

Republic of Iraq
Federal Supreme Court
Ref. 45 / 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, Haider 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 plaintiffs:

1. Bassem Khazal Khashan.
 2. the Secretary-General of the National Civil Movement / in addition to his position.
- Their 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 claimed before this court that they are challenging the constitutionality of Article (46) of the Iraqi Parliament Elections Law No. (9) of 2020 for the following reasons: Legislation of a text regulating the replacement of winning candidates who refrain from taking the constitutional oath is a

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continuation of the legislative deficiency referred to by the Federal Supreme Court In previous decisions, but the text of Article (46) of the Council of Representatives Elections Law No. (9) of 2020 applies mechanisms that contradict Articles (20), (14) and (16) as follows: First: Article (20) of the Constitution stipulates that The right of citizens to exercise the right to participate in public affairs and enjoy political rights, including the right of the voter citizen to choose his representative. The Council of Representatives has enacted Parliament Elections Law No. (9) for the year 2020 in accordance with the provisions of the constitution to guarantee this right to all citizens, and the Council has repealed the previous law that The (Modified Saint Lucky) system, which relies on lists, was adopted. Under this system, the voter had to choose the list before choosing the candidate he wanted to vote for. Forms in which the voter did not choose a list from the competing lists in his constituency were considered void. In all cases, while the form in which the voter votes for the list without choosing a specific candidate from it, and after the results are announced, seats are allotted to the list before seats are distributed to the winners of each list. To be compensated by the candidates of the same list. And since the Council of Representatives Elections Law No. (9) of 2020 has left the (Amended Saint Lucky) system, and the nomination according to Paragraph (Second) of Article (15) has become individual, and since according to Paragraph (Third) the winner is considered to be the one who gets the highest votes, the effect of this has no effect The list is included in the

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election results, and therefore paragraph (fifth) of this article stipulates (if any seat in the Council of Representatives becomes vacant, the candidate with the highest votes in the electoral district shall replace it) regardless of his list, but Article (46) whose constitutionality is challenged, deviated from the system The following law stipulates that (The winning candidate in the elections is obligated to take the constitutional oath within a maximum period of one month from the date of the first session. The alternative is the highest loser in his constituency.) Since the voter does not vote for the list at all in the upcoming elections, and votes exclusively for the candidate he chooses, the vacant seat is allocated as a result of the winning candidate's abstention from taking the constitutional oath to the next candidate on his list, regardless of the number of votes he obtained and not of the losing candidate who obtained the highest votes in the electoral district, this contradicts the voter's right to choose who represents him, as well as the right of the candidate who obtained the most votes among the losing candidates to equality before the law, and with his right to equality opportunities, And based on the foregoing, the plaintiffs' request from the Federal Supreme Court to invite the defendant to plead and rule the unconstitutionality of the part of the mechanism for replacing the winner who abstained from taking the constitutional oath stipulated in Article (46) of the Council of Representatives Elections Law No. (9) of 2020 for its conflict with the provisions of Articles (20), (14) and (16) of the constitution, and obligating the parliament to amend

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it. The case was registered with this court in No. (45/Federal/2021) and the legal fee was paid for it in accordance with Paragraph (Third) of Article (1) of the Federal Supreme Court's bylaw No. (1) of 2005. The defendant, in addition to his job, is informed of its petition and documents based on the provisions Paragraph (first) of Article (2) of the internal system of this court, and his two attorneys responded with the answer list dated 20/6/2021, which included the following: The law subject of the case was enacted according to the provisions of Article (49/fourth) of the constitution to regulate the provisions of the elections of the Council of Representatives. The text that the plaintiff's attorney requests to rule unconstitutional came as a legislative option regulating the mechanism for selecting an alternative to the winner who abstained from taking the constitutional oath and does not violate any of the constitutional provisions contained in the lawsuit petition. Also, obligating the Council of Representatives to amend the legal text under appeal is outside the jurisdiction of the Federal Supreme Court in accordance with the provisions of Article (91) of the Constitution, and for these reasons and for the reasons that the Federal Supreme Court deems appropriate, the defendant's attorney requested to dismiss the case and charge the plaintiff with all judicial fees, expenses and attorney fees. And based on the provisions of Article (2/Second) of the internal system of this court, a date was set for the pleading and the two parties were informed of it. Majed Salem and proceeded to plead in the presence and public, the plaintiffs' attorney and the first

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plaintiff reiterated what was stated in the lawsuit petition and requested the ruling in accordance with what was stated in it, adding that the appeal focuses on the unconstitutionality of Article (46) of the Elections Law No. (9) of 2020, because the aforementioned article referred the second candidate in The list replaces the winner in the elections. When the winner did not take the legal oath within a month from the date of the first session, which contradicts the principle of individual voting stipulated in the above law, the defendant's attorney responded in addition to his job, repeating what was stated in the answer list and requesting the dismissal of the case for the reasons stated therein. He added that the bylaw of the court necessitated the realization of the interest in filing the case, and the plaintiff does not have an interest in filing it, given that the elections have not yet taken place and what he has shown has not been achieved. An appeal whose application differs from what was stated in Article (15) of the law subject of the case, as it concerns the failure of the winning representative to take the oath within a month from the first session. in public. The plaintiff agent and the defendant agent repeated their requests, when there is nothing left to say, the Court decided the conclusion of the pleading and issued its decision publicly at the same meeting.

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiffs requested in their lawsuit the

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unconstitutionality of Article (46) of the Iraqi Parliament Elections Law No. (9) of 2020 because the aforementioned article contradicts the provisions of Articles (14, 16 and 20) of the Constitution of the Republic Iraq for the year 2005, where Article (20) guaranteed to all men and women the right to participate in public affairs and enjoy political rights, including the right of the voter citizen to choose who represents him, and the Council of Representatives enacted the aforementioned law to guarantee all citizens this right. who relies on lists and under this system the voter had to choose the list before choosing the candidate he wants to vote for after the results are announced, seats are allotted to the list before seats are distributed to the winners in each list, and since the Parliament Elections Law No. (9) of 2020 left the (Amended Saint Lucky) system, and the nomination according to Paragraph (Second) of Article (15) became an individual and the winner is the one who got the highest votes, so the list has no effect on the election results as the paragraph stipulates (Fifth) of the aforementioned article on (If any seat in the Council of Representatives becomes vacant, the candidate who obtains the highest votes in the electoral district shall replace it.) However, Article (46) whose unconstitutionality is challenged, deviated from that and stipulated (The candidate who won the elections is obligated to take the constitutional oath within A maximum period of one month from the date of the first session. Otherwise, the alternative for him who obtains the highest votes will be among the losing candidates from his list in his electoral district. He votes exclusively for the candidate he chooses, and the vacant seat is allotted as a result of the winning candidate's abstention from taking the constitutional oath to the next candidate on his list as stated in Article (46) whose unconstitutionality is challenged, regardless of the number of votes

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he obtained and not for The candidate of the loser who obtains the highest votes in the electoral district, this contradicts the right of the candidate who obtains the highest votes among the losing candidates and the voter's right to choose who represents him and contradicts the principle of equal opportunities. This court finds that Article (6) of the Federal Supreme Court's internal system No. (1) for the year 2005 stipulated that the plaintiff in the subject matter of the case should have a current, direct and influencing interest in his legal, financial or social position, and that the plaintiff submit evidence that actual harm had been inflicted on him as a result of the legislation required to be repealed, and that the damage be direct and independent in its elements and can be removed if it is issued A ruling that the legislation required to be repealed is illegal, that the harm is not theoretical, future or unknown, that the plaintiff has not benefited from part of the text required to be repealed, that the text required to be repealed has actually been applied to the plaintiff or is intended to be applied to him, and that all of this has not been achieved in the plaintiffs' suit, so their claim It is obligatory to respond from this aspect to him and to all of the foregoing, the Federal Supreme Court decided to dismiss the plaintiffs' suit in the name of Khazal Khashan and the Secretary General of the National Civil Movement / in addition to his job and charging them with fees and charges and attorney fees for the defendant's attorneys, in addition to his job, legal advisor Haitham Majed Salem and legal employee Saman Mohsen Ibrahim, are distributed between them in accordance with the law. The decision was issued in agreement final and binding on all authorities according to the provision of article (94) of the Constitution of 2005 and article (5/2nd) of the Federal Supreme Court law No. (30) for the year 2005 amended by Law No.

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(25) for the year 2021 and publicly understood on Safar 13/1443 AH corresponding to 9/21/2021 AD.

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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