

Republic of Iraq
Federal Supreme Court
Ref. 77/ federal /2022



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The Federal Supreme Court (F S C) has been convened on 13/6/2022 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: Ola Ouda Layeth Shanawa Al-Nashi – her agents the Barristers Oraibi Shunain Mohammed Al-Zamili, Sadiq Rasool Hassoun, and Nada Abdul Ridha Mutasher.

The Defendants: 1. The Speaker of the ICR / being in this capacity – his agents the Legal Counselor Hyatham Majid Salim and official jurist Saman Muhsin Ibrahim.
2. the Head of the Independent High Electoral Commission/ being in this capacity – his agent the Legal Counselor Ahmed Hasan Abid.
3. The Representative whose membership authenticity is challenged (Yas Khudhair Jwayer Al-Fahdawi).

The Claim

The plaintiff claimed through her agent that, on 7 February 2022, she had presented an objection with the Iraqi Council of Representatives and had registered with the President's Office income pouch under the number (Mim. Ra. 87) challenging the authenticity of the membership of the representative (Yas Khudhair Jaweer al-Fahdawi), and since more than a month had passed without taking a decision of objection and based on the decision of the

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Federal Supreme Court (71/Federal/2021), the failure to decide on rejection was considered a refusal, as she is a candidate for the fifth parliamentary session among the candidates of Dhi Qar province, the fourth electoral district received a number (6,746) votes, according to the Independent High Electoral Commission and was considered a reserve, as the women's seat was counted for the winning candidate (Nissan Abd Al-Ridha Zayer Wali) who received (23130) and ranked first among the winners, in the proper legal application of the text of article (15/3rd) of the Iraqi Parliament Elections Law No. (9) of 2020 and the rearrangement of the sequence of candidates, the candidate (Nissan Abdul Rida Zayer Wali) is the highest sequence of candidates regardless of their gender and thus has won In the parliamentary seat with its electoral power and competition for men, it is the female quota for the candidate 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 above-mentioned electoral law, and based on her objection The incorrect membership of the representative challenged by the authenticity of his membership, to the following reasons: first: The legislator drew up the constitutional and legal way to fill the parliamentary seat of the winners, men, and women, which came under the aforementioned electoral law, specifically article (16) in all its paragraphs, the mechanisms by which the quota of women is calculated in each constituency of the province. Second: To facilitate the work of this law, the Council of Commissioners (instructions for the distribution of seats for elections to the Council of Representatives) was issued based on an article (47) of the Electoral Commission Law No. (9) of 2020, item (1st) of Article (1) and item (8th) of the Independent High Electoral Commission Law No. (31) of 2019, these instructions

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violated the Constitution in articles (14- Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status) and (16- Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken) and (20- Iraqi citizens, men, and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office) and (38- The State shall guarantee in a way that does not violate public order and morality. First: Freedom of expression using all means). Third: If the holding of the parliamentary seat in a manner contrary to the provisions of the Constitution is considered invalid according to the legal rule (what was built on falsehood is invalid), also, (President of the Independent High Electoral Commission/being in this capacity) did not take into account 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 on the table attached to it, which the law considered an integral part of it and which was stipulated in article (16/3rd). He worked in accordance with impromptu jurisprudence contrary to the Constitution and the law, as well as violated article (50) of the same law by issuing instructions contrary to the provisions of the law, and when the plaintiff applied to the Federal Supreme Court to rule that the membership of mp (Yas Khudair Jawair Al-Fahdawi) was invalid and that she had the right to 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 (77/Federal/2022) and the legal fee for it was collected in accordance

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with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and notifying the defendants of its petition and documents in accordance with the provisions of article (2/1st) of the same Bylaw above, the first defendant's agents (speaker of the Council of Representatives / being in this capacity) replied to the answering draft dated April 10, 2022, the conclusion that the Representative Yas Khudhair Jawair Al-Fahdawi is a member of the Council of Representatives for the fifth election cycle and the results of the elections have been approved in accordance with the decision of the Federal Supreme Court (numbered) 175/Federal/2021) on 27 December 2021 and that the distribution of seats was made based on the provisions of the Council Elections Law No. (9) of 2020 and the relevant regulations issued by the Independent High Electoral Commission and the Court approved the final results of elections in accordance with the provisions of the Constitution and the minimum proportion of women in the province and in accordance with the schedule attached to the Council of Representatives Elections Law No. (9) of 2020 (constituencies), article (16/2nd, 3rd, and 4th) does not allow the addition of quotas for women if the feminist element of that constituency is achieved, so if the feminist quota is exhausted in the province, there will be no replacement. Moreover, the quota for women was an exception to the original principle of equality enshrined in article (14) of the Constitution, and the rule is that the exception does not expand, is not measured, and is valued as much as it is. Noting that the decision of the Federal Supreme Court No. (44/Federal/2021) of 21 September 2021 dismissed the plaintiff's case by challenging the constitutionality of article (16) and its paragraphs, so the first defendant's agent requested in addition to his job to dismiss the plaintiff's case and charge all judicial fees,

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expenses and lawyers' fees, the second defendant (President of the Independent High Electoral Commission/ being in this capacity) answered in the answering draft dated 10 April 2022, the conclusion of which is 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 (1) 8, and 19) of which, article (2nd) of the article (19) stipulates that (decisions of the Board of Commissioners may only be appealed to the judiciary in matters relating exclusively to the electoral process) as indicated in item (3rd) on (the decisions of the Electoral Committee shall be final). Therefore, the competent body to hear objections to decisions issued by the Council of Commissioners is the judicial body of the elections and may not be appealed to any other party, so the Federal Supreme Court is not competent to hear this case and article (16/3rd) of the Council of Representatives Elections Law No. (9) of 2020 stipulates that (the quota of women for each province as specified in the attached table) and by reference to the table attached to the law, which is an integral part of it, the Fourth Circle In Dhi Qar province are (4) seats, and this table specified that one woman should be among those seats and, about the election results, it was found that a female candidate had won one of the seats in the electoral district and therefore that constituency had exhausted the women's seat by winning that candidate, which was in line with the application of article (16) of the Electoral Law and the instructions for the distribution of seats issued by the Independent High Electoral Commission, and the plaintiff had already appealed to the Judicial Electoral Commission against the decisions of the Council of Commissioners concerning the preliminary results for the elections. The decision of the Judicial Electoral Commission (1666/Judicial

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Electoral Commission/2021) of 29/11/2021, which included the ratification of the challenged decision of the Council of Commissioners to announce the preliminary results of the elections to the Iraqi deputies on 11 October 2021 received the appeal, and the decisions of the Judiciary for Elections are based on an article (19/3rd) of the Independent High Electoral Commission Law No. (31) of 2017. The Federal Supreme Court's decision (214/Federal/2021) in the same plaintiff's case and on the same subject was issued to dismiss the case for lack of jurisdiction, so the second defendant/being in this capacity requested to dismiss the plaintiff's case and to burden her with the expenses, and the third defendant, the representative, whose membership authenticity is challenged (Yas Khudair Jouair Al-Fahdawi) in the answering draft dated 12 May 2022, repeating the same arguments made by the first defendant's agents (speaker of the Council of Representatives in addition to his job) and requesting the dismissal of the case and the plaintiff's charges Expenses and advocacy fees, after completing the procedures stipulated in the court's Bylaw aforementioned, a date was set for the case in accordance with the provisions of article (2/2nd) of it and informed the parties, and on the appointed day the court was formed and the prosecutor in particular (Ola Odeh Layeth) and her barrister (Aribi Shanin Mohammed) attended, and the first defendant (Speaker of the Council of Representatives/being in this capacity) and his agents, legal counselor Haitham Majid Salem and the official jurist Saman Mohsen, and the second defendant, the President of the Independent High Electoral Commission/being in this capacity as his deputy, the official jurist Ahmed Hassan Abd, attended for the second defendant, the third defendant, the Representative Yas Khader Jwayer attended by himself. The public

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in presence argument proceeded, and the plaintiff and her agent repeated the petition and requested to judge according to what was listed in the petition of the case, the first defendant's agents answered and requested to reject the case for the reasons contained in their answering draft dated 10 April 2022, the second defendant's agent answered and requested to reject the case for the reasons listed in the answering draft of 10 April 2022. The third defendant replied and requested to reject the case of the case for the reasons mentioned in his answering draft of 12 May 2022, and the plaintiff, the agents of the parties, and the third defendant reiterated their previous statements and 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 had brought the case before this court against the defendants (Speaker of the Council of Representatives, President of the Independent High Electoral Commission/ being in their capacities, and the Representative Yas Khudhair Jaweer Al-Fahdawi) to challenge the authenticity of the Representative(Yas Khudhair Jawyer Al-Fahdawi) membership, requesting to judge with its invalidity and to replace her as a member in the Iraqi Council of Representatives because the aforementioned Representative is a candidate for the fifth parliamentary cycle includes Dhi Qar Governorate candidates of the fourth constituency. She obtained in the aforementioned constituency, the Representative (Nissan Abdul Ridha Zayer Wali) the highest votes, and this matter requires applying women's Quota in the aforementioned constituency and her

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entitlement for a quota seat. Based on its challenge to article (52) of the Constitution of the Republic of Iraq 2005, and based on the violation of articles (14, 16, 20, and 38/1st) of the Constitution of the Republic of Iraq, which emphasized the principles of equality between Iraqis, equal opportunities, the right to participate in public affairs by men and women, enjoy political rights and ensure the State's freedom of expression of opinion, also their violation of articles (15/3rd) and (16) of the Iraqi Parliament Elections Law No. (9) of 2020, and the instructions for the distribution of seats for the elections of the Council of Representatives issued by the Independent High Electoral Commission adopted by the defendants / being in their capacities when applying the women's quota system, violated the provisions of the Constitution and the law with the aforementioned articles in accordance with the details referred to in the petition. The Federal Supreme Court finds that the content of article (52) of the Constitution goes to challenge the validity of the members of the Council of Representatives regarding the conditions of membership from the nomination and the duration of his stay in the Council of Representatives, but this does not include concerning the technical aspects of the electoral process in terms of counting the number of votes, abolishing stations, etc., which falls within the powers of the Independent High Electoral Commission and is challenged before the Judicial Electoral Commission. The commission's decisions are now subject to review and appeal based on an article (19) of the Independent High Electoral Commission Law No. (31) of 2019, Since the plaintiff had previously appealed to the Electoral Judiciary on the decision of the Council of Commissioners on the preliminary results of the elections, the decision of the Electoral Judiciary (1666/Judicial Electoral

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Commission/2021) of 29/11/2021, which includes 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 October 2021 and the appeal was received, and therefore there is no place for the plaintiff to challenge these proceedings before this court, as for the quota of women and the distribution of the seats are about her. The Federal Supreme Court finds that the Constitution of the Republic of Iraq 2005, article (49/IV) stipulates that (the electoral law aims to achieve a representation of women in at least a quarter of the number of members of the Council of Representatives) and supports it with the Council of Representatives Elections Law No. 9 of 2020, which adopted the constituency system and required that women be at the rate of one woman in each district. If a woman wins within the electoral district, there is no need to apply the quota for women, following the provisions of articles (16/1st, 2nd, 3rd, and 4th) of the Said Law, as paragraph (1st) of the said article stipulates that (25%) of the members of the Council of Representatives are represented at least (25%) of the members of the Council of Representatives, and paragraph (3rd) of which is recommended. On (the quota of women is determined for each province as specified in the attached table), while paragraph (4th) of the above-mentioned article stipulates (that if the feminist 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 (3rd) 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 on the basis of the table by

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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, as evidenced by the Law that the legislator has determined the number of electoral districts in each constituency. In the Republic of Iraq, there are 83 constituencies in which 83 women, one woman per constituency, are women to ensure that women are fairly represented at the provincial level following 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 following the text of the article (16/4th) of the Aforementioned Council of Representatives Elections Law. That there will be no replacement process if the feminist quota is exhausted according to the results of the elections in the province, as long as the depletion of the women's quota is carried out at the constituency level in the province, to ensure the representation of a woman in it, whether she has won her votes or by the quota of women, which was approved under article (16/3rd) of the above-mentioned Council of Representatives Elections Law, which stipulates (the quota of women is specified for each province as specified in the attached table) and refers to the table attached to the law, which is considered to be An integral part of it, and it has the same mandatory power as the provisions and provisions of the aforementioned law, it turns out that the number of seats for the fourth electoral district in Dhi Qar province is (4) seats, and this table has specified that the quota of women should be one woman, 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 Lower Council elections issued by the Independent High Electoral Commission based on the provisions of

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article (3/2nd) of which in all its paragraphs, particularly paragraph (c), which came to confirm the provisions of the Council elections law, which implicitly mentioned above. Article 16/3rd of it, specified the quota for women in a single constituency to ensure that women are represented equally in one province and according to their constituencies. Paragraph (Jim) of the above-mentioned instructions stipulates that (if the quota of women is exhausted in accordance with the results of the elections in the electoral district, those results will be adopted and there will be no replacement process) and on the basis of 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 aforementioned Elections of the Council of Representatives were based on effective and valid legislation and did not include Contrary to the provisions of the Constitution of the Republic of Iraq in 2005, in particular articles (14, 16 and 38/1), which emphasized the principles of equality between Iraqis and equal opportunities and the state's guarantee of freedom of expression of opinion, article (49/4th) of which limited the representation of women in the Iraqi Parliament by at least a quarter of the number of members of the Council of Representatives, in addition, this court has already decided to rule on the constitutionality of article (16) of the aforementioned Council of Representatives Elections Law based on the rulings issued by the number (44/Federal/2021) on 21 September 2021, which includes (ruling to dismiss the case for challenging the provisions of article 16).) of the Iraqi Parliament Elections Law No. (9) of 2020 for the absence of a constitutional violation, and in the number (151/federal/2021 on 28 December 2021 included (ruling to

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dismiss the case regarding the challenge to the constitutionality of article (16/3rd) of the Council Elections Law Deputies No. (9) for 2020 to be decided before it is decided). Since the rulings of this court are binding on all authorities based on the provisions of article (94) of the Constitution and article (5/2nd) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 20 21, which requires that the Independent High Electoral Commission abide by the provisions of article (16) of the Aforementioned Council of Representatives Elections Law, in particular paragraphs (3rd and 4th) of it for its constitutionality, and based on the foregoing, the application of article (16/3rd and 4th) by the Independent High Electoral Commission to the provisions of article (16/3rd and 4th) of The Law on The Elections of the Council of Representatives and the allowance of the article (3/2nd/Jim) of the instructions for the distribution of seats for the elections of the Council of Representatives, mentioned above, and its adoption (application of the principle of the quota of women according to the electoral districts in each province, if the quota of women in the electoral district is exhausted by the victory of a woman by her votes, The replacement process is not valid and in accordance with the provisions of the law to apply the quota for women at the level of the same constituency and not at the provincial level, and the replacement is not made for the application of the women's quota if a woman wins her votes in the same constituency in accordance with the detail mentioned above, and since the number of seats in the fourth constituency in Dhi Qar province (4) seats, one of which is reserved for women, and that mp (Nissan Abdul-Reza Zayer Wali) won her votes in the said district, so The aforementioned department has exhausted the quota and there is no replacement place in order to

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apply the quota in it. This means that the plaintiff (Ola Odeh Layeth al-Nashi) cannot be replaced by the mp challenged for the validity of his membership (Yas Khudhair Jawair al-Fahdawi), the winner of the last series of the fourth electoral district in Dhi Qar province and because there is no defect in the validity of the membership of mp (Yas Khudair Jaweer al-Fahdawi) member of the Iraqi Parliament, which requires the dismissal of the case, and when the Federal Supreme Court decided to rule on the following:

1. To reject the case of the plaintiff (Ola Ouda Layeth Al-Nashi) of challenging the authenticity of the Representative (Ya Khudhair Jawyer Al-Fahdawi) membership in the ICR.
2. To burden the plaintiff with the expenses, fees, and advocacy fees for each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim and the legal counselor Ahmed Hasan Abid amount of 100 thousand dinars. To be divided between them according to the law.

The decision has been made unanimously, decisive and binding for all powers according to the articles (52 and 94) of the Republic of Iraq Constitution for 2005 and the articles (4/9th),(5/2nd) 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 13/Dhul Qaeda/1443 Hijri coinciding 13/June/2022 AD.

**Signature of
The president**

Jasem Mohammad Abboud

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