

Republic of Iraq  
Federal Supreme Court  
Ref 43/ federal /2024



Kurdish text

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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: Sabah Mahdi Salman – His agent the barrister Muslih Mahdi Mohammed.

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

**The Request:**

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) for the extraordinary minutes (73), which includes the approval of 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 (Iraqi Basic Alliance) that won one seat in the Diyala Provincial Council, and on 21/1/2024 another decision was issued to the Board of Commissioners No. (1) in the ordinary record (4), according to which the plaintiff was replaced by the women's quota candidate (Daria Khairallah Rashid) based on the decision of the Judicial Authority No. (71) on 7/1/2024, and whereas the decision of the Board of Commissioners No.(10) on 31/10/2023, which includes the approval of the system of distribution of seats for the elections of the governorates councils that are not

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organized in a region for the year 2023 and paragraph (5) of Article (3/3<sup>rd</sup>/Tha) of the aforementioned system, on which the Judicial Authority for Elections relied in issuing its decision above, contrary to the decision of the Federal Supreme Court No. (36/Federal/2013) containing the unconstitutionality of the mechanism used by the Commission in distributing the quota for women in the governorate council elections for the year 2013, It exceeded the two-seater lists and went directly to the one-seat list, and for the non-application of the paragraphs of Article (3/3<sup>rd</sup>/Tha) according to the legal sequence, where the judicial authority relied on paragraphs (first, second and fifth) and neglected the third paragraph, which stipulated taking the quota from the two-seat list in the event that the quota was not met from the first and second paragraphs, considering that the aforementioned paragraph (5) is contrary to the Constitution in Articles (14, 16, 20 and 38/I) thereof, which stressed equality in rights and duties among the people and equal opportunities for all Iraqis and their freedom to express their opinion and choose their representatives in order to allocate the aforementioned seat to the female element in the plaintiff's list despite obtaining a sufficient number of votes, in addition to violating the decision of the Federal Supreme Court No. (12/Federal/2013), which approved that the remaining women's quota should be taken from the two-seat lists and not from the single-seat lists in line with the Iraqi constitution. In the aforementioned articles, therefore, the plaintiff asked the court to rule on the annulment of the decision of the Independent High Electoral Commission, No. (10) of 2023, and the cancellation of paragraph (5) of Article (3/3<sup>rd</sup>) of the Provincial Council Seats Distribution System No. (9) of 2023, and the application of paragraphs (1, 2 and 3) thereof, And the ruling to cancel the decision of the Board of Commissioners No. (1) of the ordinary

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minutes (4) on 21/1/2024, And the decision of the Judicial Authority No. (71/Judicial Authority for Elections/2024) on 7/1/2024, and charging the defendant with expenses and attorneyship fees, and after registering the case with this court No. (43/Federal/2024) and collecting the legal fee for it, 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 with the reply regulation dated 7/2/2024, explaining that the plaintiff's request has no basis in law because the Independent High Electoral Commission Law No. (31) of 2019 has laid the legal path to challenge the decisions issued by the Board of Commissioners under Articles (18 and 19) thereof, through which the competent authority to consider objections to the decisions issued the Board of Commissioners is the judicial authority for elections, whose decisions are final, and whereas System No. (9) for the year 2023, it was issued according to the decision of the Board of Commissioners No. (10) for the extraordinary minutes (52) on 31/10/2023 as well as its decision No. (1) for the ordinary minutes (4) on 21/1/2024, and the plaintiff did not challenge them before the Judicial Authority for Elections and could have challenged them according to the law, so the defendant's agent requested to reject the plaintiff's lawsuit and charge him the expenses. After completing the procedures required by the Court's Rules of Procedure, a date shall be set for the hearing of the case without pleading, in which the court was formed and the case was considered, the court examined the plaintiff's requests, his supports and the defenses of the defendant's agent. After completing its scrutinies, the end of the argument has been made clear, and the court issued the following decision:

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### **The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Sabah Mahdi Salman filed this lawsuit against the defendant is the head of the Independent High Electoral Commission / being in this capacity and requested a ruling to cancel the decision of the High Electoral Commission No. (10) of 2023 on 31/10/2023, and to cancel paragraph (5) of Article (3/3<sup>rd</sup>) of the system of distributing seats in the governorates councils that are not organized in a region for the year 2023, due to its violation of the Constitution and the decision of the Federal Supreme Court and the application of paragraphs (1-2-3) of Article (3/3<sup>rd</sup>) of the Seat Distribution System No. 9 of 2023 issued by the Independent High Electoral Commission, as well as the ruling to cancel the decision of the Board of Commissioners No. ( 1) For Ordinary Minutes No. (4) on 21/1/2024, and the ruling to cancel the decision of the Judicial Authority for Elections No. (71/Judicial Authority for Elections/2024) on 7/1/2024 and considering him the winner of his list (Iraqi Basic Alliance) Upon examination of the lawsuit, it was found that the subject matter of this lawsuit is related to the challenge to ratify the name of the plaintiff for the provincial council elections, whereas 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, within Article (18/1<sup>st</sup>) thereof, and that the decisions issued by it are challenged before the Judicial Authority for Elections, pursuant to the provisions of Article (19/I) thereof, and the decisions of the Judicial Authority for Elections are final pursuant to the provisions of item (third) of Article (19) of the aforementioned Commission Law, On the one hand, and on the other hand, regulation No. (9) of 2023 is the system of distributing seats for the elections of non-regular provincial

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councils in a region, Which was issued by the decision of the Board of Commissioners No. (10) of the extraordinary minutes (52) dated 31/10/2023, as well as the decision of the Board of Commissioners No. (1) of the ordinary minutes (4) on 21/1/2024 The plaintiff did not challenge them before the Judicial Authority for Elections since the jurisdiction of this court is determined by Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005, as amended by Law No. (25) of 2021, and not among those competencies the requests of the plaintiff in the lawsuit petition against him, the Federal Supreme Court decided to rule as follows:

First: reject the plaintiff's lawsuit Sabah Mahdi Salman for lack of jurisdiction.

Second: The plaintiff shall bear 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, Articles 4 and 5 (Second) of the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25, for the year 2021. The decision has been made clear on 13/Ramadan/1445 A.H. corresponding to 24/3/2024 A.D.

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

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