of the Federal Supreme Court No. (36/Federal/2013) referred to the principle of gradation and taking into account the sequence, and that the Board of Commissioners has exceeded the application of paragraphs of Article (3/3rd/Thaa) of Law No. (9) of 2023 and neglected them at the expense of applying other paragraphs without any consideration of the sequence mentioned in the Law, so the prosecutor's agent asked the court to rule on the unconstitutionality and validity of paragraph (5) of article (3/3rd/Thaa) of law No. (9) of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 38/ federal/2024



Kurdish text

2023, this is in accordance with the application and interpretation currently in force, and the ruling on the unconstitutionality of the decision of the Board of Commissioners of the Independent High Electoral Commission No. (1) of the ordinary minutes (4) dated 21/1/2024, due to the invalidity of its application of Article (3/3rd/Thaa/5) related to the distribution of women's quota seats, the defendant shall be charged the fees and attorney's fees, after registering the case with this court No. (38/Federal/2024), collecting the legal fee thereon, and informing the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his agent replied in the reply regulation dated 7/2/2024, its conclusion: The plaintiff's request has no basis in the law, as the Independent High Electoral Commission Law No. (31) of 2019 has set the legal path to appeal the decisions issued by the Board of Commissioners under Articles (18 and 19) thereof, which indicated that the competent authority to consider objections to the decisions issued by the Board of Commissioners is the Judicial Commission for Elections and its decisions shall be final, and that the system of distribution of seats for the elections of the governorates 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 Judicial Authority for Elections, as he could have challenged them in accordance with the law, so the defendant's agent requested to reject the plaintiff's claim and charging him expenses. After completing the procedures required by the rules of procedure of the court, an appointment was set in order to consider the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 38/ federal/2024



Kurdish text

case without pleading, in which the court was formed and initiate hearing the case, the court scrutinized the plaintiff's requests, his supports, and the defenses of the defendant's agent, and after completing its scrutinies, the end of the minutes 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's lawsuit included a request to rule on the constitutionality and validity of article (3/3rd/Thaa/5) of the Seat Distribution System for the irregular provincial council elections in Region No. (9). for the year 2023, according to the interpretation currently in force in the Independent High Electoral Commission, as requested by the judgment the unconstitutionality and validity of the decision of the Board of Commissioners of the Independent High Electoral Commission No. (1) of the ordinary minutes (4) on 21/1/2024, due to the invalidity of its application of article (3/3rd/Thaa/5) related to the distribution of women's quota seats this is for the reasons stated in his petition, and then the defendant is charged in addition to his job fees, expenses and attorneyship. Upon closer consideration by this court, the plaintiff's requests are free to respond for two reasons: First, this court's control over the constitutionality of the laws and regulations in force stipulated in article 93/1st of the Constitution of the Republic of Iraq of 2005 and article 4/1st of the Federal Supreme Court law No. 30 of 2005, as amended, extends to the provisions of the contested laws and regulations and not to their applications, as error in the application of the challenged text does not mean its unconstitutionality, according to the foregoing, the plaintiff's request to rule the unconstitutionality of the text of article (3/3rd/Thaa/5) of the Seat distribution system for the irregular

Zainab

Republic of Iraq
Federal Supreme Court
Ref 38/ federal/2024



Kurdish text

governorate council Elections in Region No. (9) of 2023 in accordance with the interpretation and application in force in the Independent High Electoral Commission is outside the jurisdiction of this court according to the formula in which the lawsuit is filed. Second: The Independent High Electoral Commission Law No. 31 of 2019 has established the legal mechanism for appealing the decisions of the Board of Commissioners related to elections and the related distribution of seats and others in accordance with the provisions of Article (19) thereof, where 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, based on the foregoing, the plaintiff's request to rule on the constitutionality and validity of the decision of the Board of Commissioners of the Independent High Electoral Commission No. (1) of the ordinary minutes (4) on 21/1/2024 it is also outside the jurisdiction of this court, and for all of the above, the Federal Supreme Court decided to reject the plaintiff's lawsuit (Salim Jamil Shaker) for lack of jurisdiction and to charge him fees, expenses and attorneyship fees for the defendant's agent/ being in this capacity an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously, final and binding according the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and (4 and 5/2nd) 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

Zainab