

Republic of Iraq  
Federal Supreme Court  
Ref. 260 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19/12/2022 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Bersen Jihad Mohammed Ali – her agent the barrister Mohammed Amir Taha Al-Bayati.

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

### **The Claim**

The plaintiff claimed, through her agent, that she submitted an objection to the Council of Representatives on the validity of the membership of Representative (Karwan Ali Yarois Hama Aziz) pursuant to the provisions of Article (52/1<sup>st</sup>) of the Constitution of the Republic of Iraq, which stipulated (The Council of Representatives shall decide on the validity of the membership of its members, within thirty days from the date of registering the objection, by a two-thirds majority of its members), but the Council did not decide on it, and that the Council of Representatives in the fourth session legislated (the Iraqi Council of Representatives Elections Law No. (9) of 2020), and specified in Article (16) Including the method through which the (women's quota) is calculated in each electoral district of the

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governorate, and since the filling of the parliamentary seat under a void mechanism is considered invalid according to the legal rule that states (what is based on invalidity is invalid), and Article (15/3<sup>rd</sup>) of the same law stipulates (the sequence of candidates in the electoral district shall be rearranged according to the number of votes obtained by each of them, and the winner of the one who obtained the highest votes according to the first-past-the-win system shall be considered the winner). The High Electoral Commission has counted the candidate (Sarwa Muhammad Rashid Siran Zanganeh) as the winner of her electoral strength, who obtained (7851) votes, and that her first sequence in the fifth electoral district in Sulaymaniyah Governorate, so the (women's quota) will be for the next candidate, which is the plaintiff (Bersan Jihad Muhammad Ali), and thus the membership of Representative (Karwan Ali Yarus Hama Aziz) is invalid. Therefore, the plaintiff asked this court to order the termination of the membership of the Representative (Karwan Ali Yarus Hama Aziz) and this seat (women's quota) will be for the plaintiff with the defendant bearing the expenses and advocacy fees. The lawsuit was registered with this court with the number (260/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1<sup>st</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the defendant is informed of its petition and documents based on the item (second) of the same article, and his agent responded with the reply list dated 30/11/2022, which includes detailed formal and substantive defenses, the conclusion of which is their request to dismiss the lawsuit and charge the plaintiff the expenses, as the lawsuit is filed outside the legal period, as the plaintiff's objection is submitted to the Council of Representatives on 31/5/2022 based on Article (52/2<sup>nd</sup>) of the Constitution. After completing the procedures required by the court's

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rules of procedure, a date was set for the consideration of the case without pleading in accordance with Article (31/5<sup>th</sup>) thereof, in which the court was formed and the case was considered, the court checked what was stated in the plaintiff's petition, its grounds and requests, and what was stated in the reply list submitted by the defendant's attorneys linked to the case papers, and after the court 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 noted that the summary of the plaintiff's lawsuit is her request for a ruling to terminate the membership of Representative (Karwan Ali Yarois Hama Aziz) and to allocate the parliamentary seat to her as it is from the women's quota, and upon consideration of the lawsuit petition and its annexes, including a copy of the plaintiff's request to the Council of Representatives with the same content based on the provisions of Article (52) of the Constitution registered on (31/5/2022), the Court found that the House of Representatives did not issue an explicit decision to reject the request despite the expiry of the constitutional period mentioned in Article (52/1<sup>st</sup>) of the Constitution, which starts from 30/6/2022, and since the plaintiff appealed the above decision on 11/22/2022, as proven in the lawsuit petition, so the appeal is submitted outside the constitutional period and there is no way for this court to delve into it subject matter. Therefore, the Federal Supreme Court decided to dismiss the appeal submitted by the plaintiff Bersan Jihad Muhammad Ali and to charge her the judicial fees and expenses, including advocacy fees, the defendant's agent/ being in this capacity, the legal counselor Haitham Majid Salem and the official jurist Saman

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Mohsen Ibrahim, an amount of one hundred thousand dinars, distributed according to the legal percentages. The decision has been issued unanimously, 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 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. It has been made clear on dated 26/Jamada Al-Awla/1444 Hijri coinciding 19/December/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abbood**

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