

Republic of Iraq  
Federal Supreme Court  
Ref. 99 / 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: Jawad Raheem Qasim – his agents, the barristers Ahmed Jassim Ridha, Tarid Ziyad Khalaf, and Ali Nassir Mohammed.

The Defendant: 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.

3- The Representative Ruqia Raheem Muhsin/ member of ICR – his agent the barrister Ahmed Majid Ahmed.

### **The Claim**

The plaintiff, through the mediation of his agents, claimed that after the resignation of the members of the Council of Representatives from the Sadrist bloc, the Council of Representatives held an extraordinary session on 23/6/2022, in which the third defendant (Ruqayya Rahim Mohsen) took the constitutional oath to occupy the vacant seat in the Council for the second constituency in Maysan Governorate, in which two seats became vacant after the resignation of the two representatives (Mahmoud Al-Kaabi) and (Zainab Al-Rubaie), so the seat of the

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resigned Representative (Zainab Al-Rubaie) was replaced by the representative objecting to the validity of her membership (Ruqayya Rahim Mohsen), who obtained (1552) votes, and the plaintiff believes that he is more deserving of the parliamentary seat because he exceeds the number of its votes, he obtained (8737) votes, and since Article (49/4<sup>th</sup>) of the Constitution states: (The Electoral Law aims to achieve a representation rate for women not less than a quarter of the number of members of the Council of Representatives), which is what the legislator was guided to in the text of Article (16/1<sup>st</sup>) of the Council of Representatives Elections Law No. (9) of 2020, and that this percentage is achieved and in a number more than required by the constitutional text, in addition to Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 The amendment stipulates: (If the vacant seat belongs to a woman, it is not required to be replaced by a woman unless this affects the minimum representation of women), article (15/5<sup>th</sup>) of the amended Council of Representatives Elections Law No. (9) of 2020 also stipulates: (If any seat in the Council of Representatives becomes vacant, he shall be replaced by the candidate who obtained the highest votes in the electoral district), and for the plaintiff's objection before the Council of Representatives to the validity of the membership of the third defendant in accordance with Article (52) of the Constitution on 10/4/2023 and the registration of the Council's board on the same date, and his request was not presented despite the passage of thirty days from the date of its registration, which is considered a rejection of it, so the plaintiff requested from this court ruled that the membership of the deputy (Ruqayya Rahim Mohsen) is invalid and obliges the first and second defendants to have the vacant seat of his right, allowing him to take the constitutional oath as a member of the Council of Representatives in its

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fifth session, and charging them expenses and advocacy fees. The lawsuit was registered with this court No. (99/Federal/2023), and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21/ 1<sup>st</sup> and 2<sup>nd</sup>) of the court's internal regulations No. (1) of 2022, and the first defendant's agent replied with the two response regulations dated 21/5 and 26/7/2023, they conclude that the constitution stipulates in Article (49/fourth) that the electoral law aims to achieve a percentage of women's representation in the Council of Representatives of not less than a quarter of the number of its members as a minimum, meaning that The number is more than that, and the reference in determining that minimum limit is the Elections Law, following 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 (Ruqayya Rahim) that the representation of women shall not be less than (25%) of the number of members of the Council of Representatives and that it shall not be less than (25%) of the number of members of the Council of Representatives in each governorate, the Federal Supreme Court had previously issued its decision No. (244/Federal/2022) on 29/3/2023, according to which the court ruled that the ruling on the invalidity of the membership of the challenged (representative) should not affect the percentage of women's representation in the Council of Representatives and the percentage of women's representation in the governorate, and article (16/3<sup>rd</sup>) of the Elections Law stipulates that (the quota for women is determined for each governorate as specified in the attached table), and by referring to the table, it is clear that the number of seats allocated to a governorate Maysan is (10) seats, of which (3) seats are allocated to the women's quota divided based on one seat for each electoral district, and the number of seats currently allocated to women in the governorate is only

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three (3), and prejudice to the seat of Representative (Ruqayya Rahim) or any of the other women will prejudice the percentage of women's representation that must be guaranteed by law and the aforementioned court decision, as stipulated in Article (16/9<sup>th</sup>) of the Council of Representatives Elections Law above (If the vacant seat belongs to a woman, it is not required that she be replaced by a woman unless this affects the percentage of women's representation), the replacement of the resigned Representative (Ruqayya Rahim Mohsen) shall be consistent with the law and meet its stipulations. The Elections Law of the Council of Representatives, Governorate Councils, and Districts No. 12 of 2018, as amended in force, has adopted a new mechanism for replacing members of the Council of Representatives, as article 14 of it 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), therefore, the new mechanism contained in the article is the one that must be followed to fill the vacancies that occur after the entry into force of the law because it is a subsequent law that canceled the previous one, and the Council of Representatives voted on 18/7/2023 to legislate the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives, according to which item (3) of Article (2) of it was canceled and replaced by a new text, and a request to dismiss the lawsuit and charge the plaintiff the expenses. The second defendant's agent replied in the reply list dated 29/5/2023, concluding that the plaintiff has no interest in filing the lawsuit, as his ranking in terms of the number of candidates according to their votes after the resignation of the deputies of the Sadrist bloc is (fourth), and therefore he was not a winner of the original until he was replaced by a woman, and he requested the dismissal of the lawsuit and the plaintiff to bear the expenses. The third defendant's agent responded with two

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response lists on 23/5 and 7/8/2023 requesting dismissal of the lawsuit for the same defenses contained in the second defendant's draft. After completing the procedures required by the court's internal regulations, a date was set for the consideration of the case without pleading following Article (31/5<sup>th</sup>) thereof, and on the specified day, the court was formed and the case began to be heard, the court checked what was stated in the plaintiff's requests, his supports, and the defenses of the defendants' agents, and after completing its audits, 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 Jawad Rahim Qasim is focused on challenging the negative decision of the first defendant to dismiss his objection to the validity of the membership of the Ruqayya Rahim Mohsen and to demand a ruling to invalidate her membership and oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath instead of it as a member of the Iraqi Council of Representatives in its fifth session, 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 percentage of representation of women not less than one quarter of the number of members of the Council of Representatives), while paragraph (5<sup>th</sup>) of the same article 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

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No. (6) of 2006 published in the Iraqi Gazette No. (4370 on 31/7/2023) provided 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 issue of replacing the vacant seat that belongs to a woman and explicitly stipulated that, stipulating that the replacement for her 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 dismissable because there is nothing that prejudices the validity of the membership of the third defendant in light of what is stated in Law No. (15) of 2023 - Law of the Second Amendment to 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 Jawad Rahim Qasim and charge him fees, expenses, and fees of the defendants' agents, an amount of one hundred thousand dinars distributed among them following 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.

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