

Republic of Iraq
Federal Supreme Court
Ref. 75 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 22/6/2022 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: Jehan Abdulla Abbas Al-Mihyawawi – her agents the barristers Uraibi Shunain Mohammed Al-Zamili, Sadiq Rasool Al-Muhanna, and Nada Abdul Ridha Mutashar.

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- The President of the Independent High Electoral Commission/ being in this capacity – his agent the official jurist Ahmed Hasan Abid.
3- The Representative whose membership authenticity is challenged – Hamid Ahmed Salih Al-Qura Guli his agent the barrister Hameed Obaid Mahmood.

The Claim

The plaintiff claimed through her agent that on 15 February 2022 she filed an objection with the Iraqi Parliament and this objection was recorded in the number (Mim. Ra 92- an incoming post for the office of the President) challenging the validity of the membership of mp (Hamed Ahmed Saleh Al-Qura Guli), and due to the past of more

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than a month and the Council of Representatives did not decided or presented on the agenda for the purpose of voting on it and based on the decision of the Federal Supreme Court (91/Federal/2021) is considered a non-decision of rejection, and since the plaintiff is a candidate for the fifth parliamentary session among the candidates of the province of Baghdad constituency (2021) 17) It received (955) valid votes, and higher than (10) women candidates within this constituency, according to the Independent High Electoral Commission, where the women's seat was awarded to the winning candidate with her electoral power, which finished third among The winning candidates for two previous sessions the Representative (Zaytoun Hassein Murad Al-Dulaimi) and the winner (6377) votes, note that the electoral district No. 17 in Baghdad province is among the electoral district (4) seats in which the quota is not exhausted, which is supposed to represent two women in the proper legal prLawical application of the text of article (15/3rd) of the Iraqi Parliament Elections Law No. 9 of 2020 and by rearranging the sequence of candidates, the candidate (Zaytoun Hussein Murad al-Dulaimi) is among the highest sequences and is the third among the winners regardless of gender and thus has won the parliamentary seat. With its electoral power and competition for men. Therefore, the women quota shall be for the candidate, which is followed by the number of votes within the electoral district and in accordance with the application of articles (15/3rd) and (16/3rd) of the aforementioned electoral law, since the percentage of district no. 17 consisting of (4) seats is lower. Of the percentages of three-seat constituencies, since (6) quota seats have been added to Baghdad province, the addition of constituencies with lower percentages will be in paragraphs (fifth, sixth, seventh, and eighth) of article (16) of the Law Elections, and

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the plaintiff has challenged the invalidity of the membership of the deputy challenged for the following reasons: first: the legislator drew up the constitutional and legal way to fill the parliamentary seat for the winners, men, and women, by Law No. (9) of 2020, specifically Article (16) in all its paragraphs, which mentioned the mechanisms by which the quota of women is calculated in each of the province's constituencies. Second: to facilitate the introduction of the aforementioned law, the Council of Commissioners (instructions for the distribution of seats for elections to the Council of Representatives) was issued based on the provisions of article (47) of it, section (1st) of Article (1) and section (8th) of the article (10) of the Independent High Electoral Commission Law No. (31) of 2019. These instructions violated the constitutional texts of articles (14), (16), (20), and (38/first) which emphasized the principle of equality, the principle of equal opportunities, the right of citizens to participate in public affairs and political rights, including election and candidacy, and the state's guarantee of the right to express the opinion. Third: The holding of the parliamentary seat in a manner contrary to the provisions of the Constitution is invalid pursuant to the legal rule (what was built on falsehood is invalid), and the second defendant, the President of the Independent High Electoral Commission in addition to his post, did not take into account in the distribution of women's seats in electoral districts the application of the provisions of the law in accordance with the principle of justice and equality, did not apply the provisions of article (15/3rd) of Law No. (9) of 2020 and did not work in the attached table, which the law considered an integral part of it and which was stipulated in article (16/3rd), he betook to impromptu jurisprudence contrary to the Constitution and the law, and violated article (50) of the same law by

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issuing instructions contrary to the provisions of the law, so the plaintiff asked the Federal Supreme Court to rule that the membership of mp (Hamed Ahmed Saleh) was invalid and that she should occupy the parliamentary seat within her constituency and to burden the defendants with fees, expenses, and advocacy fees. The case was registered with this court in number (75/Federal/2022) and the legal fee for it was met in accordance with article (1/3rd) of the Rules of Procedure of the Federal Court No. (1) of 2005 and informs the defendants of its petition and documents in accordance with article (2/1st). From there, the deputy defendant (Speaker of the Council of Representatives/ in addition to his job) replied to the answer list dated April 10, 2022, and it concludes that mp (Hamed Ahmed Saleh Al-Qura Guli) is a member of the Council of Representatives for the fifth election cycle and the results have been approved Elections in accordance with the decision of the Federal Court numbered (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 and related regulations issued by the Independent High Electoral Commission and the Court approved the final results of the elections in accordance with the provisions of the Constitution. The minimum proportion of women in the province, following the table attached to the Council of Representatives Elections Law (constituencies) and articles (16/2nd, 3rd, and 4th), does not allow for the addition of quotas for women if the feminist component of that constituency is achieved, so if the female quota is exhausted in the province, there will be no replacement. That the quota of women was an exception to the original principle of equality provided for in article (14) of the Constitution and that the rule is that the exception does not expand, is

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not measured, and is valued as much as it is. They, therefore, requested that the plaintiff's case be dismissed and that all judicial fees, expenses, and advocacy fees be charged. The second defendant, the President of the Independent High Electoral Commission, replied with the answer list of 10 April 2022, concluding that the Independent High Electoral Commission Law No. (31) of 2019 had charted the legal way to challenge the decisions of the Commissioners under articles (18 and 19) of it and that the competent authority to consider objections to decisions issued by the Board of Commissioners is the judicial body of elections and may not appeal to any other party, so the Federal Supreme Court is not competent to hear that case, as per article (16/3rd) of the Electoral Law to (determine the quota of women for each province as specified in the attached table) and that the seventeenth district/ Baghdad governorate is (4) seats and since there is a female candidate who has won her votes in one of the seats in the electoral district and therefore that district has exhausted the seat of women, the plaintiff has previously appealed to the Electoral Judiciary on the decisions of the Council of Commissioners concerning the preliminary results of the elections, and the decision of the Electoral Judiciary (1140/Judicial Electoral Commission /2021) was issued on 21 October 2021, which included the ratification of the contested decision of the Council of Commissioners to announce the preliminary results of the elections to the Iraqi Council of Representatives on 11/10/2021 and the appeal was received, the decisions of the Judicial Electoral Committee are based on article (19/3rd) of the aforementioned Commission Law, and the decision of the Supreme Federal Court (191/Federal/2021) in the case brought by the same plaintiff and on the same subject has already been issued for lack of jurisdiction. As the reasons for the

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request for the plaintiff's dismissal and charges were given. The third prosecutor, the representative who challenged the authenticity of his membership, also answered a reply list dated 17 May 2021, which contained the same defenses as the first and second defendants regarding the plaintiff's follow-up to the legal path specified to challenge the election results, adding that he had received (6,285) votes within the Chamber (17), The percentage of women's representation is (25%) within Baghdad province in general and the electoral district (17) in particular according to the article (49/4th) of the Iraqi constitution in force and may not sacrifice the votes of voters and replace a woman who received fewer votes than under the women's quota because this is contrary to the will of the voter and the freedom of expression guaranteed by articles (20 and 38/1st) of the Constitution. The plaintiff also received only 955 votes and a difference of (5,330) for him, in addition to the fLaw that the Federal Supreme Court issued its decision in the number (191/federal/2021) in the case brought by the same plaintiff and on the same subject and ordered the dismissal of the case for lack of jurisdiction. He, therefore, requested that the plaintiff's case be dismissed and that all judicial fees, expenses, and advocacy fees be charged. After completing the procedures stipulated in the aforementioned rules of procedure, a date for the case was set in accordance with the provisions of article (2/2nd) of it, and the parties were informed, and on the appointed day the court was formed and the plaintiff in particular (Jehan Abdullah Abbas) and her lawyers Sadiq Rasul Al-Mahna and Nada Abdul Rida attended. The first defendant (Speaker of the Council of Representatives/ being in this capacity) and his agents, Legal Counsel Haitham Majid Salem and official jurist Saman Mohsen Ibrahim, and the second defendant (president of the

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Independent High Electoral Commission/ being in this capacity) and his agent, the official jurist Ahmed Hassan Abid, attended. The third defendant (the representative who challenged the authenticity of his membership, Hamed Ahmed Saleh), his lawyer Hamid Obeid Mahmoud, attended, and the argument proceeded. The plaintiff and her agents reiterated the petition and requested the judge according to it, the defendants' agents answered and each of them asked to dismiss the case for the reasons in the answering drafts presented in the case, the plaintiff and her agents and the defendants' agents repeated their statements and previous requests and where there is nothing left to say. The end of the argument has been made clear, and the Court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff claimed to challenge the validity of the membership of mp (Hamed Ahmed Saleh) and to demand that his membership be invalidated and the right of the plaintiff in the parliamentary seat within her constituency based on the article (52/2nd) of the Constitution of the Republic of Iraq for 2005 for the reasons and reasons she submitted and referred to in the preamble to this provision and when looking at the plaintiff's requests and what was contained in her petition, the defenses and the requests of the defendants found that the substance of the plaintiff's claim contained the merits of the plaintiff's claim. Objection to how the Independent High Electoral Commission deals with the quota of women and how it is calculated in each district and province based on the provisions of article (16) of the Iraqi Parliament Elections Law No. 9 of 2020, as well as the instructions for the distribution of seats for the elections

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of the Council of Representatives issued by the Council of Commissioners of the Independent High Electoral Commission, which the plaintiff claimed that these instructions violated the provisions of the above-mentioned law, considering that the quota of women as claimed by the plaintiff is to add a woman in each electoral district regardless of whether another woman won her votes or not, the court noted that the plaintiff had already appealed on the same subject to the judicial body of elections and the body issued its decision Numbered (1140/Electoral Judiciary/2021) on 21 November 2021, which includes ratification of the contested decision of the Board of Commissioners, the plaintiff has also filed a lawsuit before this court, which was registered in the number (191/federal/2021) under which she requested the addition of a seat for the District (17) in Baghdad province and shall be its share, and this court issued its decision in that case on 13 February 2022 to dismiss the plaintiff's case for lack of jurisdiction. This court finds that although this case was brought under article (52) of the Constitution of the Republic of Iraq the plaintiff singled out the Speaker of the Council of Representatives as well as the President of the Independent High Electoral Commission as well as the deputy challenged the validity of his membership, the content and substance of the case are the same as those raised by the plaintiff in the numbered case (191/federal/2021) and based on the same arguments and reasons, all of it is relate to the conduct of the electoral process that took place on 10 October 2021 and the appeal of the decisions of the Council of Commissioners and the Electoral Judiciary. This court finds that the text of article (52) of the Constitution goes on to challenge the validity of a member of the Council of Representatives with regard to the extent to which the conditions of membership are met from his

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candidacy and the length of his stay as a member of the Council, which does not include about the technical aspects of the electoral process in terms of counting the number of votes and the subject of quotas and other reasons. This falls within the powers of the Board of Commissioners of the Independent High Electoral Commission and is challenged before the electoral judiciary and the decisions of the Commission are now subject to review and appeal, based on an article (19) of the Independent High Commission of Elections Law No. (31) For 2019, the plaintiff, in this case, did not provide anything new, which is detrimental to the validity of the membership of mp (Hamed Ahmed Saleh Al-Gargouli), and therefore the plaintiff's case is missing its constitutional substantiation contained in the article (52) of The Constitution and there is nothing to undermine the validity of the membership of the said representative. Accordingly, the FSC decided to reject the case of the plaintiff (Jehan Abdulla Abbas Al-Mahyawi) and to burden her with the fees, expenses, and advocacy fees for the agents of the first, second, and third defendants, amount of 100 thousand Iraqi dinars, to be divided between them according to the law. The decision has been issued unanimously, decisive and binding for all powers according to the provisions of articles (52) and (94) of the Constitution of the Republic of Iraq for 2005 and articles (4/9th and 5) 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 22/Dhul Qaeda/1443 Hijri coinciding 22/June/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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