

Republic of Iraq  
Federal Supreme Court  
Ref. 161 / 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, Ayoob 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 Nasir Dalli Al-Karbouli – his agent the barrister Yssir Mohammed Mahmood.

The Defendants: 1- Speaker of the ICR/ being in the capacity – his agents, the Director-General of the legal department Asst. Prof. Dr. 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.

### **The Claim**

The plaintiff claimed through his agent that after the resignation of the members of the Sadrist bloc from the membership of the Council of Representatives, the Independent High Electoral Commission sent the list of substitute candidates to the Council of Representatives by letter No. (Kha/22/Ra.Mim/146) dated 16/6/2022, and on 23/6/2022, the Council of Representatives held an extraordinary session in which the substitute candidates were sworn in, and this included a constitutional and legal violation when calculating the quota for women in the list of substitutes, namely: 1. Violation of treaties and conventions the quota is internationally defined as a temporary undemocratic system that contradicts the principle of equality stipulated in the constitutions by giving positive discrimination to women based on (gender) and not based on (competence), and its use aims to ensure the representation of women in specific cases on a temporary basis, Article 4 of the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 161 / federal /2023



Kurdish text

Convention on the Elimination of all forms of discrimination against Women of 1979 (CEDAW), which is the basis for quotas, states parties do not consider temporary special measures aimed at accelerating de facto equality between men and women as discrimination within the meaning of the Convention, but must in no way entail the maintenance of unequal or separate standards, and such measures must be discontinued once the objectives of equal opportunity and treatment are achieved, i.e. if the proportion of equal opportunities and treatment is achieved. The purpose of the Constitution is to suspend the application of this system. 2. Violation of the Iraqi Constitution of 2005, which did not mention the word (quota) at all, rather, article 49/fourth stipulates a representation rate for women not less than (a quarter), meaning that it includes the winners of their votes in addition to the quota, but the Commission expanded the application of the quota even after achieving the required percentage of representation constitutionally, which constituted a serious violation, the principle of equality recognized by the Constitution in articles 14, 16, and 20, in terms of differentiation of the gender of the candidate in these seats, its expansion also led to the confiscation of voters' freedom of choice. 3. Violation of the replacement law upheld by the Federal Supreme Court in its decision No. (244/Federal/2022), which is applicable upon the termination of membership. 4. Violating the instructions for the distribution of seats for the elections of the Iraqi Council of Representatives for the year 2021, which confirmed in Article 4 that if one of the seats in the Council of Representatives becomes vacant for any reason, he shall be replaced by the candidate who obtained the highest votes from the losers in the same electoral district, and because the seats allocated to the governorate of Baghdad are (69), including (17) seats for women based on the table attached to the instructions above, and after the replacement, the current number of women in it became (19) by increasing the application of the quota, and that the second electoral district Ten seats in it, and after the resignation of the Sadrist bloc, deputies and candidates, including in the twelfth constituency the representative (Shaima Jaafar Nassif), therefore, the plaintiff believes that he is the substitute for her, and he is the candidate who obtained the highest votes because he obtained (3747) votes, and not the aforementioned deputy who obtained (2901) votes, as the minimum percentage of women's representation in the Council stipulated in the Constitution

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 161 / federal /2023



Kurdish text

is achieved, and according to Article (52) of the Constitution, he objected before the Council of Representatives and did not decide on the objection despite the passage of the legal period. Based on clause (2<sup>nd</sup>) of the same article above, article 31 of the court's rules of procedure, article 2/3 of the replacement law, and the fact that replacing the resigned deputy does not affect the percentage of women's representation in the Council of Representatives or in the province of Baghdad, Therefore, he requested a ruling on the invalidity of the membership of the representative (Nihal Murshid Salim) and a ruling to oblige the first and second defendants, being in their capacity, to consider the vacant seat as his right and to allow him to take the constitutional oath as a member of the Iraqi Council of Representatives for its fifth session. The lawsuit was registered with this court in the number (161 / Federal / 2023) and the legal fee was collected for it the defendants are informed of its petition and documents in accordance with Article (21 / 1<sup>st</sup> and 2<sup>nd</sup>) of the rules of procedure of the court No. (1) of 2022, and the first defendant's agent replied with the reply list on 27/7/2023 Conclusion: The Constitution stipulates in Article (49/4<sup>th</sup>) that the representation of women in the Council of Representatives should be a quarter of the number of members of the Council of Representatives as a minimum, in reference to the possibility that their number in the Council of Representatives will be more. 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 the representative Nihal Murshid Salim, stipulated that the percentage of women's representation should be at least 25% of the number of members of the Council of Representatives, and stipulated the same percentage in each governorate, the Law on Elections of the Council of Representatives, Governorate 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 Law No. 9 of 2020, as stated in Article 14 of the law in force (Third: If the vacant seat belongs to a woman, she must be replaced by another woman from the same electoral list), he requested that the lawsuit be dismissed and the plaintiff charged the expenses. The second defendant's agent replied with the answering draft dated 24/7/2023, its conclusion: that the plaintiff has no interest in filing the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 161 / federal /2023



Kurdish text

lawsuit, since his ranking in terms of the number of candidates according to their votes after the resignation of the representatives of the Sadrist bloc is (sixth) and therefore he was not a winner of the original until he was replaced by a woman, so he requested the dismissal of the plaintiff's lawsuit and charging him the expenses. 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 the plaintiff's requests, his grounds and the defenses of the defendants' agents, and after completing its checks, 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 Muhammad Nasser Dali Al-Karbouli's lawsuit focuses on challenging the negative decision of the first defendant to dismiss his objection to the validity of the membership of the representative objecting to the validity of its membership, Nihal Murshid Salim, and to demand a ruling to invalidate its membership, and to oblige the Council of Representatives and the Independent High Electoral Commission to consider the vacant seat as his right and allow him to take the constitutional oath as a member of the Iraqi Council of Representatives for its fifth session, and the court finds that Article (49/4<sup>th</sup>) of the Constitution of the Republic of Iraq The year 2005 stipulates: (Fourth: The Electoral Law aims to achieve a percentage of women's representation of not less than one-quarter of the number of members of the Council of Representatives), as for paragraph (fifth) 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 2<sup>nd</sup> 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,

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 161 / federal /2023



Kurdish text

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 of Representatives in general and replace members of the Council of Representatives from women in particular, it was stated in a definitive provision in the second amendment under Article 1<sup>st</sup> - 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/IV) of the Constitution, and thus the plaintiff's claim is subject to dismissal because there is nothing that prejudices the validity of the membership of the contestant in the 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 lawsuit of the plaintiff Muhammad Nasser Daly Al-Karbouli and charge him the fees, expenses, and fees of the defendants' agents an amount of one hundred thousand dinars distributed among them in accordance with the law. The decision has been issued with the 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 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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