

Republic of Iraq
Federal Supreme Court
Ref. 122 / 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: Jassim Mohan Abid Al Khammat.

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 High Electoral Commission/ being in this capacity – his agent the legal counselor Ahmed Hasan Abid.
3. The Representative Shatha Yaseen Abdul Kareem.

The Claim

The plaintiff claimed that the third defendant took the constitutional oath before the Council to fill the vacant seat in the Council of Representatives for the Fifth District in Baghdad Governorate in the extraordinary session dated 23/6/2022 despite obtaining (2034) votes and (3745) votes and in the same constituency, but the second defendant sent the list of substitutes to fill the vacant seats, and she was appointed instead of him, especially after completing the required number of women representation in the Council, this is a violation of the Constitution, the law and the decisions of the Federal Supreme Court, a contradiction with the principles of equality and equal opportunities, and a violation of Article 2/3 of the Law on the Replacement

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of Members of the Council of Representatives No. 6 of 2006. His replacement in that seat will not affect the minimum representation of women in the Council, so he objected to the validity of the aforementioned membership of the MP before the Council of Representatives on 10/4/2023, but he did not decide on it until this lawsuit was filed, so the plaintiff asked the court to issue a ruling invalidating the membership of Representative Shatha Yassin Abdel Karim so that he could occupy the aforementioned seat and charge the defendants judicial fees and expenses. The lawsuit was registered and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and the first defendant's agent replied with the two response regulations dated 19/6 and 26/7/2023 and requested the dismissal of the lawsuit, as the significance of the text of Article 49/4th of the Constitution is that the representation of women in the Council of Representatives must be a quarter of the number of its members as a minimum, about the possibility that the number of women in the Council More than that percentage, and it also indicates that the reference in determining the minimum number of women in the Council 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 Shatha Yassin Abdul Karim, 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 that the same percentage should be of the number of members of the Council of Representatives in each governorate, it is found that the minimum number of women in the Council of Representatives is met at two levels that do not replace each other, and that 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, as Article 14 of the law in

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force stipulates: (Third: If the vacant seat belongs to a woman, she must be replaced by another woman from the same electoral list), the Council of Representatives voted to approve the Second Amendment Law to the Council of Representatives Replacement Law No. 6 of 2006, under which item 3 of Article 2 was repealed and replaced by a new text. The second defendant's attorney replied with the reply dated 21/6/2023 and requested the dismissal of the lawsuit, 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 for the purpose of redistributing 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 Independent High Electoral Commission, and since the fifth electoral district in Baghdad province consists of four seats, based on Article (15/3rd), which stipulated that the sequence of candidates in the electoral district shall be rearranged according to the number of votes obtained by each of them, and in application of this text, the order of the names of the candidates shall be as follows (Muhannad Jabbar Azab, Mohsen Ali Akbar, Saeb Khalaf Saeb, Jassim Mohan Abdul), and whereas the text of Article (16/3rd) of the Council of Representatives Elections Law No. 9 of 2020 stipulates that: (The quota for women is determined for each governorate as specified in the attached table), and by reference to it, the fifth constituency in Baghdad governorate is four seats, three seats for men, provided that the fourth seat is 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, therefore, the Commission must replace the candidate Jassim Mohan Abed since his fourth sequence in terms of the number of votes with a woman to ensure the share of women in that constituency, and he was replaced by the candidate (Shatha Yassin Abdul Karim), and thus the distribution process is consistent with the instructions for the distribution of seats issued by the Independent High Electoral Commission. The third defendant replied with the answering draft dated 19/6/2023 and requested that the suit be dismissed for the reasons

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stated therein. After completing the procedures required by the court's rules of procedure, a date was set for the consideration of the case without pleading based on Article (21/3rd) thereof, and on the specified day, the court was formed and the case began to be considered, the court checked the plaintiff's requests, his grounds, and the defendants' defenses, and where it 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 Jassim Mohan Abdul Khamat'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, the Representative Shatha Yassin Abdul Karim, and to demand a ruling to invalidate its membership and allow him to occupy the parliamentary seat in 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 (fifth) 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 published in the Iraqi Gazette No. (4730 on 31/7/2023) provided 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 advanced texts, the law dealt with the issue of

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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 subject of replacing the vacant seat that belongs to a woman, and explicitly stipulated that, stipulating that the replacement must 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 Article (49/4th) of the Constitution, thus, the plaintiff's claim is subject to dismissal, as 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 No. (6) of 2006 on the Replacement of Members of the Council of Representatives. Upon the foregoing, the court decided to reject the lawsuit of the plaintiff Jassim Mohan Abdul Khammat, and to charge him the fees, expenses, and fees of the agents of the first and second defendants 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 94) 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 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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