

Republic of Iraq  
Federal Supreme Court  
Ref. 100 / 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, Ayooob 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: Ahmed Salim Aziz – his agents the barristers, Sarab Ali Al-Esawi, Ahmed Najim Abid Al-Zaidi, and Muataz Adil Kareem Al-Khafaji.

The Defendant: 1- Speaker of the ICR/ being in this capacity. His agents are the Director-General of the legal department Asst. 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 Kifah Abdul Muhsin Al-Sudani – his agent the barrister Dhiaa Hameed Mousa.

### **The Claim**

The plaintiff claimed through his agents that the representative (Kifah Abdul Mohsen Al-Sudani) was sworn in before the Council of Representatives as a substitute for the former representative for the Sadrist bloc (Maha Al-Douri) in the second constituency of Baghdad Governorate, and since his votes are more than hers and he is the highest loser in the constituency, and that his rise to the Council of Representatives does not affect the women's quota in it, and that her swearing-in violates Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 and violates

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the decision of the Federal Supreme Court No. ( 244 / Federal / 2022), and the plaintiff objected before the Council of Representatives to the validity of the membership of representative (Kifah Abdul Mohsen Al-Sudani) on 10/4/2023, and the objection was registered in the number (1324) and it was not decided despite the passage of (30) days since its submission, therefore, the plaintiff asked this court to revoke the membership of the third defendant, Therefore, the plaintiff asked this court to revoke the membership of the third defendant, the representative Kifah Abdul Mohsen Al-Sudani, and to oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath in its place. The case was registered with this court in the number (100/federal/2023), and the legal fee was collected for it, and the defendants are informed of its petition and documents in accordance with the provisions of 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 agent replied with the two response regulations dated 29/5/2023 and 26/7/2023 in their conclusion: The Constitution stipulates in Article (49/4<sup>th</sup>) that the representation of women in the Council of Representatives should be a quarter of the number of members of the Council of Representatives as a minimum, in reference to the possibility that Their number in the Council is more, and it also indicates that the reference in determining the minimum number of women in the Council is the electoral law Kifah Abdul Mohsen Al-Sudani, and to oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath in its place. The case was registered with this court in the number (100/federal/2023), and the legal fee was collected for it, and the defendants are informed of its petition and documents in accordance with the provisions of 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 agent replied with the two answering drafts dated 29/5/2023 and 26/7/2023 in their conclusion: The Constitution stipulates in Article (49/4<sup>th</sup>) that the representation of women in the Council of Representatives should be

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a quarter of the number of members of the Council of Representatives as a minimum, about the possibility that their number in the Council is more, and it also indicates that the reference in determining the minimum number of women in the Council is the electoral law. 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 (Kifah Abdul Mohsen), stipulated that the percentage of women's representation should be at least (25%) of the number of members of the Council of Representatives, and stipulated the same percentage in each governorate, so it turns out that the minimum number of women in the Council of Representatives is met at two levels, which is that the number of women is not less than (25%) of the number of members of the Council of Representatives on the one hand and that it is not less than The number of women for (25%) for the number of seats allocated to each governorate in the Council of Representatives on the other hand, the Elections Law for the Council of Representatives, Governorate 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 Law No. 9 of 2020, as Article 14 of the law in force stipulates: (First: If a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, the next candidate shall replace him in the number of votes obtained in his list. Second: If a member of the Council of Representatives or a member of the provincial council loses his seat for any reason whatsoever, and is part of a single list, the seat shall be allocated to another candidate who obtained the highest votes for a party or political organization who obtained the maximum number of votes and did not obtain a seat. Third: If the vacant seat belongs to a woman, it is required that another woman be replaced from the same electoral list), and since this law entered into force on 27/3/2023 and was published in the Official Gazette No. (4718) on 8/5/2023, accordingly, 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

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law because it is a subsequent law that canceled the previous one, and requested the dismissal of the lawsuit and charged the plaintiff expenses. The second defendant's attorney replied with the reply dated 6/6/2023 and requested the dismissal of the lawsuit, as the distribution process was consistent with the instructions for distributing the seats, whereas the seat that has been filled is allocated according to the quota system, because Article (16/3<sup>rd</sup>) of the law requires the presence of at least one woman in the constituency to ensure the representation of women in that constituency, and the law made the number of constituencies in the province of Baghdad (17) electoral districts and by (17) women at least, and whereas Article (16/2<sup>nd</sup>) stipulates that: (The percentage of women's representation for each governorate shall be not less than (25%) of the number of members of the Council of Representatives in each governorate). The Council of Representatives voted to approve the enactment of the Second Amendment Law to Law No. 6 of 2006, according to which the text of paragraph 3 of Article 2 was repealed and replaced by the following text: If the vacant seat belongs to a woman, she must be replaced by a woman in the same constituency, regardless of exceeding the minimum representation of women in the Council. The third defendant's agent replied with the two answering drafts on 30/5/2023 and 26/7/2023, according to which he requested the dismissal of the lawsuit, as his client became a deputy constitutionally and legally and the instructions issued regarding the electoral law for obtaining the highest votes (2190) votes. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading following Article (31/5<sup>th</sup>) thereof, On the specified day, the court was formed and the case began to be heard, the court scrutinized what was stated in the petition and what was stated in the answering drafts submitted by the defendants, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

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**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Ahmed Salem Aziz's lawsuit is focused on challenging the negative decision of the first defendant to dismiss his objection to the validity of the membership of the third defendant deputy, Kifah Abdul Mohsen Al-Sudani, and to demand a ruling to annul her membership and oblige the Council of Representatives and the Independent High Electoral Commission to allow him to take the constitutional oath in her place as a deputy in the Iraqi Council of Representatives for its current 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)), and 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, it was stated in a definitive provision in the Second Amendment under Article I - paragraph (3) mentioned above regarding the subject of replacing the vacant seat that belongs to a woman and expressly stipulated that, stipulating that the replacement for her should be a woman in the same constituency even if the

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number of women in the electoral district exceeds the minimum representation of women in the Council stipulated in Article (49/4<sup>th</sup>) of the Constitution, and thus the plaintiff's claim must be dismissed because there is nothing that prejudices the validity of the membership of the third defendant in the 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 lawsuit of the plaintiff Ahmed Salem Aziz and charge him the 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 93) 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 in the session dated 28/Muharram Al-Haram/1445 Hijri coinciding with 16/August/2023 AD.

**Judge**

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

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