

Republic of Iraq
Federal Supreme Court
Ref. 74 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 20.6.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Galib Ammer Shnen, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed 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:

Doaa Kazem Bisht - her attorney, the lawyer Oreibi Shanin Muhammad Al-Zamili.

The defendants:

1. The Speaker of the Council of Representatives, in addition to his capacity - his two attorneys, the legal advisor Haitham Majed Salem, and the human rights employee Saman Mohsen Ibrahim.
2. Head of the Independent High Electoral Commission / in addition to his capacity - his deputy, legal advisor Ahmed Hassan Abd.
3. The deputy whose membership is being challenged is Ali Gharkan Amer Hussein Al-Dalfi.

The claim:

The plaintiff claimed, through her attorney, that on February 15, 2022 she submitted an objection to the Iraqi Council of

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Representatives, and this objection was recorded in the number (Mim. RA. 93 the president office) she appeals the validity of the membership of MP (Ali Gharkan Amer Hussein Al-Delfi), and given that more than a month has passed, and the Council of Representatives has not decided on it, and based on the Federal Supreme Court Decision No. (91/Federal/2021), which considered the lack of a decision as a refusal, and since she is a candidate for the fifth parliamentary session among the candidates of Wasit Governorate, the first electoral district, and she obtained (1664) valid votes according to what she announced the Independent High Electoral Commission, where the women's seat was calculated for the candidate who won with her electoral strength (Sundas Abdul Hassan Thajil Al-Lami) and obtained (12,435) votes, and upon the proper legal practical application of the text of Article (15/Third) of the Iraqi Parliament Elections Law No. (9) for the year 2020 and rearranging the hierarchy of candidates (Sundus Abed Abdul Hassan Thajil Al-Lami) will be among the highest sequencing of candidates regardless of her gender, and thus she has won the parliamentary seat with her electoral strength and competition for men, so it should be (women's quota) for the next candidate with the number of votes within the electoral district and in accordance with the application of Articles (15/Third) and (16/Third) of Law No. (9) for the year 2020. Her objection was based on the invalidity of the membership of the deputy whose membership is being challenged for the following reasons: First: The Council of Representatives legislated in its fourth

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parliamentary session, the Iraqi Parliament Elections Law No. (9) for the year 2020 to be the effective and enforceable law for the fifth electoral cycle. The mechanisms by which the (women's quota) is calculated in each electoral district of the governorate. Second: To facilitate the work of this law, the Board of Commissioners issued (instructions for distributing seats for the elections of the Council of Representatives) based on the provisions of Article (47) of the aforementioned Elections Law and Articles (1/First) and (10/eighth) of the Independent High Electoral Commission Law No. (31) for the year 2019, and these instructions violated the constitution in articles (14, 16, 20 and 38 / first), which affirmed the principles of equality, equal opportunities, the right to participate in public affairs, enjoyment of political rights, and the state's guarantee of freedom of expression of opinion. Third: occupying the parliamentary seat in a manner contrary to the provisions of the constitution is considered void pursuant to the legal rule (what is built on void is void), and the second defendant, in addition to his position, did not take into account when distributing women's seats in electoral districts the application of the provisions of the law in accordance with the principle of justice and equality and did not apply the provisions of the law. Article (15/Third) of the Elections Law and did not work in the schedule attached to it, which the law considered an integral part of it and stipulated in Article (16/Third), and he deliberately worked according to ad hoc jurisprudence in violation of the constitution and the law, as well as violating Article (50) of the same law was

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mentioned above by issuing instructions that contradict the provisions of the law. Accordingly, the plaintiff requested the Federal Supreme Court to rule the invalidity of the membership of MP (Ali Gharkan Amer Hussein Al-Delfi) and the right to occupy her parliamentary seat within her constituency and to charge the defendants fees, expenses, and attorney fees The case was registered with this court in No. (74/Federal/2022), and the legal fee was collected for it according to the provisions of Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with Article (2/first) From the same rules of procedure of the Federal Supreme Court mentioned above, the first defendant's attorney (the Speaker of the Council of Representatives / in addition to his position) responded with the answer list dated 10/4/2022, its summary is that (the representative whose membership is challenged) is a member of the Council of Representatives for the fifth electoral cycle, and the results have been approved the elections are in accordance with Federal Supreme Court Decision No. (175/Federal/2021) dated 27/12/2021, and that the distribution of seats was carried out in accordance with the provisions of Parliament Elections Law No. (9) for the year 2020 and the relevant regulations issued by the Independent High Electoral Commission. The court ratified the final results of the elections in accordance with the provisions of the constitution, as well as achieving the minimum percentage of women in the governorate and accordance with the

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table attached to the Council of Representatives Elections Law No. (9) of 2020 (the electoral constituencies) and Article (16/second, third and fourth) of it does not allow adding a quota for women in the event that the presence of the female component of that electoral district is realized. That is, if the female quota is exhausted in the governorate, there will be no replacement process. And that the quota for women was an exception to the original principle of equality stipulated in Article 14 of the Constitution, and that the rule is that the exception is not expanded or measured, and it is estimated by its value, in addition to the fact that the Federal Supreme Court ruled in accordance with its decision No. (44 / Federal / 2021). On 9/21/2021, the plaintiff's lawsuit was dismissed to challenge the constitutionality of Article (16) and its paragraphs. Therefore, they requested that the plaintiff's lawsuit be dismissed and that he be charged with all judicial fees and attorney's fees. The second defendant (the head of the Independent High Electoral Commission/in addition to his capacity) responded to the answer list in the number (Kha./22/228) on 10/4/2022, it summarizes that the Independent High Electoral Commission Law No. (31) of 2019 has drawn the legal path for appeals against the decision. On the authority of the Board of Commissioners according to Articles (18 and 19) thereof and through them, the authority competent to consider objections to the decisions issued by the Council of Commissioners is the Judicial Authority for Elections, and it is not permissible for the Supreme Court to appeal against that case before the Court. Article (16/third) from Parliament

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Elections Law No. (9) of 2020 to determine the quota for women for each governorate as specified in the attached table, and with reference to the table attached to the law, which is an integral part of it, the first constituency in a district defined a governorate (4) The table is that there should be one woman in those seats. Referring to the election results, there is a female candidate who won her votes in one of the seats. Consequently, that constituency has exhausted the women's seat with the victory of that candidate, which is in line with the application of Article (16) of the Elections Law and the instructions for distributing seats for elections issued by the Independent High Electoral Commission. The plaintiff also previously submitted an appeal before the Space Elections Commission against the decisions of the Board of Commissioners related to the preliminary results of the elections, and it issued its decision numbered (1150/ Judicial Commission for Elections, dated December 21, 2021, of the Commissioners' election dated November 20, 2021). On 10/11/2021, the Iraqi Parliament received the appeal, and that the decisions of the Judicial Committee for the elections are final in accordance with what was shown above, so it was requested that the plaintiff's case be dismissed and that she be charged with the expenses. The third defendant responded with the answer list dated 4/17/2022, in summary, that he had previously been nominated for the Council of Representatives elections (the fifth session), which was held on 10/10/2021 for Wasit Governorate / the first electoral district, and the final results of the elections were announced by his

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victory in them and the approval of the Federal Supreme Court And since the constituency in which he won, the candidate (Sundus Abdul Hassan Thajil Al-Lami) also won and based on the provisions of Parliament Elections Law No. (9) of 2020 Article (16/4), which states (if the women's quota is exhausted according to the results of the elections in the governorate, there will be no replacement process), in addition to the fact that the Federal Supreme Court had previously decided in the case (44/Federal/2021) that women's representation may be achieved by winning the highest votes, and therefore the quota issue referred to in the constitution is not taken, and the constitutional articles on which the plaintiff and her attorney relied in the case all confirm his eligibility for the parliamentary seat as he obtained (7610) votes and the plaintiff Received (1664) It is inconceivable that the candidate who wins the highest number of votes will be replaced by the female candidate with the lowest number of votes. Upon him, when he submitted a request to dismiss the plaintiff's lawsuit and pay all the expenses, and after completing the procedures required by the aforementioned bylaw, a date was set for the pleading, and the parties were informed of it, and on the appointed day the court was formed. In the Council of Representatives, in addition to his capacity, his deputy, legal advisor Haitham Majed Salem, and the second defendant, the head of the Independent High Electoral Commission, attended, in addition to his capacity, of his deputy, legal advisor Ahmed Hassan Abd. The attorneys of the first and second defendants answered and asked each

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of them to dismiss the case on behalf of his client for the reasons stated in the answer lists linked with the case papers. The defendants made their previous statements and requests, and since there is nothing left to be said, the court decided on the conclusion of the pleading and issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court of what was stated in the plaintiff's lawsuit and the mutual regulations between the two parties and what was stated by their agents in the pleading session, it was found that the plaintiff's representative requests a ruling that the procedures issued by the defendants are unconstitutional, each of the Speaker of the Council of Representatives in addition to his capacity and the Prime Minister in addition to his capacity, which It led to the vote to dismiss his client, the plaintiff, the Governor of Salah al-Din (Ammar Jabr Khalil), from his position by the Council of Representatives in the eighth session held on 5/19/2022 based on the letter issued by the Prime Minister's Office in the number (3002/2292262) On 04/26/2022, the Court finds that its jurisdiction in constitutional oversight extends to the laws and regulations in force only, without other legislation, decisions or procedures based on the provisions of Clause (First) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 Also, the jurisdiction of the Federal Supreme Court specified in Articles (52 and 93) of the Constitution and some other special laws It has emptied its competence to consider the decisions issued to

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dismiss the governor, and since Law No. (15) of 2010 (the First Amendment Law of the Law of Governorates Not Organized in a Region No. (21) of 2008 as amended) specified the body to appeal against the decisions issued to dismiss governors from their positions, as Article (2) of the aforementioned amendment law stipulates that “Paragraphs (4 and 5 of Clause 8th of Article 7) of the law shall be repealed and replaced by the following: 4. The governor may appeal the dismissal decision to the Administrative Court within (15) fifteen days. From the date of his being notified of it, and the court decides on the appeal within a period of (30) thirty days from the date of receiving the appeal, and he must conduct the work of the governorate during it)). For all of the above, the Federal Supreme Court decided to dismiss the claim of the plaintiff, Ammar Jabr Khalil, and to charge him the fees, expenses, and attorney fees for the attorney of the first defendant, the Speaker of the Council of Representatives, in addition to his capacity, the legal advisor Haitham Majed Salem and the attorney of the second defendant, the Prime Minister, in addition to his capacity, the legal advisor Haider Ali Jaber, an amount of one hundred One thousand dinars distributed among them in accordance with the law. The decision was issued by agreement, conclusive and 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 (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and

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publicly understood in 20/ Dhul-Qa'dah / 1443 AH corresponding to
20/6/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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