

Republic of Iraq
Federal Supreme Court
Ref. 244 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/3/2023 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: Yosef Baaiar Alwan – his agent the barrister Ibrahim Abdulla Muhsin.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents, each of the Ass. Prof. Dr. Sabah Juma'a Al-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

2. Chairman of the Board of Commissioners of the Independent High Electoral Commission / being in this capacity.

3. The Representative Saadia Abdulla Awfi Al-Aqabi – her agents the barristers Mohammed Majeed Risan and Ahmed Mazin Makkiya.

The Claim

The plaintiff, through his agent, claimed that the Iraqi Council of Representatives held an extraordinary session on 23/6/2022, in which the third defendant (Saadia Abdullah Awfi) took the constitutional oath to fill the vacant seat in the Council for the second constituency in Wasit Governorate (which consists of three seats at the initial division, two

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seats for men and one seat for women), and two deputies resigned from the same electoral district, thus the first seat is vacant, according to the approved names, is the right of (Ahmed Salal Ati - who repeated the oath and began his work as a deputy) and the second seat is entitled (i.e. the plaintiff) as he obtained the highest votes in sequence, but the second defendant sent the list of substitutes to fill the vacant seats and replaced the defendant (Saadia Abdullah) in clear and explicit violation of the constitution, the law and the previous 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 announcement of the election results on 10/10/2021 and the occupancy of the vacant seat, as is clear in articles (15/ Fifth: If any seat becomes vacant in the Council of Representatives, it shall be replaced by the candidate who obtained the highest votes in the electoral district) and (16/ Ninth: 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) which is the same Article (2/3) of the Law on the Replacement of Members of the Council of Representatives referred to it, and it was stated in the court's decision No. (120/Federal/2019) that it is not permissible to expand the exception for the women's quota, whereas the plaintiff objected before the Council of Representatives to the validity of the membership of Representative (Saadia Abdullah Awfi) in accordance with Article (52) of the Constitution (and the matter was presented to the Council on 28/9/2022 and received by the Council on 29/9/2022), knowing that it was submitted on the first day that the Council started after the legislative recess and was free of protesters, so the plaintiff asked this court to rule on the invalidity of the membership of REPRESENTATIVE (Saadia Abdullah Awfi) and to oblige the first and second defendants that the vacant seat is his right, and to allow him to

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perform Oath of office as a member of the Council of Representatives in its fifth session and charging them expenses, fees and advocacy fees. The lawsuit was registered with this court in the number (244 / federal / 2022) and the legal fee was collected based on the provisions of Article (21/1st) of the Court's Rules of Procedure No. (1) of 2022 and the defendants are informed of its petition and documents based on item (second) of the same article, and the first defendant's agent replied with the reply list dated 13/11/2022 in its conclusion that his client allowed the defendant (Saadia Abdullah) to take the constitutional oath in coRepresentativeliance with what was stated in the letter of the Independent High Electoral Commission No. (146 on 16/6/2022), which According to which her name was specified within the sequence (31) instead of the resigned deputy, and therefore the lawsuit is not directed against him, so he requested its dismissal and the plaintiff to be charged with fees, expenses, and advocacy fees. The second defendant replied with the reply list No. (Kha/22/805) dated 8/11/2022, it concludes that after the court approved the results of the elections, he won the seats of the second electoral district in Wasit Governorate, which amounted to (3) seats, each of (Bassem Nghimish Jaleef, Muhammad Jawad Hamdallah, and Zeina Hussein Ali), and after the members of the Council of Representatives affiliated with the Sadrist bloc submitted their resignations, the Independent High Electoral Commission was approached from the General Secretariat of the Council of Representatives / Department of Parliamentary Affairs with letter No. (8178 on 16/6/2022), to send the names of the substitutes for the two resigned Representatives (Muhammad Jawad Hamdallah and Zeina Hussein Ali) to redistribute seats in line with the Council of Representatives Elections Law and the instructions for the distribution of seats, whereas the second electoral district in Wasit Governorate

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consists of three seats and based on Article (15/3rd), which stipulates (the sequence of candidates in the electoral district shall be rearranged according to the number of votes obtained by each of them ...) and in the application of this text, the order of the names of the candidates shall be as follows (in the name of Ngeimish Jaleef Zagher Al-Gharibawi, Ahmed Salal Aziz Al-Badri, Youssef Ba'ir Alwan Al-Kalabi) and based on the text of Article (16/3rd) of the Council of Representatives Elections Law, which stipulates that (the quota for women shall be determined) For each governorate as specified in the attached table) and by referring to the table, it is clear that the aforementioned constituency consists of (three seats) two for men, and the third seat from (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 (Youssef Baer Alwan) with a woman as he has the least votes to ensure the share of women in that constituency, and thus the distribution process is consistent with the instructions for the distribution of seats, and the plaintiff's plea regarding Article (16/9th) is valid in the event that there is a woman who wins her votes, and the court has previously issued its decisions numbered (51, 52, 55, 56, and 69 / Federal/2022) to dismiss the lawsuits filed regarding the mechanism for distributing women's seats, so the court was asked to dismiss the lawsuit and charge the plaintiff the expenses. The third defendant replied with the reply list dated 20/11/2022, according to which she indicated that she is the first reserve in terms of women in the aforementioned electoral district after the resigned Representative who won the women's seat (Zeina Hussein Ali Hashem) based on the letter of the Independent High Electoral Commission addressed to the Council of Representatives, the court had previously ruled on the subject matter of the lawsuit in the lawsuit numbered (55/Federal/2022) on 5/7/2022, the

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subject of which was the dispute over the women's quota seat in the same district, as the decision confirmed that there must be at least one seat for women in the same constituency if women win their votes, and in the event that they do not win their votes, it must be one seat (women's quota), therefore, it asked the court to dismiss the lawsuit and charge the plaintiff fees and expenses, and also submitted a list through its agents dated 8/1/2023 concluding that the percentage of women's representation stipulated in the constitution is achieved and asked the court to issue its decision in accordance with what the constitution and what is specified in the law of the High Commission. After coRepresentativeleting the procedures required by the court's rules of procedure, a date was set to consider the case without pleading following Article (31/5th) thereof, in which the court was formed and began its consideration. The court also reviewed the list submitted by the plaintiff's agent dated 20/11/2022, which summarized that the defendant's giving the seat to a woman has exceeded the percentage of (25%) referred to by the constitution and the law, as it became more than (33), while his client is the most numerous electoral votes, for the court to coRepresentativelete its audits, the court decided to approach the Independent High Electoral Commission to clarify the status of the plaintiff about the number of votes he obtained and the extent to which the quota for women was achieved at the governorate and district levels, and the answer was received according to the letter of the Independent High Electoral Commission No. (Kha/23/187) dated 27/2/2023. The court reviewed it and linked it to the case papers, after the court coRepresentativeleted its checks, the end of the minutes has been made clear and the court issued the following judgment:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff claimed, through his agent, that the Iraqi Council of Representatives held an extraordinary session on 23/6/2022, in which the third defendant (Saadia Abdullah Awfi Al-Aqabi) took the constitutional oath to occupy the vacant seat in the Council for the second constituency in Wasit Governorate (which consists of three seats at the initial division, two seats for men and one seat for women), and after the resignation of two deputies from the same electoral district, the first seat became vacant, according to the names approved by Right (Ahmed Salal Ati - who repeated the oath and began his work as a deputy) and the plaintiff believes that the second seat is his right as he obtained the highest votes in sequence, however, the second defendant sent the list of substitutes to fill the vacant seats and made the defendant (Saadia Abdullah Awfi) instead of him in clear violation of the Constitution and the law, as the Council of Representatives Elections Law No. (9) of 2020 differentiated between the initial distribution of seats after the announcement of the election results on 10/10/2021 and the occupancy of the vacant seat, as is clear in articles (15/5th) and (16/9th), which is the same as what the Law on the Replacement of Members of the Council of Representatives referred to in Article (2/3) thereof, as the court's decision No. (120/Federal/2019) stated that it is not permissible to expand the exception for the women's quota, the plaintiff objected before the Council of Representatives to the validity of the membership of Representative (Saadia Abdullah) following Article (52) of the Constitution (and the matter was presented to the Council on 28/9/2022 and received by the Council on 29/9/2022), so the plaintiff asked this court to rule on the invalidity of the membership of

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Representative (Saadia Abdullah Awfi) and oblige the first and second defendants that the vacant seat is his right and allow him to take the constitutional oath as a member of the Council of Representatives in its fifth session, after reviewing the answering drafts submitted by the defendants through their representatives, according to which they requested the dismissal of the case for the reasons stated therein, the Federal Supreme Court finds the following:

First: Based on the provisions of Article (48) of the Constitution of the Republic of Iraq for the year 2005, the federal legislative authority consists of the Council of Representatives and the Federation Council, and since the system of government in Iraq is a republican, representative (parliamentary) democratic based on the rule of law, and that the people are the source of powers and their legitimacy is exercised by direct universal secret ballot, and through its constitutional institutions following the provisions of Article (5) of the Constitution and the transfer of power is carried out peacefully through the democratic means provided for in the Constitution, as citizens are men and women have the right to participate in public affairs, and the enjoyment of political rights, including the right to vote, elect and be nominated in accordance with the provisions of Article (20) of the Constitution, and in accordance with the provisions of Article (49/1st) of the Constitution, the Council of Representatives consists of a number of members at a ratio of one seat for every hundred thousand people of Iraq representing the entire Iraqi people are elected by direct universal suffrage, taking into account the representation of all coRepresentativeonents of the people in it, and the candidate for membership of the Council of Representatives is required to be a fully qualified Iraqi in accordance with the provisions of item (2nd) of the same article, which is regulated by the law of the conditions of the

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candidate and voter, and everything related to the election in accordance with the provisions of item (3rd) of the same article, and in accordance with the provisions of item (6th) of Article (49) of the Constitution, it is not permissible to combine the membership of the Council of Representatives with any other official work or position, and in accordance with the provisions of item (fourth) of the aforementioned article, the electoral 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, and the Council of Representatives enacts a law that addresses cases of replacement of its members upon resignation, dismissal or death in accordance with the provisions of item (5th) of the same article. The constitutional systems in the countries of the world varied in how to fill the vacant seats, according to their legislation and the political, economic, and social conditions prevailing in them, as some constitutional systems adopted the method of (individual (supplementary)) election, while other systems adopted the method of replacement (replacement) to fill the vacant seats in the Council of Representatives.

Second: The cases of termination of the prosecution in the Council of Representatives were determined in accordance with Article (12) of the Law of the Council of Representatives and its formations No. (13) of 2018, which are ((death, resignation, or proof of the loss of one of the conditions of the prosecution stipulated in the Constitution, the Elections Law, and the Law of the Council of Representatives, as well as when the deputy holds a position in the Presidency of the Republic, the Council of Ministers, or any other official position, and also ends when a final judicial judgment is issued against him for a felony or misdemeanor whose penalty is deprivation of liberty. For a period of time that lasts for the remainder of the electoral cycle or when suffering

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from a terminal illness, disability, or disability that prevents him from performing his duties in the Council based on a decision of a coRepresentativeent official medical committee. As well when the Council approves by a two-thirds majority of the deputies the objection submitted to the validity of the prosecution following Article (52/1st) of the Constitution, and the prosecution also ends when a decision is issued by the Federal Supreme Court that the membership is invalid when challenged before it by the decision of the Council of Representatives based on the provisions of item (second) of the aforementioned article. It also ends when the Council of Representatives approves the dismissal of a deputy when his absences without a legitimate excuse exceed more than one-third of the sessions of the Council of the total sessions of one legislative term, and when the deputy seriously violates the rules of parliamentary conduct of the Council, and insulting the Council or attacking the president, one of his deputies or one of the deputies is a serious breach to iRepresentativelement this. It should be noted that Article (1) of the Law No. (6) of 2006 on the replacement of members of the Council of Representatives specifies the reasons that terminate Membership in the Council of Representatives when achieved, it represents the same content as that contained in Article 12 of the Law of the Council of Representatives and its formations.

Third: The Council of Representatives consists of (329) three hundred and twenty-nine seats, which are distributed (320) three hundred and twenty seats to the governorates according to their administrative boundaries until the general census of the population is conducted, and (9) nine seats are distributed quota based on the provisions of Article (13 / First) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, and the percentage of women's representation is not less than (25%) of the number of members of the Council of Representatives. The

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percentage of women's representation shall be at least (25%) of the number of members of the Council of Representatives in each governorate according to the provisions of Article (16/1st and 2nd) of the Council of Representatives Elections Law No. (9) of 2020, and if the women's quota is exhausted according to the results of the elections in the governorate, there will be no replacement process based on the provisions of item (4th) of the aforementioned article, and 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. Following the provisions of item (9th) of the same article above.

Fourth: Article (16) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 did not address the issue of the reasons for the termination of membership and how to replace the Council of Representatives, and regulated the issue of the percentage of women's representation in the number of members of the Council of Representatives, the percentage of women's representation of the number of members of the Council of Representatives in each governorate, and the determination of the quota for women, as well as what was stated in the article. All this shall be done when the elections are held and the final results are ratified, but the expiration and replacement of membership shall be after that stage, and this is regulated by Law No. 6 of 2006 on the replacement of members of the Council of Representatives, Article (1) dealt with the reasons for the termination of membership in the Council of Representatives, and Article (2) dealt with the case of replacement when one of the seats in the Council of Representatives became vacant for the reasons mentioned in Article (1), where paragraph (3) of Article (2) stipulated (If the vacant seat belongs to a woman, it is not required to be replaced by a woman unless this affects the minimum representation of women in the Council) as well as

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Article (15/5th) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, which stipulated (if Any vacancy in the Council of Representatives shall be replaced by the candidate who obtains the highest votes in the electoral district) and item (third) of the article stipulates that (the sequence of candidates in the electoral district shall be rearranged according to the number of votes obtained by each of them), therefore, since the number of seats allocated to Wasit Governorate is (11) seats and the number of seats for women (3), and the electoral district (2nd) in Wasit Governorate consists of (3) seats, of which (2) seats were selected for men and (1) women's quota, and after the electoral process was held on 10/10/2021, the results were for Bassem Nghimish Jaleef who obtained (12,524) votes (winner), and Muhammad Jawad Hamdallah Received (10980) votes (winner), and Ahmed Salal Aziz got (8709) votes, Youssef Ba'ir Alwan got (7813) votes, Zeina Hussein Ali got (7324) votes (winner under the women's quota), and Saadia Abdullah Awfi got (4878) votes, and then the deputies of the Sadrist bloc announced their resignation from the membership of the Council of Representatives, including the winners of the second constituency in Wasit Governorate, namely (Muhammad Jawad Hamdallah and Zeina Hussein Ali), so and based on the provisions of Article (15/5th) of the Council Elections Law Iraqi Representatives No. (9) of 2020 and Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 the highest number of votes for the purpose of replacement in the second electoral district in Wasit Governorate shall be (Ahmed Salal Aziz) followed by (Youssef Ba'ir Alwan), accordingly, the replacement of Representative Saadia Abdullah Awfi, who obtained (4878) votes, in place of the candidate Youssef Ba'ir Alwan, who obtained (7813) votes when replacing in the second constituency in Wasit Governorate, is

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contrary to the provisions of Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, Article (15/5th) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, and Article (16/9th) of the last law, which stipulated (If the vacant seat belongs to a woman, she is not required to be replaced by a woman unless this affects the percentage of women's representation), therefore, since the ruling on the invalidity of the membership of Representative Saadia Abdullah Awfi does not affect the percentage of women's representation in the Council of Representatives and does not affect the percentage of women's representation of the number of members of the Council of Representatives in Wasit Governorate, and since the law on the replacement of members of the Council of Representatives is still in force, and the number of votes obtained by the candidate (Youssef Baer Alwan) exceeds the number of votes obtained by the aforementioned Representative, these votes represent the opinion of the voter in light of the exercise of his political right to vote in accordance with Article (20) of the Constitution, which must not be neglected in order to achieve the principle of equality before the law without discrimination for any reason whatsoever in accordance with Article (14) of the Constitution and in a manner that guarantees the right of the voter and the candidate in accordance with Article (2) of the Iraqi Council of Representatives Elections Law, Accordingly, and for all of the above, the Federal Supreme Court decided to rule that the membership of the third defendant, Saadia Abdullah Awfi Al-Aqabi, in the membership of the Council of Representatives, the fifth session, is invalid, and to oblige the first and second defendants, the Speaker of the Council of Representatives, and the Chairman of the Independent High Electoral Commission, in addition to their functions, to replace the plaintiff Youssef Ba'ir Alwan with the third defendant in the

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membership of the Council based on the provisions of Article (2/3) of the Law No. (6) of 2006 to replace the members of the Council of Representatives and charge the defendants fees, expenses, and advocacy fees to the plaintiff an amount of (one hundred thousand) dinars. The decision has been issued with a majority, final, and binding according to the provisions of articles (14, 20, 52, 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/9th and 5/2nd) 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 dated 7/Rmadhan/1444 Hijri coinciding 29/March/2023 AD.

Judge

Jassim Mohammed Abboud

President of the Federal Supreme Court

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