

Republic of Iraq
Federal Supreme Court
Ref. 91 / Federal / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 24.8.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad 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:

Suhad Mahdi Hassan - her attorneys are Mohammed Majeed Rasan and Ahmed Mazen Makiya.

The defendant:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.

The claim:

The plaintiff claimed that Mr. (Faisal Hassan Sukkar) was previously sworn in pursuant to the decision issued by the defendant, considering that the aforementioned member is a substitute for Representative (Huda Sajjad Mahmoud), who left her parliamentary seat after being assigned the tasks of the Social Protection Authority in the Ministry of Labor and Social Affairs and that this replacement contain constitutional error that caused harm to the plaintiff, who

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requested to correct this error by the warning No. (12546) on 1/6/2021, since, in according to what was stated in the nomination lists in sequence (47 to 45), she is the only one according to the field (gender/female) and that Mrs. Huda Sajjad Mahmoud is a member according to a constitutional provision in the parliamentary quota for women's representation in the governorate of Qadisiyah, and that the replacement of Mr. Faisal Hassan Sukkar Salman who is the biggest loser in the list, which is the same as the plaintiff's list, so she will have the right to be assigned. In contrary to that it represent constitutional error in the female representation in the governorate according to what stated in article (49/Fourth) of the constitution, which stated (the election law aims to achieve a representation of women not less than a quarter of the number of members of the Council of Representatives) as stated in the Law of Administration for the State for the Transitional Period in Article (30/jim) The National Assembly is elected in accordance with The Elections Law and the Political Parties Law, The elections law aims to achieve a representation of women not less than a quarter of the members of the National Assembly, and this was emphasized in several laws, including the Iraqi Elections Law No. (16) of 2005 issued by the National Assembly, where it came in Article (11) From it (at least one woman must be among the first three candidates on the list, and at least two women must be among the first six candidates on the list, and so on until the end of the list) as stated in Regulation No. (17) for the year 2005 regarding the distribution of seats, a text supporting

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this and most emphasizing is Article (20) of the Iraqi Constitution of 2005, which stipulates (citizens, men and women, have the right to participate in public affairs, and to enjoy political rights, including the right to vote, elect and be nominated), as stated in the seat distribution bylaw No. (12) of 2018 in the step (Third / A) of it with regard to calculating the women's quota, which stipulates that (a seat from the seats obtained by the list is allocated to women after every three winners, regardless of the male winners) and for the above and since the seat is based on the women's quota and not on the basis of the biggest losers, call upon the defendant's to plead and to obligates him to cancel the decision to replace (Faisal Hassan Sukkar) in the place of MP (Huda Sajjad Mahmoud) and to rule that the plaintiff is entitled to the parliamentary seat, and charged him with fees, expenses and attorney's fees. based on the provisions of Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005, the case was registered with this court in No. (91/Federal/2021), and the defendant, in addition to his post, is informed of its petition based on the provisions of Article (2/First) of the above bylaw, who answered through his two attorneys in accordance with their draft dated 27/7/2021, which included the following:

1. From a formal aspect, the plaintiff had to appeal before the Council of Representatives the validity of the membership of the representative (Faisal Hassan Sukkar) in accordance with the provisions of Article 52/First of the constitution and after a decision was issued from The Council of Representatives in this

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regard, and if it is not convinced, it may file an appeal before this court, so the plaintiff's lawsuit is obligatory to be dismissed from this aspect.

2. On the other hand, what the plaintiff's representative refers to that the replacement of a woman by a woman has no basis in the law, since the completion of the number of women in the Council of Representatives by not less than a quarter according to Article (49/fourth) of the constitution is the criterion for replacing members The Council of Representatives, therefore, requested that the plaintiff's suit be dismissed.

After completing the procedures according to what was stated in Article (2/first) of the bylaw No. (1) of 2005, a date was set for the pleading and the two parties were notified according to the provisions of Article (2/second) of the same bylaw. On the day appointed for the pleading, the court was formed and the plaintiff and her attorney attended. (Ahmed Mazen Makiya) and the defendant's attorney attended, in addition to his post, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, and the public pleading was initiated. The plaintiff repeated the case petition, her agent submitted an answering draft included the following:

First: formally, the plaintiff had previously submitted several requests to the Council of Representatives, but the council did not receive it and they were not answered with acceptance or rejection, including the request submitted on 3/22/2021. A

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grievance was also submitted by her on 5/2/2021 and it was also in vain as it was not effective, which prompted her to resort to the notary public to send a warning in which she aims to deliver the challenge to the validity of the membership of the representative (Faisal Hassan Sukkar Salman) through the central mail of the Council of Representatives. It was received by the competent employee, but he refused to sign it, so the plaintiff has exhausted all attempts to deliver a letter challenging the validity of membership.

Second: The representative (Hoda Sajjad Mahmoud) had obtained the parliamentary seat under the women's quota system, and that her parliamentary seat became vacant after being assigned the tasks of the head of the Social Welfare Authority in the Ministry of Labor and Social Affairs and the end of her membership in the Council of Representatives requires her to be replaced by the reserve member of the female component who has obtained the higher number of votes from the same electoral list, as it is not permissible to constitutionally replace the female seat within the framework of the quota system with male, according to what is stipulated in Article (49/4) of the constitution. Thus, the plaintiff has the constitutional entitlement to occupy this seat, especially since she fulfills the constitutional requirements.

the defendant's attorneys, in addition to his post, replied that they are requesting the dismissal of the case for the reasons mentioned in the draft dated 27/7/2021. The court reviewed the Divan Order No. (89)

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on 11/3/2021, which included assigning Mrs. (Hoda Sajjad Mahmoud) the duties of the head of the Social Protection Authority In the Ministry of Labor and Social Affairs, it also review the warning No. 22546 on 1/6/2021, directed by the informer (Suhad Mahdi Hussein) through the Notary Public Department in Al-Bab Al-Sharqi to the I.C.R, which included that the plaintiff had previously submitted an appeal to the validity of the membership of Representative (Faisal Hassan Sukkar) through the central mail of the Council of Representatives on 05/23/2021, but the authority concerned with receiving the mail refused to receive it, and the court reviewed the request submitted by the plaintiff to the President of the Iraqi Council of Representatives under the title Accepting Membership, which includes a request for approval to accept its membership in the Council of Representatives for the current session for Al-Diwaniyah Governorate, as it is the first reserve in the women's quota for a member of the Council of Representatives (Huda Sajjad Mahmoud) after assigning her the tasks of the head of the Social Welfare Authority, and when there is nothing left to say, the Court decided the conclusion of the pleading and issued its decision publicly at the same meeting.

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff (Suhad Mahdi Hassan) requested to call upon the defendant (the Speaker of Parliament / in

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addition to his position) to plead and order him to cancel his decision, which included replacing (Faisal Hassan Sukkar) in the place of the representative (Huda Sajjad Mahmoud) because she was assigning the duties of the head of the Social Protection Authority, given that the plaintiff, according to what was mentioned in the nomination lists in the sequence (47) to (45), is the only one according to the field (gender / female), and that the representative (Huda Sajjad Mahmoud) is a member according to a constitutional text in the representative quota for women's representation in Al-Qadisiyah Governorate and that its replacement by the representative (Faisal Hassan Sukkar), being the biggest loser on the list, is a constitutional defect that violates the provisions of Article (49/4) of the Constitution of the Republic of Iraq for the year 2005. As stated in Article (52/First and Second) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (First: The Council of Representatives shall decide on the validity of the membership of its members, within thirty days from the date of registering the objection, by a two-thirds majority of its members. Second: A decision may be appealed against the Council decision before the Federal Supreme Court, within thirty days from the date of its issuance.) Therefore, the aforementioned article requires a challenge to the validity of membership by a candidate who believes that the membership of a member of Parliament is incorrect and that he is entitled to be a member of the Iraqi parliament in the place of the MP whose membership is being challenged and that the right the

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aforementioned appeal is guaranteed under the constitutional text above, and that the Council of Representatives, under the same constitutional text, is obliged to receive and register the objection submitted to it, and to provide the presenter with what supports that, and he is obligated to decide on it within thirty days from the date of registering the objection by a majority of (two-thirds) of its members. The failure to appeal by the Council of Representatives regarding the validity of membership within thirty days from the date of registering the objection and during the legislative term is considered as a rejection of the objection because the objector cannot wait indefinitely, even though Article (52 / first) of the constitution requires deciding on the objection by a two-thirds majority of the members of the Council, but this must be within thirty days. The decision issued by the Council of Representatives in accordance with the appeal submitted to the validity of membership shall be subject to appeal before the Federal Supreme Court within thirty days from the date of its issuance or from the date on which the lack of decision was considered as a rejection of the objection based on the provisions of Paragraph 52/Second of the Constitution. And that the period of appeal before the Federal Supreme Court is inevitable, and failure to observe the results in the forfeiture of the right to appeal before it. On the other hand, this court finds that the issuance of a decision by the Council of Representatives that the membership of the representative is invalid and that he has acquired the final form by the lapse of the appeal period stipulated in Article (52/second) The aforementioned,

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as well as the issuance of a decision by the Federal Supreme Court based on the appeal submitted before it to the invalidity of the membership of the representative, entails stripping him of the status of a parliamentary representative from him, and his presence is considered illegal in the Council of Representatives and he does not enjoy any of the rights and privileges granted to him under the law from the date of acquiring the decision issued by the Council of Representatives that the deputies that the membership of the representative is not valid in its final form or from the date of the issuance of the decision by the Federal Supreme Court in this regard. This doesn't apply to the period before the decision of the I.C.R. becomes final or before the decision of the F.S.C. As for the lawsuit of the plaintiff (Suhad Mahdi Hassan), it was not proven to the court that an objection was submitted by her regarding the challenge to the validity of the membership of the representative (Faisal Hassan Sukkar) to the Council of Representatives in accordance with the mechanism established under Article (52) of the Constitution of the Republic of Iraq for the year 2005, so the plaintiff's lawsuit is obligatory to be dismissed. For all of the foregoing, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit (Suhad Mahdi Hassan) and charge her the fees, expenses, and attorney fees for the defendant's attorney, the Speaker of Parliament, in addition to his post, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim. Final and binding on all authorities according to articles (52/ First and Second) and (94) of the

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Constitution of the Republic of Iraq for the year 2005 and Article (5) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and publicly understood on Muharram 15/1443 AH corresponding to 8/24 / 2021 AD.

Signature of
The president

**Jasem Mohammad
Abbood**

Signature of
The member

**Sameer Abbas
Mohammed**

Signature of
The member

Ghaleb Amer Shnain

Signature of
The member

Haidar Jaber Abed

Signature of
The member

Haider Ali Noory

Signature of
The member

Khalaf Ahmad Rajab

Signature of
The member

Ayoub Abbas Salih

Signature of
The member

**Abdul Rahman
Suleiman Ali**

Signature of
The member

Diyar Muhammad Ali

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