

Republic of Iraq
Federal Supreme Court
Ref. 111 / 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: Mohammed Salman Salih – his agent the barrister Ahmed Saeed Mousa.

The Defendant: 1- Speaker of the ICR/ being in this capacity. His agents are the legal counselor Haytham Majid Salman and the official jurist Saman Muhsin

The Claim

The plaintiff claimed through his agent that the defendant refrained from deciding on the validity of the membership of the objecting deputy (Zikra Ammar Ahmed Megally) within (30) days of registering the objection with him following Article (52/1st) of the Constitution, so he took the initiative to appeal before this court with this negative decision, as Article (49/4th) of the Constitution obligated the Council of Representatives to enact an election law that guarantees the achievement of a percentage of representation of women not less than a quarter of the number of members of the Council of Representatives, and (95) women have reached the Council of Representatives. The Constitution does not prohibit this, nor does the Constitution require that the percentage of women in each governorate be a quarter of its seats, nor did the electoral law comply with this despite its provision in the law, the Council of Representatives enacted the Law No. (6) of 2006 to address the replacement of its members in cases of resignation, dismissal, or death, based on Article (49/5th) of the Constitution, and the Federal Supreme Court confirmed in its decision No. (244/Federal/2022),

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that replacing the resigned Representative with a man does not affect the minimum representation of women in the Council of Representatives, which is consistent with Resolution No. (17/Federal/2015), which confirmed that the Elections Law and the Replacement Law are two different laws and scope Their validity is distinct and different, and the law applicable in the event of resignation, dismissal or death is the law of substitution, the plaintiff believes that replacing the resigned Representative (Zikra Ammar Ahmed Majali) who objected to her membership with the resigned Representative (Saada Adel) despite not obtaining enough votes, and 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 on the Replacement of Members of the Council of Representatives No. (6) of 2006, as he is the candidate who obtained the highest votes in the first constituency in Baghdad Governorate, therefore, the judgment requested to annul the defendant's decision to dismiss his objection in a judgmental response and to rule on the invalidity of the membership of the Representative (Zikra Ammar Ahmed Megally) to replace the resigned Representative. The lawsuit was registered with this court at the number (111/federal/2023) and the legal fee was collected for it 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, and his agent replied with two response regulations on 12/6 and 26/7/2023 that the significance of the text of Article (49/5th) of the Constitution is that the representation of women in the Council of Representatives must be a quarter of the number of its members, with the possibility that their number should be more than a quarter, and it also has an indication. However, 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 (Zikra Ammar Ahmed Megally) confirmed that the percentage of women's representation shall be at least (25%) of the number of members of the Council of Representatives and

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the same percentage of the number of members of the Council of Representatives in each governorate, and whereas the Elections Law of the Council of Representatives, Governorate Councils, and Districts No. (12) of 2018 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, as it stated in Article (14/3rd) (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 on the Replacement of Members of the Council of Representatives No. (6) of 2006, according to which item (3) of Article (2) was canceled and replaced by a new text, so he requested the dismissal of the plaintiff's lawsuit and charging 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, which the court was formed and began to try the case, the court scrutinized the plaintiff's requests, his grounds and the defenses of the defendant's agents, the court reviewed the request of the two agents of the representative who challenged the validity of its membership, lawyers Hassan Aziz Ali and Saif Maher Ibrahim, to enter a third person in the lawsuit, the court decided to reject the request for lack of legal justification, and after the court completed its checks, the end of the minutes has been made clear and the court issued of the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Mohammed Salman Saleh's lawsuit is focused on challenging the negative decision of the defendant to dismiss his objection to the validity of Representative Thekra Ammar Ahmed Megally's membership, demand a ruling to annul its membership, and oblige the Council of

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Representatives to replace the Representative who resigned from the membership of the Council of Representatives for its fifth session, the Court finds that Article 49/4th of the Constitution of the Republic of Iraq of 2005 stipulates (Fourth: The Electoral Law aims to achieve a representation of women not less than one-quarter of the number of members of the Council of Representatives), while paragraph (Fifth) of the same article stipulates that: (The Council of Representatives shall enact a law dealing with cases of replacement of its members upon resignation, dismissal or death), Article (1) of Law No. (15) of 2023, the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 stipulates that: ((The text of paragraph (3) of Article 2 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)), and through the advanced texts, the law dealt with the issue of women's representation and how to replace members of the Council)), and 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 the replacement of female members of the Council of Representatives in particular, it came with a firm text in the second amendment under Article first /paragraph (3) mentioned above regarding the subject of replacing the vacant seat that belongs to a woman and explicitly stipulated that stipulating 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 Council stipulated in Article (49/4th) of the Constitution, and thus the plaintiff's lawsuit must be dismissed because there is nothing that prejudices the validity of the membership of the deputy (Zikra Ammar Ahmed Megally) on In light of what is stated in Law No. (15) of 2023 - Law of the Second Amendment to the Law No. (6) of 2006 on the Replacement of Members of the Council of Representatives. Accordingly, the court decided to reject the plaintiff's

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lawsuit Mohammed Salman Saleh, and to burden him with the fees, expenses, and fees of the defendant's agent an amount of one hundred thousand dinars to be distributed among them in accordance with 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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