

Republic of Iraq
Federal Supreme Court
Ref. 110 / 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: Abdul Baqi Kadhim Mutar Sahar – his agent the barrister Ahmed Saeed Mousa.

The Defendant: Speaker of the ICR/ being in this capacity. His agents are the Director-General of the legal department Sabah Jumaa Al-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his agent that the defendant refrained from deciding on the validity of the membership of the objecting representative (Haifa Hussein Hatem) within (30) days of registering the objection with him following Article (52/1st) of the Constitution, so he took the initiative to appeal this negative decision, as replacing the representative objecting to the validity of her membership with the resigned representative despite not obtaining enough votes after completing the required number of women in the Council contradicts the principles of equality and equal opportunities, and violates Article (2/3) of the Law No. 6 of 2006 on the replacement of members of the Council of Representatives, being the candidate with the highest votes in the second constituency in Dhi Qar Governorate and replacing the resigned representative does not affect the minimum representation of women in the Council, therefore, the judgment requested the annulment of the defendant's decision to dismiss his objection in a

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judgmental response and to rule on the invalidity of the membership of representative (Haifa Hussein Hatem) to replace the resigned representative. The case was registered with this court at number (110/Federal/2023) and the legal fee was collected for it, and the defendant was informed of its petition and documents in accordance with Article (21 / 1st and 2nd) of the internal regulations of the Federal Supreme Court No. (1) of 2022. His two agents replied with the answering draft dated 12/6/2023 and requested to dismiss the lawsuit, as the decisions of the Federal Supreme Court are final and binding on all authorities and are not subject to appeal by any of the usual or unusual methods of appeal in accordance with the provisions of Article (94) of the Constitution, and since the plaintiff had previously challenged the membership of the representative itself under lawsuit numbered (264/federal/2022), and the court issued its decision on 13/2/2023 to dismiss the lawsuit from a formal point of view, as the plaintiff submitted his claim outside the period stipulated in Article (52) of the Constitution, whereas the periods specified for reviewing the methods of appeal are inevitable, failure to observe and exceed them entails the forfeiture of the right to appeal, and the court shall rule on its own motion to dismiss the lawsuit if it occurs after the expiry of the legal periods in accordance with Article (171) of the Civil Procedure Law, so they requested to dismiss the plaintiff's lawsuit and charge him fees, expenses and advocacy fees. 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, in which the Court was formed and the case began to be heard, the court scrutinized the requests and grounds stated in its petition and the defenses of the defendant and the request of the challenged deputy to enter a third person in the lawsuit, and for lack of legal justification, so the court decided to reject it, and after the court completed its scrutinies, the end of the argument has been made clear, and the court issued the following judgment:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court and after reviewing the statement of claim and the requests contained therein and the list of the defendant's agents / being in this capacity, it is clear that the plaintiff filed the lawsuit before this court to demand a ruling to cancel the defendant's decision / being in this capacity that includes rejecting the plaintiff's objection to the validity of the membership of representative (Haifa Hussein Hatem) who won for the second district in Dhi Qar Governorate in the women's quota in a judgmental response and the invalidity of her membership and replacing him with the resigned representative Marwa Rahim Attia and holding the defendant accountable In addition to his job, he shall have expenses, fees, and advocacy fees, the Federal Supreme Court finds that the appeal against the decision of the Council of Representatives issued as a result of the objection to the validity of membership is carried out in accordance with the conditions stipulated in Article (31) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which stipulates that ((The Court shall decide on the appeal against the decision of the Council of Representatives issued as a result of the objection to the validity of the membership of its members following the following conditions and procedures: First: The objector shall submit a request to the Council of Representatives to challenge the validity of the membership of one of its members. Second: The Council of Representatives shall decide on the objection request within thirty days from the date of its registration by a two-thirds majority of its members. Third: In the event that the application is not decided within the period mentioned in paragraph (2nd) of this Article, this shall be considered a rejection unless it is submitted during the legislative recess, and such period shall be calculated as of the date on which the Council commences its work after its expiry. Fourth: The appeal shall be submitted to the court by the objector or challenged membership within thirty days from the date of deciding on the objection by the Council of

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Representatives or within thirty days from the date of the expiry of the period referred to in item (3rd) of this article. Fifth: The application shall be registered, copies of the President and members of the Court shall be provided with all its priorities, and shall set a date for consideration without pleading. Sixth: The court may summon the objector or contested membership to hear either or both of them in a non-public session. Seventh: The court sets a date for issuing the decision after completing its procedures and deliberation among its members)), and following Article (52) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/ninth) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and because the plaintiff had previously objected to the validity of the membership of the REPRESENTATIVE objecting to the validity of its membership before the Council of Representatives and challenged the result of the objection before this court, and because the appeal is outside the legal period necessary for its submission, so the Federal Supreme Court decided to dismiss the lawsuit in form according to its judgment issued No. (264/Federal/2022) on (13/2/2023) which includes ((ruling to dismiss the plaintiff's lawsuit from a formal point of view because the plaintiff submitted his claim outside the period stipulated in Article (52) of the Constitution)), thus, the plaintiff's lawsuit filed before this court for the second time to challenge the result of his objection to the validity of the membership of the representative who objected to the validity of its membership before the Council of Representatives for the second time, for the same reasons, is obligatory to respond in form of a previous decision on its merits, as the permissibility prescribed to challenge the result of the objection to the validity of the membership of the representative in the Council of Representatives before this court, under Articles ((52/2nd) of the Constitution and (4/9th) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) for the year 2021)), in terms of Article (31) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, it cannot continue indefinitely, because of its impact on compromising the stability and

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permanence of the legal positions of members of the Council of Representatives and preventing them from carrying out their constitutional duties, in addition to violating the principle of acquired rights resulting from the stability of those centers, if that passport is abused unjustifiably and repeatedly for the same reasons, and on the basis of the foregoing, this court finds that the appeal as a result of the objection before it, on the validity of the membership of the representative who objects to the validity of his membership before the Council of Representatives, it may not be done more than once only for the same reasons, and the appellant must abide by the legal period necessary to submit the objection during which it is stipulated in the aforementioned articles, and for the foregoing, Whereas the judgments issued by this court are final and binding on all authorities and persons in accordance with the provisions of Articles (94) of the Constitution, (5/2nd) of the amended Federal Supreme Court Law and (36) of the Rules of Procedure of the Federal Supreme Court, whereas For rulings issued by Iraqi courts that have obtained the degree of decisiveness, evidence that contradicts the authority of the definitive judgments based on the provisions of Articles (105 and 106) of the Evidence Law No. (107) of 1979, as amended, which requires the dismissal of the plaintiff's lawsuit for the previous adjudication of its merits, and for the foregoing, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff Abdul Baqi Kazem Matar for the previous adjudication of its subject matter according to the judgment decision issued by this court No. (264/Federal/2022) on (13/2/2023), and to charge him fees, expenses, and advocacy fees for the defendant's agents, being in this capacity, amount of (one hundred) thousand dinars distributed according to the law. The decision has been issued unanimously, 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 16/August/2023 AD.

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Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court