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Research paper

# The Federal Supreme Court and Its Role in Annulling Parliamentary Election Results

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## **Introduction**

Elections are a cornerstone of the constitutional and political systems in many modern states due to their significant and positive impact on entrenching the principle of peaceful transfer of power, avoiding authoritarianism, and activating the people's role as the source of legitimacy for administrative and political institutions. This is affirmed by Article 5 of the Iraqi Constitution of 2005, which states: "The law is sovereign, and the people are the source of authority and its legitimacy, exercised through direct, secret ballot and constitutional institutions."

The electoral process and its components—such as electoral laws, independent electoral commissions, specialized machinery, and other tools—constitute the legal and material framework of the electoral system. All entities, from the Council of Representatives to the Independent High Electoral Commission (IHEC) and the judicial bodies responsible for adjudicating electoral appeals, operate within their constitutionally and legally defined mandates.

The Iraqi Constitution of 2005 granted the Federal Supreme Court (FSC) multiple jurisdictions, including the authority to certify the final results of parliamentary elections. This has sparked debate among legal, political, and media elites about the court's precise role in certification and whether it holds the power to reject or annul election results. This article examines these questions based on constitutional and legal texts, as well as the court's rulings and jurisprudence in this context.

### **First: The Role of the Federal Supreme Court in the Electoral Process**

The Federal Supreme Court serves as Iraq's constitutional judiciary. It is an independent judicial body financially and administratively <sup>1</sup>, and its decisions are

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1. See Article 92 of the Constitution.

binding on all authorities and not subject to appeal <sup>2</sup>. Its jurisdictions, as outlined in Article 93 of the Constitution <sup>3</sup>, include certifying the final results of general elections for the Council of Representatives.

The Constitution also assigns the court other roles, such as adjudicating disputes over the validity of the Council of Representatives' decisions regarding its members' eligibility (Article 52, Second). Additionally, it plays a role in convicting the President of the Republic before a vote on their dismissal by the Council of Representatives (Article 61, Fourth) <sup>4</sup>. These jurisdictions are further detailed in the amended Federal Supreme Court Law No. 30 of 2005.

The constitutional jurisdictions granted to the FSC are exclusive and precise, as explicitly stated in the Constitution. Its electoral-related jurisdictions—particularly certifying final election results and adjudicating challenges to the Council of Representatives' decisions on membership validity—are clearly defined. Other

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2. See Article 49 of the Constitution.

3. The following jurisdictions are specified therein:

**First:** Oversight of the constitutionality of laws and enforceable regulations.

**Second:** Interpretation of constitutional texts.

**Third:** Adjudication of cases arising from the application of federal laws, decisions, regulations, directives, and procedures issued by federal authorities. The law guarantees the right of the Council of Ministers and concerned individuals or entities to file direct appeals before the Court.

**Fourth:** Resolution of disputes between the federal government and the governments of regions, governorates, municipalities, and local administrations.

**Fifth:** Resolution of disputes between governments of regions or governorates.

**Sixth:** Adjudication of complaints filed against the President of the Republic, the Prime Minister, or ministers, as regulated by law.

**Seventh:** Certification of the final results of general elections for membership in the Council of Representatives.

**Eighth:** a. Resolution of jurisdictional conflicts between the federal judiciary and judicial bodies of regions or governorates not organized into a region. b. Resolution of jurisdictional conflicts between judicial bodies of regions or governorates not organized into a region.

4. See: Article 16 - Sixth of the Constitution.

constitutional jurisdictions are also addressed in Article 93.

### **Second: The Federal Supreme Court and Certification of Election Results**

The constitutional and legal jurisdictions of the FSC include certifying the final results of parliamentary elections, as stipulated in Article 93, Seventh: “Certification of the final results of general elections for the Council of Representatives.”

While this text explicitly assigns the court a certification role, it is somewhat ambiguous, raising questions such as:

1. The FSC’s certification authority applies only to parliamentary elections and not to other electoral processes in regions or governorates.
2. The Constitution does not specify a timeframe for certification, leaving it open-ended despite its critical impact on convening the first session of the newly elected Council of Representatives and subsequent constitutional timelines for government formation.
3. The Constitution refers to certification of “final results,” implying that the results have undergone multiple legal stages, including announcement by IHEC, appeals, adjudication by the Judicial Panel for Elections, and final announcement. The FSC’s role is limited to post-announcement certification.

All electoral procedures follow their legal and procedural paths, as defined by law and implemented by IHEC and the Judicial Panel for Elections, whose decisions are final. The FSC has no role in these stages beyond certifying the final results.

### **Third: The Federal Supreme Court and Annulment of Election Results**

A debate arose among political and legal elites regarding the extent of the Supreme Federal Court's role in either withholding ratification of election results or its authority to annul them, or whether its jurisdiction is limited to the formal ratification of election results as stipulated in Article 93, Clause Seven, of the Constitution.

Accordingly, petitions and lawsuits were submitted to the Supreme Federal Court in this context. A lawsuit was filed by entities and individuals objecting to the results of the most recent parliamentary elections of 2021, as announced by the Independent High Electoral Commission, due to problems that accompanied the electoral process both during and after the elections—such as the confusion that occurred in the Commission's successive and disordered announcements of the results. The lawsuit submitted by the objectors included a number of points highlighting issues in the electoral process, such as the devices used for voting, electronic counting and sorting, reports from the auditing company, the Commission's confusion on election day and the day of announcing the results, and other problems contained in the objection list, which the Court summarized in 13 points. In response to all these matters raised in the lawsuit, the Supreme Federal Court decided to dismiss the case seeking annulment of the elections and the request to issue a precautionary order to halt the ratification procedures for the results of the most recent parliamentary elections held on October 10, 2021, as stated in its decision No. 159/Federal/2021. The decision's summary is as follows:

1. The plaintiffs' lawsuit to annul the elections was dismissed.
2. The request to issue a precautionary order to halt the ratification procedures for the election results was rejected.

The Court based its decision to dismiss the lawsuit on several grounds, including the finding that all the objections, appeals, and issues mentioned in the lawsuit are directly related to the procedures of the electoral process, and that the Board of Commissioners of the Independent High Electoral Commission is the competent authority to consider them. Its decisions are subject to appeal before the Judicial Panel for Elections, in accordance with Articles 18 and 19 of the Commission Law No. 31 of 2019, and the legislature has confined consideration of such matters to the Board of Commissioners.

Therefore, the Supreme Federal Court concluded that its jurisdiction concerning the ratification of the general election results for membership in the Council of Representatives is defined in Article 93, Clause Seven, of the Constitution, and Article 4, Clause Seven <sup>5</sup>, of the Supreme Court Law No. 30 of 2005, as amended by Law No. 25 of 2021. The results of the parliamentary elections are final and eligible for ratification by the Supreme Federal Court, and complaints and appeals related to them are submitted to the Board of Commissioners after the announcement of the results, which in turn decides on them, and its decisions are subject to appeal before the Judicial Panel for Elections, whose decisions are final by law <sup>6</sup>.

This jurisprudence of the Supreme Federal Court had previously been expressed in an official statement rejecting a lawsuit concerning electoral violations that accompanied the 2018 parliamentary elections, where the plaintiff requested that the President of the Supreme Federal Court, in his official capacity, be obligated not to ratify those election results by Article 93, Clause Seven, of the Constitution.

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5. Adjudication of disputes that arise among the governments of the regions or governorates.

6. Adjudication of accusations directed at the President of the Republic, the Prime Minister, and ministers, as regulated by law.

At that time, the Court clarified that the judiciary is not a litigant and cannot be considered a party in facts attributed to other persons or entities, and that the matter concerns the Independent High Electoral Commission, which is responsible for accepting complaints and objections regarding the alleged violations that occur during the electoral process <sup>7</sup>.

Accordingly, the Supreme Federal Court has resolved the issue of ratification of parliamentary election results, determining that its role is the (formal) ratification of the final results. All matters related to appeals, violations, and problems concerning the electoral process are in a stage preceding ratification, and the law has defined their procedures and mechanisms between the Independent High Electoral Commission and the Judicial Panel, whose decisions are final and not subject to appeal.

## **Conclusion**

As Iraq's constitutional judiciary, the Federal Supreme Court possesses explicit constitutional jurisdictions, none of which include annulling election results. Its role in certifying final parliamentary election results under Article 93, Seventh, is strictly formal, occurring after all electoral procedures—including appeals—are completed.

The electoral process is governed by constitutional and legal frameworks, administered by IHEC and the Judicial Panel for Elections. The FSC has consistently affirmed that its jurisdiction is limited to certification, as demonstrated in its 2021 ruling (No. 159/Federal) and its 2018 statement.

Parties alleging fraud or irregularities must follow legal channels by filing complaints with IHEC's Board of Commissioners, whose decisions can be appealed to the Judicial Panel for Elections.

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7. Ratification of the final results of the general elections for the membership of the Council of Representatives.

## **References**

1. The Iraqi Constitution of 2005.
2. Federal Supreme Court Law No. 30 of 2005 (amended by Law No. 25 of 2021).
3. IHEC Law No. 31 of 2019.
4. FSC Decision No. 159/Federal/2021.
5. FSC Official Statement, August 27, 2018.









## **Research Identity**

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