

Republic of Iraq
Federal Supreme Court
Ref. 74/ federal /media/ ٢٠١٣



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 23.10.2013 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, and it issued the following decision:

The Plaintiff:

(Mem. Ra'. Dhad.) – his agents the attorneys (Sheen. Sen. Fa').

The Defendants:

1. Chairman of the Board of the Independent High Electoral Commission/being in this post _ his agent the legal official (Alf. Ha'. Ain.).
2. The I.C.R. Speaker /being in this post_ his agents the legal official (Sen. Ta'. Ya'.) and (Ha'. Mem. Sen.).

The Claim:

The agent of the plaintiff claimed that on the date 13/5/2004 the Administrative Director of the Coalition Provisional Authority



issued the Order No. (92 on 31/5/2004) which ruled in its judgments in Clauses Three, Four and Six of Section Seven that (all decisions of the Appellate Body are not subject to review by any authority, including the judicial authority), and since the three provisions of the aforementioned decision referred to above and their extension are what was mentioned in Article (8) Paragraph (seventh) of the High Commission for Independent Elections Law No. (31) For the year 2007 amended in effect has immunized any decision issued by the Judicial Appeal Commission for Elections from any appeal or review and in line with the order of the aforementioned Coalition Provisional Authority, the law of the Independent High Commission was issued. For the elections No. (11) of 2007, the amendment which set texts similar to what was mentioned above, and in particular Article (8) thereof, which stipulated (The Court of Cassation shall form a body called the Judicial Authority for Elections consisting of three part-time judges to consider the appeals referred to it by the Commission or Submitted by those affected by the council's decisions directly to the judiciary, and the decisions of the judicial commission for elections are final and not subject to appeal in any form).

And because dealing with the issue of elections and nomination, whether it is governorate council elections or parliamentary councils, is one of the matters of great importance to which the constitution granted protection and is the first to take care of it, and considering its violation and lack of respect is a



violation of the constitution as indicated by Articles 19/20 of the Constitution.

And since the enforceable constitution in Article (100) has arranged for the text in the laws to immunize any act or administrative decision from appeal, and when (the plaintiff) has a direct and influential interest in the social and political position, because the judiciary for elections has prohibited him and his political entity Of the right to run for elections in the provincial councils when it issued its numbered decisions (19/31/33/Appeal/2013) and its appeals were rejected from the formal point of view, and its decisions were justified based on information that is legally incorrect and has no basis and may be presented (the plaintiff) To a painful picture of cases of denial of justice when a criminal record was attributed to him that does not exist and has no legal basis, as indicated by the books issued by the Criminal Registration Directorate in the Ministry of Interior.

In addition to the fact that the Judicial Authority for Elections based its reason for responding to appeals on Law No. (36) of 2008 and named it (the Law of the High Elections Commission) while the aforementioned law does not exist from the legal point of view and does not bear the aforementioned address and cannot be relied upon as it is a law dealing with a subject It has nothing to do with the work of the High Electoral Commission, but rather it is related to provincial, district and sub-district council elections.



Therefore, the request for a ruling was submitted for the unconstitutionality of the order issued by the Administrative Director of the Coalition Provisional Authority No. (92) for the year 2004 and the ruling for the unconstitutionality of Article (8) Paragraph (Seven) of the law of the Independent High Electoral Commission in force No. (11) of 2007 amended and published in The Official Gazette, issue (4037) on 3/14/2007, with (the defendants) charging all fees, expenses and attorney fees.

And after registering the case with this court in accordance with Paragraph (third) of Article (1) of the Federal Supreme Court Bylaw No. (1) for the year 2005 and after the court completes the required procedures in accordance with Paragraph (Second) of Article (2) of the Federal Supreme Court Bylaw aforementioned, the agent of (the first defendant) replied with his regulation dated 8/20/2013 and summarizes that the order (92) for the year 2004 issued by the administrative director of the Coalition Provisional Authority that the aforementioned decision was canceled according to Article (1 / first) of the Independent High Electoral Commission Law No. 11) for the year 2007, so the request for cancellation has no basis in the law, and as for his request for the unconstitutionality of Article (8 / seventh) of the Independent High Electoral Commission Law, which made the decisions of the Judicial Authority for Elections in the Federal Court of Cassation not subject to appeal in any way, it is the legislator's choice to be the decision to appeal the decisions issued by the Commission



and issued by the judicial body formed in the Federal Court of Cassation is a final decision, and this option is not considered by the legislator contrary to the text of Article (100) of the Constitution, and a request has been submitted to reject the case.

(The second defendant) also responded to the lawsuit petition by his regulation dated 8/18/2013 stating that the Coalition Authority Order No. 92 of 2004 was canceled from the date of enforcement of Law No. (1) of 2007 that repealed in Article (1) of the aforementioned decision, And that the decisions issued by the Board of Commissioners may be challenged before the Judicial Authority for Elections, and that the plaintiff had previously appealed before the judicial body for elections and that it decided to reject the appeal, and that the decisions of the judicial body are final and the case is requested to be rejected. After completing all the persuaders a date has been set for the pleading according to article (2/second) of the Court Bylaw, and the public in present pleading began.

The plaintiff's attorney repeated what was mentioned in the lawsuit's petition and requested the judgment according to it.

The defendants' agents repeated what was mentioned in their regulations.

Each of the parties repeated their previous statements and requests.

Whereas nothing left to be seed, the argument is closed, the decision issued publicly.



The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff attorney requests in his lawsuit petition from the Federal Supreme Court (First) to rule in the unconstitutionality of the Order issued by the Administrative Director of the Coalition Provisional Authority No. (92) for year 2004, the court finds that by looking into the provisions of the Law of the Independent High Electoral Commission No. (11) of 2007, it was found that Article (1 / First) of it stipulates (The Coalition Authority Order No. 92 in 5/31/2004) shall be repealed from the effective date of this the law and all regulations and instructions issued pursuant to it).

The aforementioned law was published in the Official Gazette No. (4037) on 3/14/2004 and became effective on the aforementioned date, since the aforementioned article canceled the order of the Coalition Authority that is the subject of the request, so the plaintiff's request to rule that the aforementioned order is unconstitutional has no basis in the law As the aforementioned order is no longer in effect and its provisions are in effect from the date of enforcement of the Law of the Independent High Electoral Commission No. 11 of 2007.

The Federal Supreme Court also finds that the plaintiff's second request in his case is the ruling that Article (8 / seventh) of the Independent High Electoral Commission Law No. (11) Of 2007/amended is unconstitutional.



The court finds that the aforementioned text states that (the decisions of the Judicial Committee for the elections are final and not subject to appeal in any way). And that this judicial body is formed according to the provisions of Paragraph (Third) of the mentioned article which states (The Court of Cassation shall form a body called the Judicial Authority for Elections consisting of three part-time judges to consider the appeals referred to it by the Commission or Submitted by those affected by the council's decisions directly to the judiciary) From the foregoing, the aforementioned body formed according to the provisions of the aforementioned paragraph is a judicial body composed of three judges from the Federal Court of Cassation to consider the appeals received against the decisions of the Commission's Board, which made the Commission's Board's decisions not immune from appeal, and either the decisions of the Judicial Commission are not subject to appeal. In any way, according to what is stated in paragraph (seventh of Article 8) of the aforementioned law, which is required to be ruled unconstitutional, the provisions of Article (100) of the Constitution of the Republic of Iraq for the year 2005 do not apply to the decisions of the judicial body in the Federal Court of Cassation.

Because the decision issued by the judicial commission for elections is a judicial decision that is not covered by the provisions of Article (100) of the constitution, because its

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provisions are related to administrative decisions, so they are prevented from immunizing them from appeal and did not address judicial decisions.

Therefore, the plaintiff's request to rule the unconstitutional of Article (8 / Seventh) of the Independent High Electoral Commission's law, which has no basis in the law.

The court decided to dismiss the plaintiff's case with charging him with all the case's expenses with the advocacy fees for the defendants' agents Amount of (one hundred thousand) IQ.D. This decision has been issued decisively based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and by agreement and was publicly understood.