

Republic of Iraq
Federal Supreme Court
Ref. 94/ federal /media/ 2013



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27.11.2013 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:

(Alf. Mem. Sen.) – his agents the attorneys (Alf. Mem. Ain.) and (Lam. Ain. Lam.).

The Defendants:

Chairman of the Board of the Independent High Electoral Commission/being in this post _ his agent the legal official (Alf. Ha'. Ain.).



The Claim:

The agent of the plaintiff claimed in his lawsuit No. (94/federal/2013) before the F.S.C that his client won the provincial councils / Anbar Provincial Council, and the Judiciary Commission approved the results, and that he occupied his seat and practiced his initial work, he was surprised by the Federal Supreme Court's decision regarding transferring paragraph (E) of the seat distribution system No. (12) of 2013 issued by the High Elections Commission, and that the Commission applied this decision as it is binding on the Commission and amended the system and amended the results, and he was changed by another candidate from the same list, so she took the initiative to appeal the decision within the legal period, requesting a revocation for the following reasons:

1. Provincial councils have been formed and according to which the governors' elections and the formation of committees and executive positions, and that replacing the names of candidates in this way violates the provisions of Law No. (36) of 2008 amended and the system of amendment of seats No. (12) of 2013. Thus, it leads to a lack of confidence in the judiciary and the waste of the public interest and imposes the meaning of approval for the judicial body from its content.



2. The decision of the Federal Supreme Court is not enforceable retroactively and does not affect the results of the elections in the governorate, especially since the judiciary has approved the results and that what the judiciary at the Federal Supreme Court has decided on previous occasions to support this opinion, as it had previously issued the decision (67) in 2012 and clearly indicated that it does not affect the results of the previous elections, and added to many other points. Therefore, due to the above reasons, a request from the Federal Supreme Court to revoke the Commission's Board Decision No. (2) for the record (118) and to keep the situation as it is and the failure of the aforementioned Federal Supreme Court's decision to apply to the results of the past elections and that its effect on the upcoming elections with Charging the defendant with the expenses and 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, a date has been set for the pleading, and the



two attorneys of the plaintiff in the proxy linked in the case have attended on behalf of the plaintiff, and the legal representative of the defendant has also attended on behalf of the him under the official power of attorney linked to the case file, 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, and the defendant shall be charged with the lawsuit fees and attorney fees.

The court reviewed the response list dated (10/9/2013) submitted by the Chairman of the Board of Commissioners, in which he requested to dismiss the lawsuit because the Commission made its decision based on the implementation of the Federal Supreme Court Decision No. (36 / Federal / 2013) and amended the seat distribution system No. (12) for the year 2013 after it formed a specialized committee and submitted its recommendations to amend the aforementioned system and that the plaintiff had previously filed an appeal for the same reason before the Judicial Authority for Elections, and the aforementioned commission rejected the appeal.

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 to rule to revoke the Commission's Board Decision No. (2) for the minutes (118) and the situation remains as it is and the Federal Supreme Court's decision No. (36 / Federal / 2013) on 26/8/26 is not enforceable. 2013 is based on the results of the past elections, but it applies to the upcoming elections, as the jurisdiction of the Federal Supreme Court is defined in Article (93) of the Constitution of the Republic of Iraq for the year 2005 and in Article (4) of the Federal Supreme Court Law No. (30) of 2005 and not from among them are considering the request of the plaintiff's attorney requesting the ruling to veto the decision of the Board of Commissioners in the Independent High Electoral Commission regarding the distribution of seats among the winning candidates in the elections for the provincial councils, as this is within the jurisdiction of the Independent High Electoral Commission and that its decision is subject to appeal before the cassation

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commission formed in the Federal Court of Cassation And that the decisions of the Federal Supreme Court are final and binding on all authorities based on the provisions of Article (94) of the Constitution, and that they apply from the date of their issuance to the election results, and their effectiveness may not be postponed unless this is mentioned in the body of the decision. And for the aforementioned reasons, the plaintiff's lawsuit is outside the jurisdiction of the Federal Supreme Court, which requires its dismissal from the point of lack of jurisdiction. Therefore, the court decided to dismiss the plaintiff's case from the non-jurisdiction side with charging it with all the case's expenses with the advocacy fees for the defendant agent the legal official (Alf. Ha'. Ain.) 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 on 27/11/2013.