

Republic of Iraq
Federal Supreme Court
Ref. 91 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/7/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khaled Ahmed Taha who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Thana'a Faraj Othman Al-Rubaie – her agents the barristers Ahmed Fakhri Abdulla and Yassir Mohammed Mahmood.

The Defendants: The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haythm Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed, through her agents, that the Federal Supreme Court had previously ratified the results of the elections of the Iraqi Council of Representatives for the current session (which took place on 10/10/2021), and the Council of Representatives met on 9/1/2022, and that she requested an appeal against the validity of the membership of the Representative (Ghason Hamid Attia al-Fartousi) based on Article (52/1st) of the Constitution, which stipulated that "the Council of Representatives shall decide on the validity of the membership of its members, within thirty days from the date of registration of the objection, by a two-thirds majority of its members." because of the existence of legal violations in the process of her election, which were not taken up by the Commission in a

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timely manner, including the failure to close the ballot boxes within the specified time, the acceptance of inaccurate papers and the cancellation of valid papers numbering (3241) ballot papers, which indicates a legal violation in the calculation of the number of votes and prevented her from winning the parliamentary seat, she also appealed the decision of the Independent High Electoral Commission dated 11/10/2021 to announce the preliminary results of the elections, according to which it obtained (5999) votes within the first electoral district in Maysan governorate and the appeal was dismissed by the Commission, and then appealed to the Judicial Electoral Commission and issued its decision No. (987/Electoral Judicial Commission/2021) on 15/11/2021 to dismiss the appeal and ratify the Commission's decision. The violations that took place require scrutiny (including them and Representative Ghoson Hamid) as they are the candidates for the first district in the Maysan governorate, in addition to the fact that article (20) of the Constitution affirmed the right of citizens to participate in public affairs and enjoy political rights, including the right to vote, vote and run while many voters were prevented in benefit of her, as for those who enter electoral centers or invalidate their papers contrary to the law and the Constitution and that Article (38/1st) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 stipulates (... If the results of the electronic counting and sorting do not match the manual counting and sorting by 5% of the votes of that station, the manual counting and sorting of all the stations of the electoral center will be carried out and when referring to the priorities of the electronic tape of the results of the first district in Maysan governorate, it turns out that there are (24) stations that have been closed after 6 pm and that their competitor obtained (996) votes after

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six o'clock, and by applying the law and not counting those votes for the competition, the (plaintiff) will be the winner in that constituency, and the Commission has invalidated approximately (3) thousand ballot papers in the said constituency without stating the reasons and without informing the representatives of political entities, and since the plaintiff has an interest in initiating this lawsuit and that the constitutional violation is clear through the violation of the text of Article (52) of the Constitution, Article (12) of the Law of the Council of Representatives and its formations No. (13) of 2018 and Article (8) of the Law on Elections of the Council of Representatives No. (9) of 2020 and its submission of an appeal against the membership of the said Representative on 7/2/2022 registered under the incoming post (Mim.Ra/ (83) However, the procedure was not submitted to the Council of Representatives within (30) days contrary to the Constitution and the decisions of the Federal Supreme Court, which considers the rejection a fact of judgment. Therefore, the plaintiff requested the Federal Supreme Court to rule unconstitutionally and legally reject the appeal filed by her on 7/2/2022 and rule that the membership of the Representative (Ghason Hamid Attia Al-Fartousi) was invalid and replaced with it and that the defendant was charged fees, expenses, and advocacy fees. The case was registered with this court in the number (91/federal/2022) and the legal fee for it was met on 5/4/2022 in accordance with Article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and the defendant shall be informed of its petition and documents in accordance with Article (2/1st) thereof, his agents replied with the answering draft dated 18/4/2022 to conclude that the Representative (Ghason Hamid Attia Al-Fartoussi) is a member of the Council of Representatives for the fifth electoral cycle

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and the results of the final elections have been approved in accordance with the decision of the Federal Supreme Court No. (175/Federal/2021) dated 27/12/2021 and that the annulment and cancellation of electoral papers in an electoral district, in the event of appeals or complaints, the competence of the Independent High Electoral Commission based on the provisions of Article (38) of the Council of Representatives Elections Law No. (9) of 2020 and the provisions of the Commission's Law No. (31) of 2019, which drew up the methods of appeal, and the Judicial Electoral Authority has already ratified the decision of the Board of Commissioners regarding the dismissal of the appeal submitted by the plaintiff and that the decisions of the Judicial Authority are final according to Article (19) of Law No. (31) of 2019, therefore, they requested to reject the case and to burden the plaintiff with the expenses, fees, and advocacy fees, and after completing the procedures stipulated in the Court's Bylaw above-mentioned, a date for the argument has been scheduled according to the article (2/2nd) of which, both parties were notified. On the appointed day, the Court convened, and on behalf of the defendant, his agents the legal counselor Haytham Majid Salim and official jurist Saman Muhsin Ibrahim attended. The public in presence argument proceeded, and the agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it, the agents of the defendant answered and requested to reject the case in the answering draft dated 18/4/2022. The agent of both parties repeated their previous sayings and requests, whereas nothing was left to be said, 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 Thana Faraj Osman Al-Rubaie filed this lawsuit against the defendant Speaker of the Council of Representatives in addition to his job and requested a ruling on the unconstitutionality of rejecting the appeal submitted by her to the Council of Representatives on 7/2/2022 and the invalidity of the membership of the Representative Ghoson Hamid Attia Al-Fartousi, the candidate for the first electoral district in Maysan Governorate and replacing her with her (i.e. the plaintiff) for the reasons stated in her petition, including the occurrence of some violations in the process of her election. The Court noted that the case was filed within the period stipulated in Article (52/2nd) of the Constitution of the Republic of Iraq for the year 2005, so it decided to accept it in form, and after the court reviewed the reply list of the defendant in addition to his job dated 18/4/2022, in which he requested the dismissal of the lawsuit, as well as the court's access to the statements of the agents of the parties recorded to control and the decision of this court rejecting the request of the plaintiff's agent to include a third person in this case alongside the defendant due to the lack of Legal basis, through scrutiny, it was found that the plaintiff was a candidate for the first electoral district of Maysan province in the elections of the Iraqi Council of Representatives for the fifth session of 2021 and did not obtain a sufficient number of votes to qualify her to win the parliamentary seat, and the candidate Ghosoon Hamid Attia Al-Fartousi won that seat and that the plaintiff had previously appealed the decision of the Board of Commissioners

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regarding the preliminary results of the elections to the Judicial Electoral Authority, formed under Article (19/1st) of the Law of the Independent High Electoral Commission No. (31) of the year 2019 because of some violations in it, and that the Electoral Judicial Authority issued its decision No. (987 / Judicial Electoral Commission / 2021 on 15/11/2021) including the dismissal of the appeal and the ratification of the decision of the Board of Commissioners and that the decisions of the aforementioned body are final under Article (19/3rd) of the same aforementioned law, therefore, the Court finds that the case of the plaintiff has no legal substantiation. The Court decided to reject the case of the plaintiff Thana'a Faraj Othman Al-Rubaie for its lacking of legal substantiation and to burden her with the fees, expenses, and advocacy fees for the agents of the defendant, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount of one-hundred thousand Iraqi dinars, to be divided following the law. The decision has been issued unanimously, decisive, and binding for all powers according to the provisions of articles (52/2nd and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/9th and 5/2nd) of the Federal Supreme Court No. (30) for 2005 which was amended by the law (25) for 2021. The decision has been made clear on 6/Dhul Hijja/1443 Hijri coinciding 6/July/2022 AD.

**Signature of
the president
Jasem Mohammad Abbood**

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