

Republic of Iraq  
Federal Supreme Court  
Ref. 52 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3/7/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khaled Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mezir Sofi Nuhair – the independent candidate/  
Governorate of Ninveh/ the constituency No. (8).

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 Board of Commissioners in the Independent High Electoral Commission/ being in this capacity –his agent the legal counselor Ahmed Hasan Abid.

### **The Claim**

The plaintiff claimed through his agent that the results of the elections of members of the Council of Representatives for 2021 were announced by the Independent High Electoral Commission on (30/11/2021), including the results of the elections in Nineveh governorate/ 8<sup>th</sup> constituency, which numbered four seats, won by each From (I- Youssef Faraj Mohammed Abdullah Al-Sabawi), (2<sup>nd</sup>- Jamil Abdul Mahmoud Plumber Mutawahi), (third - Latif Mustafa Ahmed Warshan) and (4<sup>th</sup> Quota women - Basma Mohammed Basim Sabri) and according to the sequence of the highest votes, and that (i.e. the plaintiff) represents the reserve First on the men's side, after the ratification of these results by the Federal Supreme Court, the

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convening of the Council of Representatives and the swearing-in of the winners, he considers that he was more entitled to the parliamentary seat than the winning representative (Basma Mohammed Besim Sabri) because its membership is incorrect and contrary to article (16) of the Iraqi Parliament Elections Law No. 9 of the year (2020) and the articles (14, 16 and 38/1<sup>st</sup>) of the Constitution, which affirmed the principles of equality and equal opportunity and ensured the state's freedom of expression of opinion. On 2 February 2022, he objected to the validity of the membership of the representative Basma Mohammed Bassem Sabri in accordance with article (52/1) of the Constitution, and despite the passage of more than 30 days, the Council of Representatives did not decide to appeal until the case was filed on 10 March 2022) Since the Federal Supreme Court issued its decision in number (91/federal /2021) on 24 August 2021, including that the failure to decide on the objection by the Council of Representatives on the validity of the membership within (30) days of the date of registration of the objection It is considered as a rejection of the objection and since the distribution schedule of parliamentary seats came within the article (16/3<sup>rd</sup>) of the Law on elections to the Council of Representatives and specified the total seats in Nineveh governorate with (31) seats, of these (8) for women, which the second defendant's office had to apply accurately and properly, which stipulated (first, the representation of women is at least (25%) of the members of the Council of Representatives, secondly, the representation of women is at least (25%) of the number of members of the Council of Representatives in each province, and thirdly, the quota of women is determined for each province as specified in the attached table.)) and if all women do not win their votes in the application of the system of deputies in each

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province Quota. If some women win their votes, the number will be completed to (8) by applying the quota system contained in article 16 above, since the number of women who have won their votes is (6), which requires the application of the quota system only for (2) women in order for the total number (8), and that the legislator has specified the seats of women to not be less than (25%) of the number of seats in the province and not the district, and since article (15/3<sup>rd</sup>) of the same law stipulated (rearrange the sequence of candidates) In the electoral district according to the number of votes each received and is the winner of the highest votes according to the system of the first winner and so on for the remaining candidates) that is, the winners are arranged according to the number of their votes only, regardless of gender, and if articles (15 and 16) of the Law are applied above, the number of women who win the highest votes is (6) women, namely (Ikhlas Sabah Khader/First Circle) and (Ahlam Ramadan Fattah / First Circle) and (Cavin Saeed Mohammed Ahmed / Second Circle), (Ronze Ziad Sido / Second Circle) and (Vian Dakhil Saeed / Third Circle) and (Muntaha Abdul Wahab / 7th Circle) and therefore only need to replace (2) men, In order to achieve the number of seats (8) for women in Nineveh province and the replacement, is from the districts that no woman has won ( fourth 4 seats, fifth 5 seats, sixth 5 seats, eighth 4 seats), and the application of the text of the article (16/5<sup>th</sup>) by adding one seat (hypothetical) to the number of women winners per constituency, then dividing the output by the number of seats in that district, then adding a seat for women in the lower district, the proportions of the districts are as follows (fourth = 0.25/ fifth = 0.20/ 6th district =0.20/ 8 = 0.25) Thus, the five and six constituencies are of the lowest proportions and are replaced, and the eighth constituency with four seats is the

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share of men. Since the Commission went the opposite and made the distribution of seats for women to all districts of Nineveh province in terms of women who obtained seats in all constituencies in Nineveh province as a result of winning their votes and Quota, a total of 10 women, which is a serious mistake that confiscates the freedom of the voter to elect his candidate and is contrary to the article (38) of the Constitution, so the plaintiff requested from the Federal Supreme Court to rule that he be replaced by a member of the Iraqi Parliament in the Iraqi Parliament (Basma Mohammed Basim Sabri) and to burden the defendants with fees and expenses, and advocacy fees. The case was registered with this court in number (52/Federal/2022) and the legal fee for it was met in accordance with the provisions of article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendants of its petition and documents in accordance with article (2) / 1<sup>st</sup>) from the same rules of the procedure above, the deputy first defendant (Speaker of the Council of Representatives / being in this capacity) replied to the answer list dated 28 March 2022 its conclusion that the member of the Council of Representatives for the fifth election cycle (Basma Mohammed Basim Sabri) has been approved As a result of her election in accordance with the Decision of the Federal Supreme Court in number (175/Federal/2021) on 27 December 2021, and that the distribution of seats was made based on the provisions of the Council Of Representatives Elections Law No. 9 (2020) and the relevant regulations issued by the Independent High Electoral Commission and the court approved the results of that distribution in accordance with the provisions of the Constitution. They attached an answer list of (30) on 27 March 2022 submitted by the appellants to the validity of its membership and requested that it be considered an integral part

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of their list. Article (52/first) of the Constitution requires the dismissal of the case from this side, which was confirmed by the Federal Supreme Court by its decision in the number (91/federal/2021), and that is what was dealt with by the House of Representatives Elections Act in the article (16/III) of which targeted Article (49/IV) of the Constitution, this is the achievement of a representation of women at least a quarter of the number of members of the House of Representatives, which was decided by the legislator in section (II) of article (16) of the House of Representatives Elections Act that the quota of women was limited to at least (25%) of the number of members of the House of Representatives in each province, and the Independent High Electoral Commission committed itself to calculating seats reserved for women in the table attached to the law and did not deviate from it in achieving the will of the legislator, which aims to have representation of women In each constituency of Nineveh province, ensuring that the representation of women is not less than (a quarter) of the number of members of the House of Representatives at the level of each province, To say otherwise represents a waste of women's rights to representation as decided by the legislator in the table attached to the Law on Elections of the House of Representatives, and that the results of the elections announced by the Independent High Electoral Commission in the 8th district of Nineveh province were carried out in accordance with section (IV) of article (16) of the Law on Elections of the House of Representatives. Since the results of the elections did not exhaust the women's quota in Nineveh province and because mp (Basma Mohammed Besim) is the first winner in the eighth electoral district among women candidates, in which a female candidate did not win according to the system of the first winner and according to the order

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of the sequence of candidates in accordance with article (15/III) of the said electoral law, therefore mp (Basma Mohammed Besim) shall be the holder of constitutional and legal entitlement in occupying the seat of the women's quota in the eighth district of Nineveh province, the victory of two women in other constituencies in Nineveh province does not detract from the share of the eighth electoral district of Kuta established under the schedule attached to the law to achieve equal rights and duties between women and men, especially since securing the share of women in the quota system, as well as their electoral entitlement when winning the votes cast in the elections, is in line with the constitutional trend of achieving representation of women at least (a quarter) of the number of members of the House of Representatives at the minimum level of each level. A province in accordance with article (49/IV) of it, which the Federal Supreme Court has already set out in its numbered decision (8/federal/2019) on (26 August 2019). Thus, the plaintiff's statement in this regard is unsubstantiated by law, so they requested that the plaintiff's case be dismissed and charged all fees, expenses, and advocacy fees. . The second defendant, the President of the Independent High Electoral Commission/In addition to his post, replied to the answer list of (X/22/178) on (22 March 2022) its conclusion that the Independent High Electoral Commission Act No. (31) of 20 19. The legal way to appeal the decisions of the Board of Commissioners under articles (18 and 19) of it may not be challenged by the Decisions of the Council of Commissioners except before the Judicial Electoral Commission and its decisions shall be made under article (19/III) of the same law above, so that the Federal Supreme Court is not competent to hear the case, The eighth district in Nineveh province is (4) seats and the table attached to the Law on

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Elections to the House of Representatives has been set to be one woman, which is in line with the application of article (16) of it and the instructions for the distribution of seats issued by the Independent High Electoral Commission, the plaintiff has already appealed to the Electoral Judiciary the decisions of the Board of Commissioners concerning the preliminary results of the elections announced on 11 October 2021, which includes the ratification of the contested decision of the Board of Commissioners and the appeal, and when the second defendant's request to dismiss the case and charge the plaintiff with expenses. After completing the required procedures in accordance with the rules of procedure of the aforementioned Federal Supreme Court, a date for the case has been set in accordance with article (2/II) of it. On the appointed day, the court was formed and the agents of the parties attended and the case was openly initiated, the plaintiff's agents repeated the petition and requested the verdict, according to which the first and second defendants' agents replied, each of whom asked to dismiss the case for the reasons contained in the answering drafts attached to the proceedings, and the agent of each party reiterated his previous statements and requests, and where there was nothing left to say, the court has made the end of the argument clear and issued the following decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that Plaintiff Meiser Sophie Noher filed this case before this court against the defendants, the Speaker of the House of Representatives and the Chairman of the Council of Commissioners of the Independent High Electoral Commission in addition to their

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functions, in which he is requested to replace Mp Basma Mohammed Bassim as a member of the Iraqi Parliament and to charge fees and expenses. Upon scrutiny, it was found that the plaintiff had initiated the case within the legal period stipulated in article (52/II) of the Constitution of the Republic of Iraq for 2005, so the court decided to accept it in form, and when he looked at the reasons for the case and the requests contained in it and the regulations and mutual payments between the parties, he found that the plaintiff is a candidate for the province of Nineveh, the eighth electoral district, which has four seats, four candidates won, namely, the highest votes, The first Youssef Faraj Mohammed, the second Jamil Abdul Mahmoud, the third Latif Mustafa Ahmed and the fourth quota for women Basma Mohammed Basim, and the plaintiff Meiser Sophie Noher considered the first reserve in terms of men for the said constituency, and since paragraph (II) of article (16) of the Iraqi Parliament Elections Act No. (9) of 2020 stipulated that (the representation of women shall be at least 25% of the number of members of the House of Representatives in each of the Province) Paragraph (III) of the same article stipulates (the quota of women for each province is specified in the attached table), and the Independent High Electoral Commission has issued instructions for the distribution of seats for the Iraqi House of Representatives elections on the basis of the Commission's Law No. 31 of 2019, which is stated in article (II/D) of the article (3) of which ((if a woman does not win a seat in the electoral district according to the votes obtained in accordance with article (3/first c) of these instructions is done. Replacing the winning male candidate with the last seats in the constituency with a woman who received the highest votes from women in the same constituency)) Since the plaintiff is the winning candidate of men in

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the last seats of the eighth four-seat electoral district, and mp Basma Mohammed Besim is the woman with the highest votes of women in the same district, her replacement for the plaintiff is a valid application of the text of the article mentioned above as well as a proper application of the instructions for the distribution of seats for the Elections to the Iraqi House of Representatives, which aims to achieve a percentage of seats for women at least (25%) and twenty-five percent of the total seats in the House of Representatives as well as Ensures the investigation of the same percentage of the number of members of the House of Representatives in each province, and the decision of the Commission is correct and in accordance with the law, and in the absence of anything that violates the validity of the membership of Mp Basma Mohammed Basim challenged the validity of its membership, the case is due to be rejected. Accordingly, the FSC decided to judge by rejecting the plaintiff's case Mezir Sofi Nuhair, and to burden him with the fees and expenses for the agents of the defendants, the first, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim, the second, the official jurist Ahmed Hasan Abid amount of 100 thousand Iraqi dinars to be divided between them according to the law. The decision has been issued with the majority, decisive, and binding for all powers according to the provisions of the articles (52/2<sup>nd</sup> 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. The decision has been made clear on 3/Dhul Hijja/1443 Hijri coinciding 3/July/2022 AD.

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

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