

Republic of Iraq
Federal Supreme Court
Ref. 102 / 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: Nafea Abid Karchi Hasan Al-Eqabi – his agent the barrister Ibrahim Abdulla Muhsin.

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 and the official jurist Saman Muhsin Ibraheem.

2- President of the Board of Commissioners in the Independent High Electoral Commission/ being in this capacity – his agent the legal counselor Ahmed Abid Hasan.

3- The Representative Fatin Mohie Muhsin Al-Qaragoli – her agent the barrister Zainulabdeen Hussein Dardooh.

The Claim

The plaintiff claimed through his agent that the third defendant had already taken the constitutional oath before the Iraqi Council of Representatives to fill the vacant seat in the Iraqi Council of Representatives for its fifth session for the ninth constituency in Baghdad Governorate after the resignation of Representative (Ibtisam Swailem Owaid), and the plaintiff believes that the vacant seat is due to being the highest number of electoral votes, but the second defendant sent the list of substitutes to fill the vacant seats and made the third defendant the alternative, which violates the constitution, the law and the decisions of the Federal Court. Therefore, the plaintiff objected

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before the Council of Representatives on 10/4/2023 and the objection was registered with a board (12/4/2023), It was not decided despite the lapse of the period stipulated in article 52/first of the constitution and article 31/third of the court's internal system, violating the decision of the Federal Supreme Court No. (244/Federal/2022) concerning a similar case, and since the Iraqi Council of Representatives Elections Law No. (9) of 2020 differentiated between the initial distribution of seats after the announcement of the election results on 10/10/2021 and (filling the vacant seat) under Article (15/ Fifth), if any seat in the Council of Representatives becomes vacant, it shall be replaced by the candidate who obtains the highest votes in the electoral district), as well as article (16 / 1st, 2nd and 9th) 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's representation, and the Federal Supreme Court indicated in its decision No. (120/Federal/2019) that it is not permissible to expand the exception for the women's quota, and since Article (49/fifth) of the Constitution stipulates: (The Council of Representatives enacts a law that addresses cases of replacement of its members upon resignation, dismissal or death) The Council of Representatives has legislated a law to replace members of the Iraqi Council of Representatives No. (6) of 2006 Article (2/3) thereof stipulates: (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), since the percentage of women's representation in the Council of Representatives exceeds one quarter and that replacing it with the third defendant will not affect the percentage of women's representation established by law, the plaintiff requested a ruling that her membership is invalid and that the first and second defendants, in addition to their jobs, be obliged to consider the vacant seat (fourth) of his legal and electoral entitlement and replace it with it and allow him to take the constitutional oath as a member of the Iraqi Council of Representatives for its fifth session. The lawsuit was registered with this court in the number (102/ Federal/ 2023), and the legal fee was collected for it, and the defendants are

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informed of its petition and documents, in accordance with the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the first defendant's agent replied with two response lists on 29/5 and 26/7/2023, their conclusion: The significance of the text of Article (49/4th) of the Constitution is that women must be represented in the Council of Representatives by a quarter of the number of its members as a minimum, about the possibility that the number of women in the Council is more than that percentage, and it also indicates that the reference in determining the minimum number of Women in the Council is the Election 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 (Faten Muhyi Mohsen Al-Qaraghli), obliges that the percentage of women's representation should be at least (25%) of the number of members of the Council of Representatives and that it should be the same percentage of the number of members of the Council of Representatives in each governorate, in addition to that the Law on Elections of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, as amended by Law No. (4) of 2023, has adopted a mechanism New to replace members of the Council of Representatives in Article (14), where the item included (Third: If the vacant seat belongs to a woman, it is required that she be replaced by another woman from the same electoral list), the Council of Representatives also voted to approve the amendment of the Law No. 6 of 2006 on the replacement of members of the Council of Representatives, and the text of paragraph (3) of Article (2) thereof was canceled and replaced by a new text, so he requested the dismissal of the lawsuit and the plaintiff charged the expenses. The second defendant replied in the reply statement dated 25/5/2023, its conclusion: that after the resignation of the members of the Council of Representatives affiliated with the Sadrist bloc from the membership of the Council of Representatives and at the request of the Department of Parliamentary Affairs in the General Secretariat of the Council of Representatives, the names of the replacements for the resigned

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deputies were sent and to redistribute seats in line with the Council of Representatives Elections Law No. (9) of 2020 and the instructions for the distribution of seats issued by the Commission, and since the ninth electoral district in Baghdad governorate consists of four seats and following Article (15/3rd) the sequence of candidates in the electoral district be rearranged according to the number of votes obtained by each of them so that the names of the candidates are arranged as follows: (Atwan Sayed Hassan, Hamid Kazem Awad, Kamel Anid Hussein, and Nafi Abed Karji), whereas Article (16/3rd) of Law No. (9) of 2020 stipulates that: (The quota for women is determined for each governorate as specified in the attached table) and by referring to the table attached to the law, the aforementioned constituency is (4) seats, (3) for men and the fourth seat from the women's quota, and since the last ranking of candidates according to their votes did not result in a woman winning her votes, so the Commission had to replace the candidate (Nafi Abed Karji - fourth in terms of the number of votes) with a woman to ensure the share of women In that constituency, and since the seat that was filled is allocated according to the quota system and since Article (16/3rd) of the law required the presence of at least one woman in the constituency to ensure that there is representation of women in that constituency, so he requested the dismissal of the plaintiff's lawsuit and charging him the expenses. The third defendant and her agent replied with two response lists on 29/5 and 31/7/2023, they concluded that she obtained the highest votes from women and (2609) votes and that her exclusion would lead to keeping the deputies who obtained a lower number of votes than her, and that this is unfair to justice, and she requested that the lawsuit be dismissed and the plaintiff charged the fees and expenses. After completing the procedures required by the Court's Rules of Procedure, and based on Article (31/5th) thereof, the court set a date for hearing the case without pleading, and on the specified day, the court was formed and the case began to be heard, the court examined the plaintiff's requests, his grounds and the defendants' defenses,

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and after completing its scrutinies, the end of the minutes has been made clear and issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Nafi Abd Karaji Hassan Al-Aqabi's lawsuit is focused on challenging the negative decision of the first defendant to dismiss his objection to the validity of the membership of the third defendant MP, Faten Mohi Mohsen Al-Qaragholi, and to demand a ruling on the invalidity of her membership, and to oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath as a member of the Iraqi Council of Representatives for its fifth session, The Court finds that Article (49/4th) of the Constitution of the Republic of Iraq for the year 2005 stipulates (Fourth: The Elections Law aims to achieve a percentage of women's representation not less than one quarter of the number of members of the Council of Representatives), while paragraph (5th) of the same article stipulates that: (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 Deputies No. (6) of 2006 stipulates 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, she must be replaced by a woman in the same electoral district, regardless of exceeding the minimum representation of women in the Council)), through the above 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 came with a firm text in the second amendment under Article 1st / paragraph (3) mentioned above regarding the subject of replacing the vacant seat that belongs to a woman and explicitly stipulated that, stipulating

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that the replacement for her should be a woman in the same constituency even if the number of women in the electoral district exceeds the minimum representation of women in the stipulated Council In the article (49/4th) of the Constitution, thus, the plaintiff's lawsuit is dismissable because there is nothing that violates the validity of the 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 lawsuit of the plaintiff Nafi Abdul Karaji Hassan Al-Aqabi and to charge him the fees, expenses, and fees of the defendants' agents an amount of one hundred thousand dinars distributed among them in accordance with the law. The decision has been issued with majority, final, and binding for all authorities according to articles (52 and 94) 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 on the session dated 28/Muharram Al-Haram/1445 Hijri coinciding 16/August/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court

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