

Republic of Iraq
Federal Supreme Court
Ref 56/ 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, 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: Muayyad Azeem Rahim– His agent the barrister
Kazim Karem Rahem.

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 the Independent High Electoral Commission had issued the seat distribution system No.(9) of 2023 based on the provisions of article (10/8th) of the Independent High Electoral Commission law No. (31) of 2019, and the law on elections of the Council of Representatives, governorate councils and districts No. (12) of 2018, as amended, it entered into force after its approval by the Board of Commissioners on 31/10/2023, and it was stated in article (3/3rd) thereof, distribution of seats for women candidates (quota for women), point (Dal), paragraph (5), states the following: ((If there remains one seat reserved for women (quota) and there are lists that have 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, 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

Zainab

Republic of Iraq
Federal Supreme Court
Ref 56/ federal/2024



Kurdish text

and shall be replaced by a winning candidate from among those lists)), whereas the plaintiff has submitted his candidacy for the 2023 provincial council elections, within the (State of Law Coalition) list (233) sequence (5) and when the results were announced by the Commission, he obtained valid votes with (2411) and ranked second among the winners in the list after the winning candidate (Ali Hadi Kazim), who obtained valid votes with (2958) according to the official website of the Independent High Electoral Commission, and the winning parties in the seats of the Wasit Provincial Council, which numbered (15) fifteen seats, of which four seats (women's quota) were allocated and one was allocated to its list, the allocation of the seat allocated to the list of the plaintiff to the female element despite obtaining the largest number of votes, this is contrary to the provision of the Constitution, specifically Articles (14 and 38/1st) thereof, which affirmed the equality of Iraqis and their freedom of expression, and Article (16 and 20) of the Constitution on equal opportunities for citizens and their right to participate in public affairs and their right to vote, and that the mechanism adopted by the Commission in distributing women's seats is unfair and what is stated in it is considered jurisprudence, and that the method of (Saint Lego) did not deal with (women's quota) in the original and did not address it, this mechanism came by distributing (25%) of the seats to women, and what was stated in the article - the subject of the challenge was unfair to the plaintiff, as he was replaced by the candidate (Esraa Hamid Melli) who obtained (1970) a valid vote and its sequence (16), so the plaintiff asked this court to rule on the unconstitutionality of Article (3/3rd/Thaa/5) of Regulation No. (9) of 2023, and the seat was occupied by him. After registering the case with this court No. (56/Federal/2024)

Zainab

Republic of Iraq
Federal Supreme Court
Ref 56/ federal/2024



Kurdish text

and to collect the legal fee for it, and to notify 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 with the reply regulation dated 7/2/2024 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 Authority for elections and its decisions are final, the system of distributing seats for the irregular governorate council elections 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, that is, before the elections were held, and it was not challenged, and the plaintiff had previously appealed the decision of the Board of Commissioners to announce the results, and the decision was issued by the Judicial Authority for Elections to reject the appeal, so the defendant's agent requested to reject the plaintiff's lawsuit after completing the procedures required by the court's rules of procedure, a date was 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, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

Zainab

Republic of Iraq
Federal Supreme Court
Ref 56/ federal/2024



Kurdish text

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 of Article (3/3rd/Thaa/5) of the Seat Distribution System for the irregular governorate council elections in Region No. (9) of 2023, and to rule for him to occupy a seat in the Wasit Governorate Council instead of the candidate (Esraa Hamid Melli), and through checking the lawsuit file and papers, it was found that the Independent High Electoral Commission issued Regulation No. (9) of 2023 which concern regulating the distribution of seats on the electoral lists participating in the provincial council elections, article(3/3rd) thereof, how to distribute the seats of women candidates she explained that the system ensures the achievement of a ratio not less than (25%) of women in each electoral district, where paragraph (Dal) of the said article shows how to replace one or more candidates in the list with a woman who obtained the highest votes from women in the same list, as it stipulates that ((If one seat reserved for women (quota) remains and there are lists that obtained three, two seats or one seat and none of them was a winning woman, the replacement shall be from the lists that obtained three, two seats or one seat. One for a candidate who obtained the highest number of votes among women on these lists and did not win a seat and is replaced by a winning candidate from among those lists)). This court considers that the aforementioned and contested text is consistent with the provisions of the Constitution and the Electoral Law and is consistent with the quota for women, as it guarantees a fair percentage of women's representation in provincial councils and does not violate the provisions of this Constitution on the one hand, on the other hand, this court finds that the plaintiff's request to rule for him to occupy a seat in the wasit provincial council is outside the competences

Zainab

Republic of Iraq
Federal Supreme Court
Ref 56/ federal/2024



Kurdish text

of this court specified in articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005, in particular, the Independent High Electoral Commission Law No. (31) of 2019 has established the legal mechanism for appealing In 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, and whereas the plaintiff had appealed the decision of the Board of Commissioners before the aforementioned authority which issued its decision No. (260/Judicial Commission for Elections/2024) on 14/1/2024, rejecting the plaintiff's appeal and ratify the decision of the Board of Commissioners. Based on the foregoing, the Federal Supreme Court decided to rule with:

First: Reject of the plaintiff's lawsuit (Muayad Azim Mohsen) regarding the challenge of the constitutionality of Article (3/3rd/Thaa/5) of the Seat Distribution System for the irregular governorate council elections in Region No. (9) of 2023, due to the absence of a constitutional violation. Second: Reject of the plaintiff's claim (Muayyad Azim Mohsen) regarding the claim for his seat in the Wasit Provincial Council Instead of the candidate (Esraa Hamid Melli) for lack of competence. Third: Charging the plaintiff fees, expenses and attorneyship fees the defendant's agent, 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 according with the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, articles (4 and 5/2nd) of the Federal Supreme Court Law No. 30 of 2005, as amended

Zainab

Republic of Iraq
Federal Supreme Court
Ref 56/ federal/2024



Kurdish text

by Law No. 25, for the year 2021. The decision has been edited in the session dated 13/Ramadan/1445 A.H. corresponding to 24/3/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

Zainab

Federal Supreme Court - Iraq - Baghdad
Tel – 009647706770419
E-mail: federalcourt_iraq@yahoo.com
Mailbox- 55566