

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / 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: Waad Hasan Muzail.

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 Fatima Hussein Mutaighi – her agent the barrister Raheem Hasan Khudhair.

### **The Claim**

The plaintiff claimed in the lawsuit petition that the third defendant took the constitutional oath before the Council of Representatives as a substitute for the resigned Representative (Mona Ahmed Kazim) in the Council of Representatives for the third district of Maysan Governorate, while she was not the highest loser because she obtained (762) votes, while he obtained (7314) votes, and that his ascension to the Council of Representatives does not affect the quota for women in the Council, and since her swearing-in violates Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, and the decision of the Federal

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2023



Kurdish text

Supreme Court No. (244/Federal/2022), therefore, he objected before the Council of Representatives on 2/5/2023 and registered his objection with (4139), but it was not decided despite the passage of the period of (30) days since its submission, so he asked this court to rule to invalidate the membership of Representative (Fatima Hussein Metighi) and oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath in her place as a deputy in the Council of Representatives for its fifth session. The case was registered with this court 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 internal regulations of the Federal Supreme Court No. (1) of 2022, and the first defendant's agent replied with two response regulations on 18/6 and 26/7/2023 Their conclusion: The significance of the text of Article (49/4<sup>th</sup>) 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, with the possibility that their number in the Council of Representatives is more than a quarter, it also indicates that the reference in determining that minimum limit is the Elections Law, and Article (16) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, which is in force at the time of the swearing-in of Representative (Fatima Hussein Metighi) 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 of the number of members of the Council of Representatives in each governorate, and the Federal Supreme Court confirmed in its decision No. (244/Federal/2022) on 29/3/2023 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 prejudice that percentage following the text of Article (16/2<sup>nd</sup>) of the Iraqi Council of Representatives Elections Law, and the court also required that the ruling on the invalidity of the membership of A woman whose membership is contested may affect the

*saady*



percentage of women's representation in the Council of Representatives and the percentage of women's representation in the province. Whereas Article (16) of the Elections Law stipulates (Third: The quota for women is determined for each governorate as specified in the attached table), referring to the table, it is clear that the number of seats allocated to Maysan Governorate is (10) ten parliamentary seats, including (3) for the women's quota and divided based on one seat for each electoral district, which is the minimum necessary to achieve the quota for women in that governorate, and that prejudice to the seat of Representative (Fatima Hussein Metigi) or any of the other women will prejudice the percentage of women's representation, and that the amended Law on Elections for the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, 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, article (14) of the law in force states (Third: If the vacant seat belongs to a woman, it is required that she be replaced by another woman from the same electoral list), so he requested the dismissal of the lawsuit and the plaintiff to charge the expenses. The second defendant's agent replied in the reply list dated 21/6/2023, the conclusion of which is that the plaintiff has no interest in filing the lawsuit, since his sequence in terms of the number of candidates according to their votes after the resignation of the deputies of the Sadrist bloc is (5<sup>th</sup>) and therefore he was not a winner in the original until he was replaced by a woman, he therefore requested that the plaintiff's claim be dismissed and that he be charged with the expenses. The third defendant's agent responded with two answering drafts 21/6 and 27/7/2023 and requested that the lawsuit be dismissed for the reasons stated therein and that the plaintiff be charged with the expenses and advocacy fees. After completing the procedures required by the Court's Rules of Procedure, the Court set a date for hearing the case without pleading in accordance with Article (31/5<sup>th</sup>) thereof, on the appointed day, the court was formed and the case was commenced, the court examined the plaintiff's requests, his grounds

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2023



Kurdish text

and the defendants' defenses under the regulations submitted through the mediation of their agents. Whereas the court has completed its scrutinies, 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 Waad Hassan Mizaal'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 Fatima Hussein Metigi, 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 member of 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 Elections Law aims to achieve a percentage of representation of women not less than one-quarter of the number of members of the Council of Representatives), as for paragraph (5<sup>th</sup>) of the same article, it 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) that: ((The text of paragraph (3) of Article II of the Law shall be repealed and replaced by the following: 3. If the vacant seat belongs to a woman, it is required that she 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 female members of the Council of

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 126 / federal /2023



Kurdish text

Representatives in particular, so it came with a definitive 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 in Article (49/4<sup>th</sup>) of the Constitution, thus, the plaintiff's lawsuit 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, and for the foregoing, the court decided to dismiss the plaintiff's lawsuit Waad Hasan Mizal, and to burden him with the fees, expenses, and fees of the defendants' agents an amount of one hundred thousand dinars to be 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 (4/9<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 Abboud**

**President of the Federal Supreme Court**

*saady*