

Republic of Iraq  
Federal Supreme Court  
Ref. 116 / 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: Khalaf Abdul Samad Khalaf Ali.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents, the Director-General of the legal department Sabah Jumaa Al-Bawi, and the official jurist Saman Muhsin Ibrahim.  
2. Chairman of the Board of Commissioners of the Independent Electoral Commission/ being in this capacity – his agent the legal counselor Ahmed Hasan Abid.  
3. The Representative Sarah Tawfeeq Kinan Al-Salihi – her agents, the barristers Hasan Aziz Ali and Saif Mahir Ibrahim.

### **The Claim**

The plaintiff claimed in the lawsuit petition that on 23/6/2022, the Council of Representatives held an extraordinary session during which the third defendant (Sarah Tawfiq Kenan) took the constitutional oath before the Council of Representatives to fill the vacant parliamentary seat for the second constituency / Basra Governorate, which consists of five seats at the initial division, four seats for men and one seat for women, and after the resignation of two deputies from that constituency, the first seat was filled according to the approved names (Amer Abdul-Jabbar Ismail), as for the second seat, the plaintiff believes that it is his right as he obtained the highest votes (7238) votes, but the second defendant sent the list of substitutes to fill the vacant seats under Book No. (146) on 16/6/2022 and made the third defendant who obtained (5040) votes instead of him in violation of the

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constitution, the law, and the decisions of the Federal Supreme Court, Whereas the Council of Representatives Elections Law No. (9) of 2020 differentiated between the initial distribution of seats after the results of the elections on 10/10/2021 and (filling the vacant seat) as clarified in the article (15/fifth) If any seat in the Council of Representatives becomes vacant, it shall be replaced by the candidate who obtained the highest votes in the electoral district) and article (16/9<sup>th</sup>) 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) which is the same Referred to Law No. 6 of 2006 on the Replacement of Members of the Council of Representatives in Article 2/3, in particular, the decision of the Federal Supreme Court No. (244/Federal/2022) confirmed that it is not permissible to expand the exception for the women's quota. According to Article 52 of the Constitution, the plaintiff objected to the validity of the membership of the third defendant before the Council of Representatives on 12/4/2023 and then initiated this lawsuit requesting a ruling that the membership of the third defendant is invalid and obliging the first and second defendants to consider the vacant seat as his right and allow him to take the constitutional oath as a member of the Council of Representatives in the fifth session and charge them expenses and fees. The case was registered with this court No. (116/Federal/2023), and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Rules of Procedure No. (1) of 2022, the first defendant's attorney replied with two response lists on 11/6 and 26/7/2023 summary: Article (49/4<sup>th</sup>) of the Constitution of the Republic of Iraq for the year 2005 obliges that the electoral law aims to achieve a percentage of women's representation of not less than one-quarter of the number of its members, about the possibility that the number of women in the Council is more than that percentage and that the Electoral Law is the reference in determining the minimum number of women in the Council, article (16/ 1<sup>st</sup> and 2<sup>nd</sup>) of Law No. (9) of 2020 in force at the time of the swearing-in of

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Representative (Sarah Tawfiq Kenan Al-Salhi) indicated that the minimum number of women in the Council of Representatives is met on two levels, one of which does not replace the other, which is that the number of women is not less than (25%) of the number of members of the Council of Representatives and that their number is not less than (25%) of the number of seats allocated to each governorate in the Council of Representatives, and paragraph (3<sup>rd</sup>) of the same article indicated Until the quota for women is determined for each governorate as specified in the table attached to the law, with reference to it, the number of seats allocated to the province of Basra is (25) parliamentary seats, of which (6) seats are allocated to the women's quota, which is the minimum necessary to achieve the quota for women in the province in accordance with the table attached to the Council of Representatives Elections Law and the instructions for distributing seats issued by the Independent High Electoral Commission, and that prejudice to the seat of Representative (Sarah Tawfiq Kenan) or any other women will violate this percentage, and the Federal Supreme Court issued its decision No. (244/Federal/2022) on 29/3/2023, according to which it affirmed the inevitability of ensuring the Percentage of women's representation at the governorate level, and that the replacement of any member of the Council of Representatives in any governorate would not affect the percentage of women's representation in the Council of Representatives and the governorate, and in conclusion the amended Law of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, It 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 under Article (14) thereof, where item (Third: If the vacant seat belongs to a woman, she is required to be replaced by another woman from the same electoral list) and this mechanism is the duty to be followed to fill the vacancies that occur after the entry into force of the law because it is a subsequent law that canceled a previous law, and the Council of Representatives voted to approve the

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amendment of the law on the replacement of members of the representatives No. (6) of 2006 Item (3) of Article (2) was repealed and replaced by a new text. The second defendant's attorney replied in the reply dated 6/6/2023, which included detailed defenses, including that the Commission had to replace the plaintiff with a woman to ensure the share of women in that circuit as his fifth constituency, so he requested the dismissal of the lawsuit. The third defendant's attorneys replied with two response lists on 11/6 and 31/7/2023 that included a repetition of the defenses and requests for dismissal of the lawsuit stated by the first and second defendants' agents. After completing the procedures required by the court's internal regulations, a date was set for the consideration of the case without pleading following Article (31/5<sup>th</sup>) thereof, and on the specified day, the court was formed and the case began to be heard, the court checked what was stated in the plaintiff's requests and grounds and what was stated in the defenses of the defendants' agents under the response regulations, and after the court completed its scrutinies, the end of the minutes has been made clear and the court issued the following judgment:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Khalaf Abdul Samad Khalaf Ali'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, and the Representative Sarah Tawfiq Kenan Al-Salhi, and to demand a ruling to invalidate her membership, and to oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath in her place as a representative in the Iraqi Council of Representatives for its fifth session, the Court finds that Article (49/4<sup>th</sup>) of the Constitution of the Republic of Iraq for the year 2005 stipulates (Fourth: The Electoral Law aims to achieve a percentage of representation of women not

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less than one quarter of the number of members of the Council of Representatives), while paragraph (5<sup>th</sup>) of the same article 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 provided that: ((The text of paragraph (3) of Article 2<sup>nd</sup> 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 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 1<sup>st</sup> / paragraph (3) mentioned above regarding the issue 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 Article (49/4<sup>th</sup>) of the Constitution, thus, the plaintiff's claim is subject to dismissal because there is nothing that prejudices 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 House of Representatives No. (6) of 2006. When the court decided to dismiss the plaintiff's lawsuit Khalaf Abdul Samad Khalaf Ali, and to burden her with the fees, expenses, and fees of the defendants' agents an amount of one hundred thousand dinars to be distributed among them according to the law. The decision has been issued with majority, final, and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq

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for 2005 and Articles (4/9<sup>th</sup> 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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