

Republic of Iraq  
Federal Supreme Court  
Ref. 56 / federal /2022



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 7/6/2022 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, 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: Abdullah Hasan Abid Al-Yassiri/ his agent the Barrister Imad Hamad Nattah.

The Defendants: 1. The Speaker of the ICR/ being in this capacity – his agents the legal counselor Hytham Majid Salim and the official jurist Saman Muhsin Ibrahim.  
2. The Head of Commissioners Board in the Independent High Electoral Commission/ his agent the legal counselor Ahmed Hasan Abid.

### **The Claim**

The plaintiff claimed through his agent that on 30 November 2021, the Independent High Electoral Commission announced the final results of the 2021 elections for members of the Council of Representatives, including those of Baghdad/Rasafa/8<sup>th</sup> Constituency, which numbered three seats, and considered that the winners of this constituency, namely, the highest votes (1<sup>st</sup>/Ahmed Salim Abdul Rahman), (2<sup>nd</sup>/Thaer Abdul Jalil Hayal Shuwaili) and (3<sup>rd</sup>/ Quota Women/Madiha Hassan Adeb Al-Maksusi), Since the (Plaintiff - Abdullah Hassan Abid Al-Yasiri) represents the first

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reserve on the men's side of the aforementioned electoral constituency, and after the Federal Supreme Court approved the results of the elections by its decision in number (175/Federal/2021) the first session of the ICR has been convened on 9/1/2022, the Constitutional oath was taken for the Members of the Council. According to the plaintiff, he was entitled to the parliamentary seat of the member Madiha Hassan Atheeb Al-Maksusi, the winner of the women's quota, because her membership is incorrect and contrary to the text of the article (16) of the Iraqi Parliament Elections Law No. 9 of 2020 because he obtained a total of 5,992 votes, while the Representative Madiha Hassan received 2,462 votes, resulting in the confiscation of the voter's right and contrary to the provisions of the Constitution of the Republic of Iraq in articles (14, 16 and 38/1<sup>st</sup>) of which, and these articles had emphasized the principles of equality between Iraqis and equal opportunities, and the State shall guarantees the freedom of opinion. In accordance with article (52/1<sup>st</sup>) of the Constitution, the plaintiff, therefore, presented an objection to the validity of the membership of the Representative (Madiha Hassan Atib) before the Council of Representatives and was informed of the objection on 2 February 2022, despite the passage of more than thirteen days. However, the Council of Representatives has not yet decided to appeal, in accordance with article (52) of the article (52) of the aforementioned Constitution, it has brought this case before this court based on the court's decision in number (91/Federal/2021) dated on 24/8/2021 which included ((the failure to decide on the appeal by the Council of Representatives on the validity of the membership within 30 days of the date of registration of the objection and during the legislative chapter is considered a rejection of the objection... Etc.), since the distribution table of parliamentary

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seats came within paragraph (3<sup>rd</sup>) of article (16) of the aforementioned Council of Representatives Elections Law and specified the total seats in Baghdad governorate (69) seats, of these, (52) for men and (17) for women, so the second defendant's office, in being in this capacity, had to apply the paragraphs of the article (16) of the said law accurately and properly, but it violated this, which harmed the interest of the plaintiff and lost the parliamentary seat and obtained by (Madiha Hassan Atheeb - Women's Quota) since article (16/1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>) of the Council of Representatives Elections Law stipulates that (first- the representation of women is at least 25% of the number of members of the Council of Representatives. Second- Women are represented by at least 25% of the number of members of the Council of Representatives in each Governorate, third- the quota for women for each province is determined as specified in the attached table, and the total number of seats in Baghdad governorate (69) of which (17) is for women, and this term is absolute and applies to its release unless it is specified by a legal text, which confirms that the number of women seats for Baghdad province (17) and if not all women win their votes, the quota system will be implemented and if some women win their votes, the number will be completed to 17 by applying the quota system contained in the paragraphs of the article (16) mentioned above, Since the number of women who won their votes in Baghdad province was 13, which necessitates the application of the quota system only (4) women in order to become the total number (17), the Council of Commissioners violated the text of article (16) mentioned above when it distributed seats of the quota for women, as this article specified the exLaw mechanism that does not accept doubt, interpretation or diligence by granting seats of quota to women because the legislator specified the seats of women to at least

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25% of the number of seats in the province and not the department, If the text of articles (15 and 16) of the aforementioned electoral law were applied, since article (15/3<sup>rd</sup>) stipulates that (the sequence of candidates in the electoral constituency is rearranged according to the number of votes received by each of them, and is the winner of the highest votes according to the system of the first winner and so on for the rest of the candidates), the result is that (13) women win their votes and (4) men are replaced to achieve (17) seats for women and after the application of article (16/5<sup>th</sup>) of the Council of Representatives Election Law above, it turns out that the constituencies (1st, 12th and 13th) The lowest percentages are replaced by article (16/V/C) by replacing the lowest-voiced man with the highest woman of the three constituencies with their paragraphs (Alif, Beh and Jim) the percentage in (First Constituency 4 seats = 0.25), (8th Constituency 3 seats = 0.33), (10th Constituency 3 seats = 0.33), (12th Constituency = 0.20) and (13th Constituency 14 seats = 0.33) 25) And (16th Constituency 3 seats = 0.25) and then needs one woman to achieve the (17) seats for women so that the transition to the application of article (16/5<sup>th</sup>) which stipulates (if two or more constituencies get the same percentages a seat is added to the electoral constituency obtained with the lowest number of votes). Since the number of votes in the eighth district (59,977) and in the tenth district (52,836) votes and the sixteenth district (77,675) votes and since the tenth district (52,836) votes are the lowest number of votes to be replaced In the sense that a man comes out and a woman climbs and the number of women (17), and through this careful calculation that corresponds to the text of the article (16) of the aforementioned Council of Representatives elections law in all its paragraphs, the eighth electoral district/Baghdad/Rasafa, with a total

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of three seats, is all three. of the share of men being that the women's seats allocated to Baghdad governorate, the 17 have been completed and there is no need to reflect this on other constituencies, and since the Commission has gone the opposite and made the distribution of women's seats to all districts of Baghdad in that woman who hold seats in all constituencies in Baghdad province as a result of winning their votes and the quota have become nineteen, i.e. by increasing two seats (for quotas), this is a serious mistake that confiscates the freedom of the voter to elect a candidate himself and contrary to the text of the article (38) of the Constitution. Therefore, The plaintiff requested the Federal Supreme Court to rule that he be replaced by a member of the Iraqi Parliament in the place of Representative (Madiha Hassan Atheeb Al-Maksusi) and that the defendants be burdened with fees, expenses, and advocacy fees). The legal fee for it has been met in accordance with the provisions of article (1/3<sup>rd</sup>) of the Bylaw of the Supreme Federal Court No. (1) of 2005 and informs the defendants of its petition and documents in accordance with the provisions of article (2/1<sup>st</sup>) of the same Bylaw. The first defendant's agents answered by their answering list dated 30 March 2022, the conclusion of which is that the deputy challenged for the validity of her membership is a member of the Council of Representatives for the fifth election cycle and the result of her election has been approved in accordance with the decision of the Federal Supreme Court (175) On 27 December 2021, the distribution of seats was carried out based on the provisions of the Council of Representatives Elections Law No. 9 of 2020 and the relevant regulations issued by the Independent High Electoral Commission and approved by the Court. As a result of the distribution of seats following the provisions of the Constitution, therefore, requesting that the

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plaintiff's case be dismissed and to burden him with all judicial fees, expenses, and advocacy fees, the second defendant (Chairman of the Board of Commissioners of the Independent High Electoral Commission/being in this capacity) responded to the answering draft of 22 March 2022, which Its conclusion lies in the fLaw that the Independent High Electoral Commission Law No. (31) of 2019, charted the legal way to challenge the decisions of the Board of Commissioners in articles (18 and 19) of it and that the competent body to hear these objections is the judicial body of the elections Its decisions are made under article (19/3<sup>rd</sup>) of the same law and may not be appealed to any other party, so the Federal Supreme Court is not competent to hear such a case. Article (16/3<sup>rd</sup>) of the Council's elections law No. 9 of 2020 stipulates that (the quota for women per province as specified in the attached table) and by reference to the table attached to the law, which is an integral part of it, shows that the eighth district in Baghdad province is (3) seats and this table has been determined to be one woman, which is in line with the application of article (16) of the Electoral Law and the instructions for the distribution of seats issued by the Commission, and that the plaintiff has already specified that it be one woman and that the plaintiff has already specified that it be one woman. The decision of the Electoral Committee to challenge the decisions of the Council of Commissioners concerning the preliminary results of the elections was issued by the Electoral Judiciary Committee (1419/Judicial Electoral Commission/2021) dated 21/11/2021. This includes the ratification of the challenged decision of the Council of Commissioners to announce the preliminary results of the elections to the Iraqi Council of Representatives on 11 October 2021 and the appeal was received, and the decisions of the Judicial Electoral

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Commission are as indicated above, so he requested that the plaintiff's case be dismissed and to burden him with expenses. After completing the procedures required by the court's Bylaw mentioned above, a date for the case was set following article (2/2<sup>nd</sup>) of it, on the appointed day, the court was formed, and the plaintiff and his two agents, Imad Hamad Natah and Lawrence Imad Hamad, attended the first defendant of the Speaker of the Council of Representatives/being in this capacity, his agent, Legal Counsel Haitham Majid, and the second defendant, the Chairman of the Board of Commissioners of the Independent High Electoral Commission/being in this capacity attended as his agent, official jurist Ahmed Hassan Abid. The public in the presence of argument proceeded, and the plaintiff and his agents repeated the petition and requested to judge according to what was listed in the petition of the case, the court noted that lawyer Ahmed Said Musa submitted a request dated April 4, 2022, requesting to introduce his client Madiha Hassan Atheeb, a third person, along with the defendants, and because there was no need to bring her in alongside the defendants, the court decided to reject this request. The agent of the first defendant answered by requesting to reject the case for the reasons listed in the draft dated 4/4/2022, and the agent of the second defendant answered by requesting to reject the case for the reasons listed in the draft dated 22/3/2022. The plaintiff and his agent, the defendants, and their agents repeated their previous sayings and requests. Whereas nothing is left to be said. The end of the argument has been made clear, and the Court issued the following decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff brought the case before this court against the defendants (Speaker of the Council of Representatives and Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in their capacities) to demand that he be replaced by a member of the Iraqi Parliament in the Iraqi Parliament to replace the winning mp (Madiha Hassan Atheeb Al-Maksusi) (women's quota), as its membership is incorrect and to obtain more votes than in the results of the Baghdad/Rasafa/8 electoral district elections, and to burden them with fees, expenses and advocacy fees, based on article (52) of the Constitution of the Republic of Iraq 2005, and on the basis of the defendants' violation of the articles (14, 16 and 38/1<sup>st</sup>) of the Aforementioned Constitution of the Republic of Iraq, which confirmed the Principles of equality between Iraqis, equal opportunities and state guarantee of freedom of expression, and their violation of article (16) of the Iraqi Parliament Elections Law No. 9 of 2020, and the Federal Supreme Court finds that the content of article (52) of the Constitution goes to appeal the validity of the membership of members of the Council of Representatives regarding the conditions of membership starting from the nomination and the duration of his stay in the Council of Representatives, but this does not include with regard to the technical aspects of the electoral process in terms of counting the number of votes, the cancellation of the stations and other matters that fall within the powers of the Independent High Electoral Commission and are challenged before the judicial body of the elections and the decisions of the

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Commission are now subject to review and appeal based on article (19) of the Independent High Electoral Commission Law No. (31) of 2019, and since the plaintiff has already appealed to the Electoral Committee on the decisions of the Council of Commissioners on the preliminary results of the elections, the decision of the Judicial Electoral Commission of 1419/Judicial Electoral Commission/2033 was issued dated 1419/2031 On 21 November 2021, which included the ratification of the challenged decision of the Council of Commissioners to announce the preliminary results of the elections to the Iraqi Council of Representatives on 11 October 2021, the appeal was received, so there is no place for the plaintiff to challenge these proceedings before this court. As for the quota for women and the distribution of seats, the Federal Supreme Court finds that the Constitution of the Republic of Iraq 2005, article (49/4<sup>th</sup>) stipulates that (the electoral law aims to achieve a representation of women of at least a quarter of the number of members of the Council of Representatives), in support of the Iraqi Parliament Elections Law No. 9 of 2020, which adopted the electoral district system and stipulated that women should be at the rate of one woman in each constituency, if a woman wins within the electoral district, there is no need to apply the quota for women, following article (16/I, 23 and 4) of the Said Law, as paragraph (1<sup>st</sup>) of the said article stipulates that (women are represented at least (25%) of the number of members of the Council of Representatives). Paragraph (2<sup>nd</sup>) of which stipulated that (the representation of women shall be at least (25%) of the number of members of the Council of Representatives in each province), and paragraph (third) of which stipulated (the quota of women for each province as specified in the attached table), while paragraph (4<sup>th</sup>) of the above-mentioned article stipulated (if the

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Women quota is exhausted according to the results of the elections in the province, there will be no replacement process), since the table attached to the origin of the law based on an article (3<sup>rd</sup>) of the article (16) of the Aforementioned Council of Representatives Elections Law is part of the aforementioned law, under which the provinces were divided into constituencies and the quota of quota for women in each constituency was adopted based on the table by one woman in each electoral district, the purpose of which is the legislator's desire to represent women at the constituency level in one province, this is evidenced by the fLaw that the legislator has limited the number of constituencies in the Republic of Iraq to 83 constituencies, and that the quota of 83 women, by one woman per constituency, to ensure that women are fairly represented at the provincial level according to electoral districts, and since the concept of quota for women is an exception to the general origin, that concept may not be expanded or measured, and therefore the legislator has approved in accordance with the text of article (16/4<sup>th</sup>) of the Aforementioned Council of Representatives Elections Law, that there will be no replacement if the Women quota is exhausted according to the election results in the province, as long as the depletion of the feminist quota is carried out at the constituency level in the province, to ensure that a woman is represented in it, whether she has won her votes or the quota of women, this has been approved under article (16/3<sup>rd</sup>) of the aforementioned Council of Representatives Elections Law, which stipulates (the quota of women is specified for each province as specified in the attached table). Referring to the table attached to the law, which is an integral part of it and has the same mandatory force as the provisions and provisions of the aforementioned law, it became clear that the number of seats in the eighth district in The

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Province of Baghdad Al-Rusafa is (3) seats and this table has been determined to have a quota of women in which one woman is, which is in line with the application of article (16) of the above-mentioned Council of Representatives Elections Law and the instructions for the distribution of seats for the elections of the Council of Representatives issued by the Independent High Electoral Commission. Based on the provisions of article (3/2<sup>nd</sup>) of which in all its paragraphs, particularly paragraph (c), came to confirm the provisions of the Council of Representatives Elections Law implicitly mentioned in the text of the article (16/3<sup>rd</sup>), which specified the quota for women in the same constituency to ensure that women are equally represented in one province and according to their constituencies. Paragraph (Jim) of the above-mentioned instructions stipulates that (if the quota of women is exhausted following the results of the elections in the electoral district, those results will be adopted and there will be no replacement process) and based on the above, the application of the women's quota system approved by the legislator and adopted by the Independent High Electoral Commission in accordance with the provisions of the Council of Representatives Elections Law and the instructions for the distribution of seats for the elections of the Council of Representatives issued by the aforementioned, was based on effective and valid legislation and did not include a violation of the provisions of the Constitution of the Council of Representatives. Republic of Iraq 2005, particularly articles (14, 16, and 38/1<sup>st</sup>), which emphasized the principles of equality between Iraqis, equal opportunities, and state guarantee of freedom of expression, and article (49/4<sup>th</sup>), which specified the representation of women in the Iraqi Parliament by at least a quarter of the number of members of the Council of

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Representatives, in addition to the above, this court has already decided to rule on the constitutionality of article (16) of the above-mentioned Council of Representatives Elections Law based on the two rulings issued 44/2021 on 21 September 2021, which includes (ruling to dismiss the case about the appeal of the article (16) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 for not Constitutional violation) in the number (151/federal/2021) on 28 December 2021 contained (the ruling to dismiss the case concerning the challenge to the constitutionality of article (16/3<sup>rd</sup>) of the Council Elections Law No. (9) of 2020 for pre-adjudication), and since the provisions of these The Court is binding on all authorities on the basis of article (94) of the Constitution and Article (5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, which requires that the Independent High Electoral Commission comply with article 16. From the above-mentioned Council of Representatives Elections Law, in particular, paragraph (3<sup>rd</sup>) of which is constitutional, and based on the above, the application of the Independent High Electoral Commission provisions of article (16/3<sup>rd</sup>) of the above-mentioned Council of Representatives Elections Law and the adoption of the quota for women according to the electoral districts in each province. The replacement of the Representative was challenged by the authenticity of its membership (Madiha Hassan Atheeb Al-Maksusi) following the quota of women in the eighth electoral district in Baghdad al-Rasafa with the plaintiff with the total number of votes more than it, was valid and following the provisions of the law to apply the quota of women at the level of the same constituency and not at the level of the province in accordance with the detail mentioned above, and because there is no defect in the validity of the membership of mp

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(Madiha Hassan Atheeb Al-Maksassi) member of the Iraqi Parliament, which requires the dismissal of the case, and when the Federal Supreme Court decided Ruling on the following:

1. To reject the case of the plaintiff (Abdullah Hasan Abid Al-Yassiri) for challenging the authenticity of the Representative (Madiha Hasan Autheeb Al-Maksusi) membership, the Member of the ICR.
2. To burden the plaintiff with the expenses, fees, and advocacy fees for the agents of the defendants/ being in their capacities, each of, the legal counselor Haytham Majid Salim, the official jurist Saman Muhsin Ibrahim, and the legal counselor Ahmed Hasan Abid amount of 100 thousand Iraqi Dinars. To be divided in accordance with the law.

The decision has been issued with the majority, decisive, and binding for all powers according to the provisions of the articles (52,94) of the Constitution of the Republic of Iraq for 2005, and articles (4/9<sup>th</sup>) (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 7/Dhul Qeda/1443 Hijri coinciding 7/June/2022 AD.

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

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