

Republic of Iraq  
Federal Supreme Court  
Ref. 44 / Federal / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 21.9.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

Bassem Khazal Khashan - his attorney, Ahmed Saeed Musa.

**The defendant:**

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.

**The claim:**

The plaintiffs (Basim Khazal Khashan and the Secretary-General of the National Civil Movement / in addition to his position) claimed through their attorney that they are challenging before the Federal Supreme Court the constitutionality of Paragraph (Second) of Article (16) of the Iraqi Parliament Election Law No. (9) of 2020, and they are also challenging the paragraphs (Second), (Third), (Fifth), (Sixth), (Seventh) and (Eighth), with the tables attached to the law for the following reasons:

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First: Article (16) of the Parliament's Election Law has become confused, and its paragraphs contradict each other and violate the constitution, Paragraph (Second) stipulates allocating at least a quarter of the seats in each governorate to women, which increases the number of women seats in the Council of Representatives to (87), and this number constitutes (26.5%) of the seats in the Council, and the Council of Representatives does not have to legislate a law that increases the limit of the minimum percentage of women's seats in the Council of Representatives set by Article (49/4) of the constitution is a quarter of the parliament's seats (25%), and allocating a quarter of the governorate's seats to women is an expansion of the constitutional exception mentioned in Article (49/fourth). The allocation of a quarter of the seats in the Council of Representatives is a constitutional exception to the principles of equality and equal opportunities, and the defendant does not have the right to expand on this exception to allocate initially a quarter of the seats in each governorate to women, because what was mentioned by way of exception may not be expanded, and others cannot be measured, and because this expansion is in violation of Articles (14) and (16) of the Constitution, in addition to its violation of Article (49/fourth).

Second: Paragraph (Third) stipulates the distribution of Parliament seats according to the tables attached to the law, and these tables do not achieve a percentage of (25%) in each governorate as

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stated in the text of Paragraph (Second), and this contradiction will open the doors of constitutional disputes about the validity of membership, for example , these tables have allocated four seats for women out of the seventeen seats in the governorate of Babylon, and this means that the proportion of women in the governorate of Babylon is (23.5%), and this paragraph has allocated six seats for women from the seats in the governorate of Basra out of twenty-five seats, and thus the proportion of the quota seats for women in this governorate (24%), and the percentage of women in Baghdad and Nineveh, according to the tables, is (23.6%) and (23.5%), respectively, and thus paragraph (Third) and the attached tables on which it is based contradict the text of paragraph (Second), regardless of Paragraphs (Second) and (Third) agree or contradict the text of paragraphs (Second) and (Third), the latter included several constitutional violations, including the following:

1. Article (49/4) of the constitution sought to enable women to reach the Council of Representatives and obligated the legislator to enact a law that would achieve a percentage of representation for women. Not less than a quarter of the number of members of the Council of Representatives, and this requires that the number of women in the Council of Representatives reaches (83) a woman. If the election results achieve this number without the need to replace winning candidates with losing candidates, the percentage of one-

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fourth stipulated in Article (49/4) will be achieved even if women are not able to win a seat in one or more governorates, because the quota for women is complementary and if, for example, fifty women won with the votes they obtained without relying on the women's quota bylaw, in this case, thirty-three winning candidates must be replaced by thirty-three losing women to complete the number that achieves a quarter, and in accordance with Article (49/fourth), The Council is obligated to enact a law that achieves the percentage of one-fourth, provided that it does not conflict with the provisions of the Constitution and the principles and rights that it has enshrined. The tables attached to the law divided the contested public seats in each constituency into two parts: (the seats with the highest votes) and (the women's seats), and according to this distribution, the candidates, men, and women, compete for the highest votes in the constituency, and competition for the seat of women is limited to women, and according to this division, at least a quarter of the seats in the Council of Representatives was initially allocated in contravention of Articles 14 and 16, and in contravention of Article (49/4) of the Constitution, which required the Council of Representatives to enact a law that complements the shortfall in women's representation, if the election results are not achieved. The quarter percentage of women, and

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according to the tables attached to the law, the winning male candidates in the governorate in which the female candidates were not able to win are replaced by losing women, even if the quarter percentage is achieved in the Council of Representatives without the need for this replacement because the law allocates a certain number of seats for women regardless on the results of the general elections.

2. The tables attached to the law, the subject of the lawsuit, divided Iraq into districts (eighty-three electoral districts) for this division to achieve a quarter by allocating one seat for women in each district, but these districts are not equal. In the governorates of Kirkuk and Najaf, the tables distributed the twelve governorate seats over three unequal electoral districts in which competition for an unequal number of seats (3), (4) and (5) seats, and the tables in each district, including one seat for women, and the rest of the seats are allocated to the winners with the highest votes, and thus the proportion of women's seats varied in these Circles (33%), (25%) and (20%) respectively, and this disparity violates the principle of equality and equal opportunities without this division having an arithmetical necessity, because the number (12) is divisible by (4), and therefore this must be redistributed the districts are to be divided into three, each of which will be contested for four seats. In the governorate of

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Baghdad, the districts were divided as follows (three districts in which competition for three seats is held, and the proportion of women is 33%) (ten districts in which competition is held for four seats and the proportion of women is 25%) (four districts in which competition is held for five seats and the proportion of women in Nineveh Governorate, districts were divided as follows (three districts in which competition for three seats is held, and the proportion of women is 33%) (three districts in which competition for four seats and the proportion of women are 25%) (two districts in which competition is taking place on five seats and the percentage of women specified therein is 20%).

3. The members of the Council of Representatives agreed to divide the governorates into several electoral districts, and that the representatives of each governorate would take charge of dividing the districts of their governorate, so the representatives of each governorate met separately and divided the districts as they liked, and since the representatives who divided the districts are themselves candidates in the upcoming elections, their establishment drawing the boundaries of those constituencies in which they run violates the principle of equal opportunities between them and the rest of the candidates, knowing that the distribution of constituencies is a technical issue that

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should have been handled by the Independent High Electoral Commission, not the representatives who run in them and who divided them into a division that outweighs them in the elections at the expense of the rest of the candidates.

4. The tables attached to the law, which are part of it, neglected the quota seats for minorities and excluded these seats from the allocation for women. This exception violates the principle of equality and equal opportunities because excluding minority candidates from the bylaw of replacing men with women to achieve a quarter is a violation of the principle of equality among Iraqis before the law without discrimination between them because of nationalism and religion.

Third: The direct meaning of paragraphs (fifth / a, b and c) (is that a seat is not allotted to women from among the seats in the list in which a woman won with the votes she obtained without focusing on the women's quota, because the percentage of women in the list in which a woman wins one of her seats or More will be, according to the equation mentioned in paragraph (fifth), always higher, and this is a discrimination between women and men before the law, as these two paragraphs did not treat the woman who won her votes as the man who won her votes, and this contradicts Article 14 of the Constitution because discrimination between the female candidate and the

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male candidate before one law The Federal Supreme Court has previously stated in its decision No. (8/Federal/2019) on August 26, 2019 that women are equal to men in rights and duties, and this necessitates that they be treated as men, which stated (find The Federal Supreme Court that the presence of a woman who won the votes in her favor on that list does not preclude the presence of another woman who came by securing the women's quota on her side (the quota), because the constitution and the law does not prevent the presence of two women on one of the lists and at the same time does not deprive the list of its rights in my seat n in the Council of Representatives is occupied by two women, especially since the legal position of a woman representative is equal to the legal position of a male representative.).

Fourth: Paragraphs (seventh) and (eighth) allocate the seats of male winners to female losers according to rules that do not take into account the number of votes that men have obtained. Seats are allocated to women who obtained the least votes, and they are not allocated to women who obtained the highest votes but are allocated based on the number of votes in the electoral district, regardless of the number of votes of the replaced man and the number of votes of the alternative woman, and this in itself violates the principle of equality between winning men and contradicts the right of Men who win equal opportunities among themselves.

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Based on the foregoing, the plaintiffs requested this court to invite the defendant to plead and judge the unconstitutionality of paragraphs (second, third, fifth, seventh, and eighth) of Article (16) of the Parliament Elections Law No. (9) of 2020 as being inconsistent with the provisions of Articles (20) and (14) and (16) of the constitution, as well as a request for ruling that the division of electoral districts is unconstitutional according to the schedule attached to it as it contradicts the same constitutional articles mentioned above. And based on the provisions of Article (1/Third) of the Federal Supreme Court's internal bylaw No. (1) of 2005, the case was registered with this court in No. (44/Federal/2021), and the defendant, in addition to his post, is informed of its petition based on the provisions of Article (2/First) of the aforementioned bylaw, the defendant and his two attorneys, Legal Counsel Haitham Majed Salem, and the legal official Saman Mohsen Ibrahim responded with their regulations dated 20/6/2021, which included the following:

1. Regard the appeal against Article (16) of the law subject of the case, the text of Article (49/fourth) of the Constitution clarified that a percentage of women should be achieved not less than a quarter, and the article had not allocated the percentage as claimed by the plaintiff. Representation of women may be achieved by winning the highest votes and not going to the issue of (quota) referred to in the constitution.
2. The plaintiff bases his defenses regarding Paragraph (Third) of the tables attached to the law on assumptions, while the case is (a

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person requesting his right from another before the judiciary) and this right may not be based on assumptions because it will be negated in this case, even if the plaintiffs' representative referred to that this matter will open the door to disputes regarding the validity of members' membership, as this is entrusted to the judiciary represented by the Federal Supreme Court. As for the issue of expansion by constitutional exception concerning the percentage of women in the Council of Representatives, it is a personal assessment by the plaintiff and has no basis in the law, and that what is stated in the law The object of the appeal came as a legislative option following the constitution. The same applies to what the plaintiff stated about the discrepancy in the size of the electoral districts and the percentage of women. It is also not true what the plaintiff stated about defining the electoral district by the deputies according to their will. Concerning minority seats, they are among the seats allocated to each governorate. The law did not differentiate who holds a seat Quota for minorities, whether men or women.

3. What the plaintiff stated regarding paragraph (fifth) subject to appeal is untrue and unsupported by the law, and that calculating the women's quota with the women's winning of her votes is calculated following the provisions of the constitution and the law, in addition to the fact that it came legislation following the provisions of the constitution in Article ( 61/ first) of it.

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4. Regard the appeal against paragraph (seventh and eighth), the calculating of seats for women was carried out following the principle of achieving justice and equality, and what the plaintiff stated is not true and has no basis in the law, and that the claim that the percentage (a quarter) will be imbalanced in some governorates is not productive as the constitution obligated that the ratio not less than a quarter of the number of women in the Council of Representatives, it did not appoint this ratio and it is achieved at the level of each governorate. The law came to regulate these conditions and their conformity with the constitution.

For these reasons and the reasons that the Federal Supreme Court deems appropriate, the defendant's attorney requested, in addition to his post, to reject the plaintiff's lawsuit and charge him all judicial fees, expenses, and attorney's fees. After completing all the procedures, a date was set for the pleading and the parties were informed of it in accordance with the provisions of Article (2/Second) of the aforementioned bylaw. On the day appointed for the pleading, the court was formed, and the lawyer, Basem Khazal Khashan, attended as the first plaintiff and as a representative of the second plaintiff. Lawyer Ahmed Saeed Moussa attended as the representative of the plaintiffs, and the defendant's attorney attended, in addition to his post, the legal advisor Haitham Majed Salem, and started conducting the public pleading. The plaintiffs' agent repeated what was stated in the petition and requested the judgment in

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accordance with what it stated and added that he is requesting the nullification of the case for the second plaintiff (the Secretary General of the National Civil Movement / in addition to his post), the defendant's attorney, in addition to his post, replied that he had no objection to its nullification, and to the approval of the request for the law and based on the provisions of Article (88) of the Law Civil Procedure No. (83) for the year 1969, amended, the court decided to nullify the case for the second plaintiff (the Secretary General of the National Civil Movement / in addition to his position) and charge him the relative fees and expenses and attorney's fees for the defendant's attorney, the defendant agent repeated the answering draft dated on 20.6.2021 and requested the dismissal of the case, and the plaintiff reiterated that the case is focused on appealing to Article (16) of the law, and the court was informed of the decision of the Egyptian Constitutional Court presented by the plaintiff, the attorneys of the two parties repeated their requests and statements, since the court has completed its audits and there is nothing left to be said, it understand the conclusion of the pleading and the court issued its next decision in public.

### **The decision:**

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff requested a ruling of unconstitutionality of paragraphs (second, third, fifth, seventh, and eighth) of Article (16) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 as it contradicts the provisions of

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Articles (20) and (14) And (16) of the Constitution of the Republic of Iraq for the year 2005, where paragraph (Second) of the aforementioned article stipulates that (the representation of women shall be no less than (25%) of the number of members of the Council of Representatives in each governorate). As for the third paragraph, it stipulates (the quota for women is determined for each governorate as specified in the attached table) and paragraph (fifth) of it stipulates that ((the quota for women is distributed in case it is not achieved according to the item (Fourth) as follows: A. One (virtual) seat is added to the number of the winning women for each constituency B. The number obtained as a result of the process in Paragraph (A) is divided by the total number of seats allocated to the constituency to determine the percentage of women winning in case of an increase. C. One seat is added to the number of women seats for the constituency with the lowest percentage Celsius d. If the required number of seats for women allocated to the council is not completed according to paragraphs (a, b, and c), there will be a new process starting from paragraph (a) with calculating the increase that occurred previously in paragraph (c). Seventh) of the same article (If two or more electoral districts obtain the same percentages, a seat is added to the electoral district with the least number of votes.) While paragraph (eighth) of it stipulates (If there is an equality in the number of valid votes, the resort will be taken. to a lottery to determine which of the constituencies to which a seat should be added). The Federal Supreme Court finds that the above paragraphs of Article (16) of the Iraqi Parliament Elections Law No. (9) of 2020 came to implement what was stated in Paragraph (Fourth) of Article (49) of the Constitution, which stipulates that (the election law aims to achieve a percentage of representation Women shall not be less

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than a quarter of the number of members of the Council of Representatives. As for Article (14) of the Constitution, it included the principle of equality of Iraqis before the law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, opinion, economic status, or The contested paragraphs of Article (16) of the Parliament Elections Law do not contradict Article (14) of the Constitution, and there is also no conflict between the aforementioned paragraphs and Article (16) of the Constitution, which stipulates that (equal opportunities is a right guaranteed to all Iraqis, and the state guarantees Take the necessary measures to achieve this.) As this text has its compelling constitutional reasons, and paragraph (Fourth) of Article (49) of the Constitution has its compelling reasons, and the same applies to Article (20) of the Constitution, which stipulates that (citizens, men and women, have the right to participate in public affairs, and enjoy political rights , including the right to vote, elect and be nominated.) Since the goal of legislation is the ultimate will and purpose of the legislator from legislative intervention, or it is the final result that is expected to be achieved from his intervention, and that the goal of legislation must always be aimed at achieving the public interest in any of its aspects, so every legislation must be aiming to achieve the legitimate interests protected by the constitution, otherwise the work of the legislator will be null and void, and since public interests are difficult to limit or specify and may change from time to time or from one society to another, but in the end its framework is determined by the overall purposes targeted by the constitution and accepted by the will of its makers, public values and interests an umbrella for this society that is governed by that document with what that interest represents in its general concept of the necessity of working to

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achieve the good and the public benefit in all areas of legislation, whether economic, social or political. The necessity of working to take care of it by way of privatization, which requires the legislator, in the event of his intervention, not to deviate from it to others. Therefore, what was stated in Articles (14, 16, and 20) of the Constitution, which was received In Chapter Two of it (rights and freedoms), the legislator must take them into account when approving any legislation. As for Article (49/fourth) of the Constitution, it was included in Chapter Three of the Constitution (Federal Authorities), specifically within the articles related to the Council of Representatives. Therefore, the constitution required achieving a representation ratio for women. In the Council of Representatives, it is not less than a quarter of its members, so the legislator may not deviate from that. Accordingly, and for the absence of a constitutional violation, the Federal Supreme Court decided to reject the claim of the plaintiff in the name of Khazal Khashan and to charge him the fees, expenses, and attorney fees of the defendant's attorney / in addition to his post, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars distributed between them according to the law and the agreement was issued a final judgment And it is binding on all authorities based on the provisions of Articles (93) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and publicly understood on 13/Safar/1443 AH corresponding to 9/21/2021 AD.

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Signature of  
The president

**Jasem Mohammad  
Abbood**

Signature of  
The member

**Sameer Abbas  
Mohammed**

Signature of  
The member

**Ghaleb Amer  
Shnain**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Khalaf Ahmad Rajab**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Abdul Rahman  
Suleiman Ali**

Signature of  
The member

**Diyar Muhammad  
Ali**

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