

Republic of Iraq  
Federal Supreme Court  
Ref. 21 / federal /2020



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/10/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Nadia Hussein Abu Ragheef – her agent the Barrister Emad Hamad Nattah.

The Defendants: 1. The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

2. Head of the board of commissioners in the Higher Independent Electoral Commission – his agent the official jurist Ali Saeed Jassim.

### **The Claim**

The plaintiff claimed by her agent that the Federal Supreme Court had already ratified the names of the winning candidates in the 2018 Council of Representatives elections and that the total number of seats allocated to Dhi Qar governorate were (19) seats, (14) for men and (5) for women based on the distribution system of seats in the Council of Representatives No. 12 for 2018, where seats were distributed to blocs and political entities as follows: (6 seats) for the alliance of the Sairoon five for men and one seat for women, (3) seats for Al-Nasr alliance two for men and one for women, (2) seats for Al-Hikma movement one for men and one for women. On 14 May 2019, the numbered judgment

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(213/federal/2018) of the plaintiff Sattar Jabbar Abbas al-Jabri had been issued, which included that the report of the five experts was part of it and that the report confirmed that the correct distribution of seats obtained by the six-seat alliance of Sairoon is (4 for men) and (2 for women), while the two seats obtained by Al-Hikma movement are only the share of men. In light of the report of the five experts, the Federal Supreme Court issued the aforementioned judgment, which included that the plaintiff Sattar Abbas Jabbar shall be replaced with Ajyal Karim Hassan in the membership of the Council of Representatives from Dhi Qar governorate within the Al-Hikma movement, and indeed the decision was implemented by the first defendant and the Representative Sattar Jabbar Abbas began his duties as a member of the Council of Representatives instead of the aforementioned Representative and the representation of women in the coalition of those marching from Dhi Qar governorate was not amended to Women's representation (quota for women) is achieved in Dhi Qar governorate. Members of the Council of Representatives from Dhi Qar governorate currently have 15 seats for men and 4 for women, contrary to the text of article (49/4<sup>th</sup>) of the Constitution, which showed that the representation of women is not less than a quarter of the number of members of the Council, which was set out by the distribution system of seats in the Council of Representatives No. 12 for 2018 issued by the office of the Second Defendant (Head of the Council of Commissioners of the Higher Independent Electoral Commission/ being in this capacity and came in the field of the second section of it, which includes the

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distribution of seats for all seats for all governorates and with regard to Dhi Qar governorate (19) seats, including (14) for men and (5) for women, through it, the defendants has made a constitutional violation concerning the representation of women in the Council of Representatives of Dhi Qar province in article (49/4<sup>th</sup>) and the federal Supreme Court decision (213/federal/2018) was not fully implemented, but part of it was implemented and this is another constitutional violation, especially since article (94) of the Constitution has made the decisions of the Federal Supreme Court binding on all authorities and she (the plaintiff) is the highest vote from the women of the alliance of Sairoon from Dhi Qar governorate, as the plaintiff requested from the Federal Supreme Court to judge by replacing her instead of the Representative Hamdallah Mezher Jool in the membership of the Council of Representatives within the coalition of Sairoon from Dhi Qar governorate (first reserve), especially after the Representative Wasan Abdul Hussein got a seat instead of the resignee Representative Haifa Kadhim and the Representative Hamdallah Mezher holds the fifth seat and the lowest number of votes in terms of the winners, and to burden the defendants the expenses and the advocacy fees. The case was registered with this court in number (21/Federal/2020) and the legal fee for it was met in accordance with article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and notifying the defendants of its petition and documents according to Article (2/1<sup>st</sup>) of the same Bylaw, the agent of the first defendant (Speaker of the Council of Representatives /being in this capacity) replied in the

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answering draft dated 25 February 2020 that the hearing of the case falls outside the jurisdiction of the Federal Supreme Court because it focuses on the implementation of the numbered decision (213/Federal/2018) under Article (93/1<sup>st</sup>) of the Constitution, The representation of members of the Council of Representatives under article (49/4<sup>th</sup>) of the Constitution is of the total number of members and not for each governorate as a whole, and the number of women's representation in the Council of Representatives is complete with a quarter of its members. Moreover, the plaintiff did not appeal the authenticity of the Representative (Hamdallah Mezher) in accordance with the aforementioned court's decision so that the Council of Representatives can consider it in accordance with the provisions of article (52/1<sup>st</sup>) of the Constitution and decide on it and then go to the Federal Supreme Court if the appeal is rejected. As the reasons for the defendant's agent's request to dismiss the plaintiff's case and burden her with judicial expenses. The second defendant (Chairman of the Board of Commissioners of the Independent High Electoral Commission (being in this capacity) answered by the answering drafts number (Kha/20/130) on 10 February 2020 and (239) on 29 April 2020 that the candidate had already appealed the decisions of the Board of Commissioners numbered (19) for the exceptional minutes. (25) On 18 May 2018 and (69) for the usual minutes (41) on 9 August 2018 before the Judicial Electoral Committee, the appeal was dismissed by the decision of the aforementioned Committee (1408/Appeal/2018) dated 15 August 2018 as the Committee found no violation or defect in the

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proceedings followed by the Board of Commissioners (Assigned Judges) in the distribution of seats, in addition to what above-mentioned, the decisions of the judiciary are now unimpeachable. A seat is allocated to women after every three male winners for each list and if the woman does not get the quota to follow the next steps one by one until she gets the quota for each constituency and these steps are: Alif. The seats allocated to each list are divided by the number (3) to neglect the decimal fractures. Beh. A seat is allocated to women after each of the two winners for men regardless of the number of votes received by men. 1. If the seats are not exhausted for the women's quota as mentioned above, a seat will be allocated to women from the lists that have received two seats and from the bottom up. 2. Finally, the lists that won one seat are going to be made, starting with those who received the least winning votes and replaced by a woman who got the highest votes on that list, and so on until the quota for women is obtained. He requested to reject the case of the plaintiff because she didn't gain the votes that qualify her to get one of the two seats which specialized for women's quota in Dhi Qar Governorate. The agent of the plaintiff replied to the defendants' arguments in a draft dated 4 March 2020 that his client's appeal was based on an article (93/3<sup>rd</sup>) of the Constitution, which provided for the court's jurisdiction to (adjudicate cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the Federal Authority, and the law guarantees the right of both the Council of Ministers, individuals or those who are interested and others to

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directly challenge the court). The Decisions issued by the Board of Commissioners are not considered a presumption against his client according to the provision of articles (105 and 106) of the Evidence Law after the decision (213/federal/2018) and finally the request of attaching the dossier (213/federal/2018) repeating his arguments and requests in the petition and requesting the judgment. After completing the required procedures in accordance with the Bylaw of the Federal Supreme Court, the court set a date for the case and informed the parties of it, based on an article (2/2<sup>nd</sup>) of the aforementioned Bylaw, and at the appointed date the court was formed, and the agent of the plaintiff, lawyer Imad Hamad Natah, attended the first defendant and his agents, legal counsel Haitham Majid Salem and the official jurist Saman Muhsin Ibrahim attended as well, on behalf of the second defendant, his agent the official jurist Ali Saeed Jasim attended. The public in presence argument proceeded, the agent of the plaintiff repeated the petition of the case and requested to judge according to it. The agents of the first defendant answered that they requests to reject the case for the reasons listed in their answering draft dated 25/February/2020, the agent of the second defendant answered and requested to reject the case for the reasons listed in the answering drafts dated 10/2 and 29/April/2020. The agent of the plaintiff replied based on the court's clarification that following the mechanism set out in the article (52/1<sup>st</sup>) of the Constitution was resolved by the decision of the court mentioned in his draft, which revealed the right of his client even though she is not a party to the case, there is no need to submit the

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objection to the Council of Representatives, the second defendant's agent replied that the plaintiff did not get the necessary votes to take the place of the Representative (Hamdallah Mezher). The previous candidates Haifa and the number of votes (12,399) voted and then Wasan Abdul Hussein and the number of votes (4491) and the plaintiff got (2826) votes, the agent of the plaintiff replied that candidate Haifa won outside the quota of women and then resigned from the Council of Representatives and replaced her by Wasan Abdul Hussein and by that his client the first reserve and that the Council of Representatives was supposed to replace the Representative Hamdallah Mezher without asking her and that not to do so contrary to the provisions of the article (49/4<sup>th</sup>) and article (94) of the Constitution and that his client is based on an article (49/IV) of the Constitution and the agent of each party reiterated his previous statements and requests and where there is nothing left to be said. The Court has made the end of the argument clear and appointed on 6/10/2021 the date of the decision. On this day the Court has been convened and issued the following decision.

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff had claimed that the court had previously ratified the names of the winning candidates in the 2018 Council of Representatives elections and that the total number of seats allocated to Dhi Qar governorate (19) seats (14) for men and (5) for women

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according to the seats distribution system of the ICR No. (12) for 2018, whereas the blocs and the political entities seats were distributed as follows: (6 seats) for the Alliance of Siroon, five for men and one for women, (5 seats) for the Al-Fatih Alliance (4) for men and one for women, (3 seats) for the State of Law, two for men and one for women (3 seats) for the Al-Nasir Coalition two seats for men and one seat for women, (2 seats) for the Al-Hikma movement one seat for men and one seat for women. On 14 May 2019, the Federal Supreme Court issued its numbered decision (213/federal/2018) of the plaintiff Star Jabbar Abbas, which included that the report of the five experts was part of it and that the report confirmed that the correct distribution of seats obtained by the Six-Seat Alliance of Sairoon was (4 for men) and (2 for women), and as for the two seats which Al-Hikma movement acquired are from the men's share and in light of what was listed in the experts report, the decision adjudged with replacing the plaintiff Sattar Abbas Jabbar instead of Ajial Kareem Hasan in the membership of the ICR of Dhi Qar Governorate includes Al-Hikma National movement. This matter was achieved, and women representation within Sairoon Alliance was not adjusted of Dhi Qar Governorate to accomplish the percentage of women representation (women's quota) for the aforementioned Governorate. She claimed that she was the highest-ranking female candidate for the Dhi Qar governorate Coalition, so she requested that the defendants/ being in this capacities call upon for argument and to judge by replacing Representative Hamdallah Mezher Jool as a member of the Council of Representatives. This court finds

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that its jurisdiction to challenge the authenticity of the members of the Council of Representatives is limited to article (52) of the Constitution of the Republic of Iraq 2005, where paragraph (1<sup>st</sup>) stipulates that (the Council of Representatives shall decide on the authenticity of its membership within 30 days of the date of registration of the objection, by a two-thirds majority of its members, and paragraph (2<sup>nd</sup>) of the same article stipulates (the decision of the Council may be appealed to the Supreme Federal Court within 30 days of the date of its issuance) so as not to follow the plaintiff's The above-mentioned article states that it was not a party to the court's decision (213/Federal 2018) on 14 May 2019. Therefore, the case is lacking in its legal substantiation and should be rejected. Accordingly, the FSC decided to reject the case of the plaintiff Nadia Hussein Ali Abu Rgheef and to burden her with the expenses and the advocacy fees for the agents of the defendants/ being in their capacities amount of –one-hundred thousand Iraqi dinar, to be divided between them according to the law. The decision has been made clear, final, decisive, and binding for all powers according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005, and the article (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 28/Sufur/1443 Hijri which coinciding 6/October/2021 A.D.

**Signature of the President**  
**Jassim Mohammed Abbood**

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