

Republic of Iraq  
Federal Supreme Court  
Ref. 98 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/8/2023 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: Abdul Munam Huwaidi Abbas – his agent Saad Ghazi Mislih.

The Defendants: 1- Speaker of the ICR/ being in this capacity – his agents, the Director-General of the Legal Department Ass. Prof. Dr. Sabah Jumaa Al-Bawi and the official jurist Saman Muhsin Ibrahim.

2- Chairman of the Board of Commissioners of the Independent High Electoral Commission/ being in this capacity – his agent, the legal counselor Ahmed Hasan Abid.

### **The Claim**

The plaintiff claimed through his agent that on 23/6/2022, the Council of Representatives held its session dedicated to receiving the replacements of the resigned deputies, to take the constitutional oath of members of the Council of Representatives, after receiving the list of substitutes from the second defendant, who erred in applying the election law by replacing members of the Council of Representatives instead of applying the Law on Replacing Members of the Council of Representatives No. (6) of 2006, and wasted the right of the legal plaintiff to be the winner of the seat after the resignation of the deputies in his constituency (the first in Wasit Governorate), where she took the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 98 / federal /2023



Kurdish text

constitutional oath (Doaa Kazem Bisht Al-Eqabi) contrary to the provisions of Article (2/3) of the aforementioned law, and after the Federal Supreme Court's decision (244/Federal/2022) was issued binding, definitive and argument to all, the plaintiff objected before the first defendant to the validity of its membership based on the provisions of Article (52/1<sup>st</sup>) of the Constitution of the Republic of Iraq, but he did not apply the law of replacing members of the Council of Representatives and refrained from issuing the decision despite the lapse of the period necessary for its issuance, so the plaintiff asked this court to rule that the validity of the membership of the Representative (Doaa Kazem Bisht) and obliging the defendants being in their capacity after the vacant seat of his legal right (i.e. the plaintiff's right) and allowing him to take the constitutional oath as a member of the Council of Representatives for its fifth session and charging the defendants expenses and advocacy fees. The lawsuit was registered with this court in the number (98/Federal/2023), and the legal fee was collected for it, and the defendants were informed of its petition and documents based on Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and the first defendant's agents replied with the two response regulations dated 30/5 and 26/7/2023, their conclusion: The significance of the text of the article (49/4<sup>th</sup>) of the Constitution is that the representation of women in the Council of Representatives must be a quarter of its members as a minimum, about the possibility that their number is more than a quarter ratio, it also indicates that the reference in determining the minimum number of women in the Council is the Election Law, and according to Article (16) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 in force at the time of the swearing-in of Representative (Doaa Kazem Bisht), the minimum number of women in the Council of

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 98 / federal /2023



Kurdish text

Representatives is met on two levels: The number of women should not be less than (25%) of the number of members of the Council of Representatives on the one hand, on the other hand, their number should not be less than (25%) of the number of seats allocated to each governorate in the Council of Representatives, after the resignation of MP (Sundus Abdel Lami) from the membership of the Council of Representatives, the Council replaced it with (Doaa Kazem Al-Aqabi) based on Article (16) of the Council of Representatives Elections Law No. (9) of 2020, which determined the quota for women, in order to complete the quota in the (first) constituency, and accepting the objection of the objector will lead to a violation of the law and a violation of the table attached to it, the plaintiff omitted paragraphs (first and second) of Article (2) of the Replacement Law, which stipulates (First- If the vacant seat is within the compensatory seats specified by the electoral law, it shall be compensated from the compensatory list of the political entity concerned ... Second: If the vacant seat is within the governorate seats specified by the electoral law, it shall be compensated by the bloc to which the member covered by the replacement belongs within the governorate list, and in the event that the names of candidates in one governorate are exhausted, the entity concerned must submit the name of another candidate, provided that he is among those nominated by the entity within the electoral list in another governorate, and those whose candidacy has already been approved by the Commission), the plaintiff is not on the list of the Sadrist bloc, and that the replacement law has indicated a clear implicit indication that the electoral law determines how to occupy the seat and did not neglect the Election Law No. (9) of 2020, as it extensively touched on how to occupy and replace the seat, and that the Independent High Electoral Commission, through its media spokesman (Jumana Al-Ghalay), indicated that it sent the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 98 / federal /2023



Kurdish text

names of deputies and their replacements to the Council of Representatives, and therefore it has indicated initially that (Doaa Kazem Bisht) is an alternative for the resigned winning deputy (Sundus Abdul Lami) therefore, the objector had to submit the appeal to the Board of Commissioners or the judicial body directly following Article (10) of the Independent High Electoral Commission Law No. (31) of 2019, and the decisions of the Council are subject to appeal before the body formed following Article (19) of the same law, the Elections Law for the Council of Representatives, Provincial Councils, and Districts No. 12 of 2018, as amended by Law No. 4 of 2023, has adopted a new mechanism for replacing members of the Council of Representatives that differs from the mechanism adopted by the Iraqi Council of Representatives Elections Law No. 9 of 2020, as Article 14 of the law in force stipulates: (Third: If the vacant seat belongs to a woman, it is required that she be replaced by another woman from the same electoral list), and that the new mechanism contained in the article is obligatory. Following to fill vacancies that occur after its entry into force because it is a subsequent law canceled the previous The Council of Representatives also voted to approve the second amendment to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, under which item (3) of Article (2) was canceled and replaced by a new text, so the first defendant's agent requested to dismiss the lawsuit and charge the plaintiff the expenses. The second defendant's agent replied with the answering draft dated 29/5/2023, its conclusion: to redistribute seats in the first constituency in Wasit Governorate in line with the Council of Representatives Elections Law No. (9) of 2020 and the instructions for distributing seats issued by the Independent High Electoral Commission, and concerning the table attached to the aforementioned law, which is an integral part of it, the

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said constituency consists of (4) seats, with (3) seats for men, provided that the fourth seat is from the women's quota, and whereas, The last ranking of candidates according to their votes did not result in a woman winning her votes, therefore, the Commission must replace the candidate (Abdel Moneim Howeidi Abbas) since his fourth sequence in terms of the number of votes with a woman to ensure the share of women in that constituency, as Article (16/3<sup>rd</sup>) stipulates the presence of at least one woman in the constituency to ensure that there is the representation of women in that constituency. He therefore requested that the plaintiff's claim be dismissed and that he be charged with the expenses. After completing the procedures required by the court's bylaws, he set a date for hearing the case without pleading following Article (31/5<sup>th</sup>) thereof, in which the court was formed and began hearing the case, the court checked the plaintiff's requests, his grounds, and the defendants' defenses, the court noted that the challenged deputy submitted a request through its agent, lawyer Saif Maher Ibrahim, to enter a third person in the lawsuit, the court also noted that the plaintiff's agent submitted a list requesting the inclusion of a third person in the contested membership, to complete the litigation, the court decided to reject the said requests for lack of justification; after the court completed its scrutinies, the end of the minutes 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 lawsuit of the plaintiff Abdel Moneim Huwaidi Abbas is focused on demanding a ruling on the invalidity of the membership of the Representative (Doaa Kazem Bisht Al-Aqabi) and obliging the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 98 / federal /2023



Kurdish text

Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath instead as a member of the Iraqi Council of Representatives for its fifth session, and the court finds that Article (49/4<sup>th</sup>) of the Constitution of the Republic of Iraq for the year 2005 stipulates (Fourth: The electoral law aims to achieve a representation of women of at least one-quarter of the number of members of the Council of Representatives, As for paragraph (5<sup>th</sup>) of the same article, it stipulates (the Council of Representatives shall enact a law that addresses cases of replacement of its members upon resignation, dismissal or death), while Article (1) of Law No. (15) of 2023 stipulates the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 published in the Iraqi Gazette No. (4730 on 31/7/2023) that: ((The text of paragraph (3) of Article 2<sup>nd</sup> of the Law shall be repealed and replaced by the following: 3. If the vacant seat belongs to a woman, it is required that she be replaced by a woman in the same electoral district, regardless of exceeding the minimum representation of women in the Council)), through the advanced texts, the law dealt with the issue of women's representation and how to replace members of the Council of Representatives in general and replace members of the Council of Representatives from women in particular, and it came with a firm text in the second amendment under Article 1<sup>st</sup>/ paragraph (3) mentioned above regarding the subject of replacing the vacant seat that belongs to a woman and explicitly stipulated that, stipulating that the replacement should be a woman in the same constituency even if the number of women in the electoral district exceeds the minimum representation of women in the Council stipulated Article (49/4<sup>th</sup>) of the Constitution, thus, the plaintiff's lawsuit is subject to dismissal, because there is nothing that prejudices the validity of the membership of the challenged

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 98 / federal /2023



Kurdish text

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deputy with the validity of its membership in light of what is stated in Law No. (15) of 2023 Second Amendment Law of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, and for the foregoing, the court decided to dismiss the plaintiff's lawsuit Abdel Moneim Howeidi Abbas and charge him the fees, expenses, and advocacy fees of the defendants' agents, an amount of one hundred thousand dinars distributed among them in accordance with the law. The decision has been issued with majority, final, and binding for all authorities according to the provisions of Articles (52 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4/9<sup>th</sup> and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 28/Muharram Al-Haram/1445 Hijri coinciding 16/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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