

Republic of Iraq
Federal Supreme Court
Ref. 65 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/8/2023 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, and Dyar Mohammed Ali, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mohammed Nassir Al-Karbouli – his agents, the barristers Imad Hamad Nattah and Lawrence Imad Hamad.

The Defendant: Speaker of the ICR/ being in this capacity – his agents, the director-general of the legal department Ast. Prof. Dr. Sabah Jumaa Al-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his agents that he was nominated for the 2021 Iraqi Council of Representatives elections within the Iraq Resolve Alliance for (Baghdad Governorate / Karkh - Electoral District No. 12, Sequence 31), and he was not lucky to win, as he obtained (3747 votes), and because he obtained the highest votes for the losing candidates, he currently represents the first reserve, and that MP (Gandhi Muhammad Abdul Karim Al-Kasnazani) was a candidate within the National Progress Alliance for the same governorate and constituency and in sequence (113), and for several reasons, the aforementioned Representative inspected one of the Conditions for membership in the

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Council of Representatives In application of the provisions of Article (52/1st) of the Constitution of the Republic of Iraq for the year 2005, the plaintiff objected before the Council of Representatives to the validity of the membership of the aforementioned Representative, and the objection was registered with a number contained (Alif. Ain/1679 on 14/2/2023) and despite the passage of the period of (thirty) days, the objection was not decided, which is considered a rejection, so and based on Article (52/2nd) of the Constitution, he filed this lawsuit to challenge the validity of the membership of the aforementioned Representative due to the existence of several rulings issued against him by the courts of Amman in the Kingdom Jordanian Hashemite, (Including its classification of fraud, including its classification of crimes in violation of the Labor Law and others classified as a financial claim), as well as there are other lawsuits in the Court of First Instance of Karkh on the subject of the usurpation of real estate, which was forcibly evicted by the Karkh Execution Department according to the details contained in the lawsuit petition, and where a member of the Council of Representatives is supposed to have integrity and preserve citizens' funds and properties and not usurp their real estate, due to the large number of these lawsuits of the deputy, which makes him dishonest of the position of a member of the Council of Representatives, in addition to the issuance of a judgment against him in 1999 by the Iraqi criminal courts for the crime of forgery, which is one of the crimes against honor, he was in a post of minister when he was serving as Secretary General of Endowments and Religious Affairs from 1996 to 2002 within the Executive Committee for Autonomy in Kurdistan, which was linked with the Iraqi government under the former regime, and therefore he is covered by accountability and justice procedures, not to mention being awarded a medal of courage from the former regime's president, and for all of the above, the

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prosecutor asked this court to approach the Criminal Evidence Directorate to provide it with the precedents of MP Gandhi Muhammad Abdul Karim Al-Kasnazani and to rule to replace him as a member of the The Iraqi Council of Representatives replaces the aforementioned MP and charges him fees, expenses and attorney's fees. The case was registered with this court in the number (65/Federal/2023), the legal fee was collected and the defendant was informed of her petition and documents in accordance with Article (21/1st and 2nd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, and his agent replied with the reply regulation dated 12/4/2023, it concludes that the Representative whose membership is contested had previously won the 2020 Council of Representatives elections, and the Independent High Electoral Commission announced his official victory, which means that he fulfills all the conditions for membership in the Council of Representatives, and the Federal Supreme Court has ratified the result of the election of his election if he lacked any of the conditions for membership, the Independent High Electoral Commission would not have allowed him to participate initially in the general elections, the plaintiff had to object to the acceptance of the nomination of the aforementioned deputy when announcing the names of the candidates, as Article (20/1st) of the Independent High Electoral Commission Law No. (31) of 2019 allowed any political party or candidate to appeal the decision of the Board of Commissioners within three days starting from the day following its publication, and among those decisions that can be appealed is the decision of the Board of Commissioners to approve the Register of lists of candidates for elections under Article (10/3rd) of the law and the decision to ratify the final results of the elections under Article (10/7th) of it, and the claim of the existence of judicial rulings, foreign or national, against him on the assumption of their validity does

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not require a ruling that his membership is invalid, It is known that foreign judicial rulings are implemented under the Law on the Implementation of Foreign Courts Judgments in Iraq No. (30) of 1928 under specific contexts and assets, while the lawsuit for the existence of a forced eviction decision for a property that was occupied by an Iraqi citizen, assuming the existence of this decision, it is a decision that does not deprive the aforementioned Representative of his right to run for general legislative elections and win, and one of the conditions for accepting candidacy for membership of the Council of Representatives is that the candidate is not included in accountability and justice procedures, had he been covered by these procedures, his nomination would not have received approval from the Independent High Electoral Commission, so the defendant's agent requested that the plaintiff's claim be dismissed and charged the fees and expenses. After completing the procedures required by the court's internal regulations, a date was set for the consideration of the case without pleading based on Article (31/5th) thereof, in which the court was formed and reviewed the plaintiff's lawsuit, his grounds and requests, and the list of the defendant's agent according to which he requested the dismissal of the lawsuit for the reasons stated therein, and the court reviewed the list of the defendant's agents dated 29/5/2023 and attached to it a certificate of non-conviction belonging to the challenged deputy with the validity of his membership, provided by the same deputy, which is issued by the Hashemite Kingdom of Jordan / Amman Court of First Instance with the reference number (23155702 on 4/4/2023) indicating that the referred to is not convicted of a felony or misdemeanor that violates honor and public morals, the court noted that the plaintiff agent did not submit the criminal decisions that the court assigned him to produce, and since the

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court completed its scrutinies, the end of the minutes has been made clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit (Muhammad Nasser Deli Al-Karbouli) is focused on challenging the negative decision of the Council of Representatives to reject the plaintiff's objection to the validity of the membership of Representative (Gandhi Muhammad Abdul Karim Al-Kasnazani) by not deciding on the objection within a period of (thirty) days from the date of registering the objection, and the plaintiff requested to invite the defendant in addition to his job to plead and rule to replace the aforementioned Representative as a member of the House of Representatives, all by claiming that Representative (Gandhi Muhammad) is sentenced in Several cases in the courts of the Hashemite Kingdom of Jordan, including a fraud case, as well as he was accused of usurping the property of a citizen and there is an executive file against him, and he was also assigned forgery crimes dating back to the time of the former regime, as well as its inclusion in accountability and justice procedures. Upon careful consideration of the plaintiff's claim by this court and the reasons he reviewed, it was found that everything attributed by the plaintiff to the Representative (Gandhi Muhammad Abdul Karim) was not proven by conclusive and irrefutable evidence and did not exceed the scope of the claim and allegation, especially since the Representative, during the period of his candidacy for the elections, had passed the conditions for candidacy and the Independent High Electoral Commission accepted his candidacy after verifying the conditions, later on, the court also reviewed the (non-

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conviction) certificate issued by the Amman Court of First Instance in the Hashemite Kingdom of Jordan under reference number (23155702) on 4/4/2023 - including the fact that Representative (Gandhi Muhammad Abdul Karim Al-Kasnazani) is not convicted of a felony or misdemeanor that violates honor and public morals - and the plaintiff did not provide any evidence to prove the crimes assigned to the aforementioned Representative of forgery and other crimes that violate the conditions for membership in the House of Representatives, and therefore the court finds that there is nothing that prejudices the validity of the membership of Representative (Gandhi Muhammad Abdul Karim Al-Kasnazani), for all of the above, the court decided to dismiss the plaintiff's lawsuit and charge the expenses, fees, and advocacy fees to the defendant's agents / being in this capacity an amount of (one hundred) thousand dinars. The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (52/2nd) and (94) of the Constitution of the Republic of Iraq for 2005 and Article (5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 18/Muharram Al-Haram/1445 Hijri coinciding with 6/August/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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