

Republic of Iraq
Federal Supreme Court
Ref. 101 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/8/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayooob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Katea Najman Jalloud – his agent, the barrister Mohammed Akram Ali.

The Defendant: 1- Speaker of the ICR/ being in this capacity. His agents are the Director-General of the legal department Asst. Prof. Dr. Sabah Jumaa Al-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.
2- Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity.
3- The Representative Zainab Waheed Salman Ali Al-Khazraji.

The Claim

The plaintiff claimed through his agent that after the resignation of the deputies of the Sadrist bloc from the membership of the Council of Representatives, two out of four seats became vacant in the third district in Dhi Qar governorate, and the first seat with the highest votes was filled (Kazem Jarro Karim Sultan with 8187 votes), while the second vacant seat was filled by the one who obtained a number of votes (3021- Zainab Waheed Salman Al-Khazraji) and was sworn in in the extraordinary session of the Council of Representatives on 23/6/2023, based on the list of substitutes sent by the defendant The second who made it instead of

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him while he obtained (7949 votes) in violation of the constitution, the law and the decisions of the Federal Supreme Court, because the number of seats allocated to Dhi Qar Governorate (19) seats, including (5) for women, whereas Article (16/9th) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 states: (If the vacant seat belongs to a woman, it is not required that she be replaced by a woman unless this affects the percentage of women) and with the third defendant occupying the vacant seat, the number of women became (6) in the governorate, and since the number of women in the Council of Representatives exceeded (25%), therefore it is not permissible to expand with the exception, based on the Law on the Replacement of Members of the Council of Representatives in Article (2/3) thereof, and what was stated in the Federal Supreme Court's decision No. (244/Federal/2022), which concluded that it is not permissible to expand the exception for the quota (women), so the plaintiff objected before the Council of Representatives to the validity of the membership of Representative (Zainab Wahid Al-Khazraji) in accordance with Article (52) of the Constitution, it was registered in No. (1327) on 10/4/2023 and was not decided despite the lapse of the period specified in the aforementioned article, and since Article (2/3) of the Replacement Law stipulated (if the vacant seat belongs to a woman, it is not required to be replaced by a woman unless this affects the minimum representation of women in the Council), and because the defendants violated the law, so the plaintiff asked this court to rule that the membership of MP (Zainab Wahid Al-Khazraji) is invalid and oblige the first and second defendants to be the vacant seat is entitled to, And allowing him to take the constitutional oath as a member of the Council of Representatives in its fifth session and charging them expenses and advocacy fees. The case was registered with this court at the number (101/Federal/2023) and the legal fee was collected for it the defendants are informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court

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No. (1) of 2022, and the first defendant's agent replied with response regulations dated 30/5, 1/6, and 26/7/2023 that concluded that the significance of the text of Article (49/4th) of the Constitution is that the representation of women in the Council of Representatives should be a quarter of the number of its members as a minimum, with the possibility that Their number in the Council is more than a quarter, the reference in determining the minimum number of women in the assembly is the electoral law. Article 16 of the Iraqi Council of Representatives Elections Law No. 9 of 2020, in force at the time of the swearing-in of Representative Zainab Wahid, confirmed that the percentage of women's representation should be no less than 25% of the number of members of the Council of Representatives and no less than 25% of the number of members of the Council of Representatives in each governorate, so it turns out that the minimum number of women in the Council of Representatives is met at two levels that do not replace each other, which is that the number of women should not be less than (25%) of the number of members of the Council of Representatives on the one hand, and on the other hand, that the number of women should not be less than (25%) of the number of seats allocated to each governorate in the Council of Representatives. The Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, as amended by Law No. (4) of 2023, has adopted a new mechanism for replacing members of the Council of Representatives that differs from the mechanism adopted by the Iraqi Council of Representatives Elections Law No. (9) of 2020, where Article (14) of the law in force stipulates (Third: If the vacant seat belongs to a woman, it is required that she be replaced by another woman from the same electoral list), so the new mechanism included in the article is required to be followed to fill vacancies that occur after the entry into force of the law because it is a subsequent law that canceled the previous, therefore, he requested the dismissal of the lawsuit and the plaintiff to be charged with the expenses. The second defendant replied in the reply list

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dated 24/5/2023, its conclusion: that after rearranging the names of the candidates, the Commission had to replace the candidate (Kata Najman Jloud - being the fourth sequence in terms of the number of votes) with a woman to ensure the share of women in the third constituency in Dhi Qar Governorate, the plea submitted by the plaintiff regarding Article (16/9th) shall be valid in the event that there is a woman who wins her votes in that constituency, and since the seat that has been filled is allocated according to the quota system and that Article (16/3rd) of the law requires the presence of at least one woman in the constituency to ensure that there is representation of women in that constituency, whereas the law made the number of constituencies in Dhi Qar governorate (5) electoral districts and by (5) women at least, especially since Article (16/2nd) stipulates that: (The percentage of women's representation in each governorate shall be not less than (25%) of the number of members of the Council of Representatives in each governorate), so he requested the dismissal of the lawsuit and the plaintiff to be charged with the expenses. The third defendant's attorney replied with two response regulations dated 29/5 and 31/7/2023, which included a repetition of what was stated in the first and second defendants' drafts and a request to dismiss the lawsuit. After completing the procedures required by the court's internal regulations, the court set a date for hearing the case without pleading, based on Article (31/5th) thereof, in which the court was formed and the case was considered, the court checked the plaintiff's requests and his grounds and the defenses of the defendants' agents, and after the court completed its audits, the end of the minutes has been made clear and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit Kata Najman Jloud is focused on

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demanding a ruling to annul the membership of the third defendant, the Representative Zainab Waheed Salman Ali Al-Khazraji, and to oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath in its place as a member of the Iraqi Council of Representatives for its current session because he obtained a number of votes more than what it obtained, and the Court finds that Article (49/4th) of the Constitution of the Republic of Iraq for the year 2005 stipulates (Fourth: The electoral law aims to achieve a representation of women of at least one quarter of the number of members of the Council of Representatives), As for paragraph (fifth) of the same article, it stipulates (the Council of Representatives shall enact a law that addresses cases of replacement of its members upon resignation, dismissal or death), while Article (1) of Law No. (15) of 2023 stipulates the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 published in the Iraqi Gazette No. (4730 on 31/7/2023) that: ((The text of paragraph (3) of Article 2nd of the Law shall be repealed and replaced by the following: 3. If the vacant seat belongs to a woman, it is required that she be replaced by a woman in the same electoral district, regardless of exceeding the minimum representation of women in the Council)), through the advanced texts, the law dealt with the issue of women's representation and how to replace members of the Council of Representatives in general and replace members of the Council of Representatives from women in particular, and it came with a firm text in the second amendment under Article 1st/ paragraph (3) mentioned above regarding the issue of replacing the vacant seat that belongs to a woman and explicitly stipulated that, it was stipulated that the replacement should be a woman in the same constituency even if the number of women in the electoral district exceeded the minimum representation of women in the Council stipulated in Article (49/4th) of the Constitution, and thus the plaintiff's claim must be dismissed because there is nothing that prejudices the validity of the

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membership of the third defendant in light of what is stated in Law No. (15) of 2023 - Law of the Second Amendment to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, and for the foregoing, the court decided to dismiss The plaintiff's lawsuit Kata Najman Jلود, and to burden him with the fees, expenses, and fees of the defendants' agents an amount of one hundred thousand dinars distributed among them following the law. The decision has been issued with majority, final, and binding for all authorities according to the provisions of Articles (52 and 93) of the Constitution of the Republic of Iraq for 2005 and Articles (4/9th and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 28/Muharram Al-Haram/1445 Hijri coinciding with 16/August/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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