

Republic of Iraq  
Federal Supreme Court  
Ref. 102 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 1.6.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed 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:**

Sadiq Madlool Hamad Jassem \_ his attorney, Dr. Walid Kased Al-Zaidi.

**The defendant:**

The Speaker of the Council of Representatives / in addition to his position - his two attorneys are Legal Counsel Haitham Majed Salem and Human Rights Officer Saman Mohsen Ibrahim.

**The claim:**

The plaintiff claimed, through his attorney, that he submits his appeal to this court within the framework of its jurisdiction stipulated in Article (93/Third) of the Constitution, and what Article 52/Second of it stipulates with the jurisdiction of the Federal Supreme Court to consider appeals against decisions of the Council of Representatives to decide on The validity of the membership of its members issued within (30) days from the date of registering the objection by a two-thirds majority of its members, in addition to what was stipulated in Article (4/ninth) of the Federal Supreme Court Law No. (30) for the year 2005 as amended by Law No. (25) for the year 2021, which It

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stipulated that among the court's competencies (to consider an appeal against the decision of the Council of Representatives issued in accordance with its powers stipulated in Article (52) of the Constitution of the Republic of Iraq for the year 2005, within (30) thirty days from the date of its issuance), and that he submitted an objection to the Iraqi Council of Representatives Based on the text of Article 52/First of the Constitution, which was registered in the Council of Representatives' office in the number (M.R/89) on 2/15/2022, he challenged the validity of the membership of Representative (Amir Kamel Muhammad), as his membership in the Council is invalid. And his illegally occupying the parliamentary seat, and the plaintiff considers that he is the one who deserves to be a member of M The Council of Representatives sat in the place of the representative whose membership is being challenged and that the Council of Representatives is obliged to receive and register the objection and decide on it within 30 days from the date of its registration in accordance with the text of the Constitutional Article (52/first). , according to what was permitted and indicated by the Federal Supreme Court in its decision No. (91/Federal/2021), which allows him to submit this appeal based on the provisions of Article 52/Second, especially after achieving the two-thirds quorum stipulated in Clause (First) of Constitutional Article (52) in Parliamentary Session No. (3), dated 5/3/2022, and that by doing so, he has taken the legal avenues outlined in Article (52) of the Constitution, even though the Council of Representatives does not include in its agendas the vote on (objections) Membership validity), which does not provide an opportunity to present the objections to the members of the Council for a vote, whether by acceptance or

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rejection, which is what the presidency of the Council has been doing since the 2018 elections until today. And that his appeal is that he had previously competed as a candidate in the Council of Representatives elections for the fifth session 2021 in Babil Governorate within the second electoral district. The Independent Elections Commission on announcing the results on 10/10/2021, which resulted in the following: 1- On 11/15/2021, the Judicial Authority issued a decision No. (1631/Judicial Authority/2021) accepting the appeal submitted by him related to the violation of the continuation of the work of polling stations After the scheduled time, it canceled two polling stations, and returned the appeal to the commission to follow the necessary measures in this regard. 2- The Independent High Electoral Commission has taken the necessary measures in accordance with the recommendation of the General Secretariat of the Board of Commissioners - Complaints and Appeals Department, and instructed to cancel the polling stations No. (4) of the electoral center (162310) and No. (2) of the electoral center (162304) in implementation of the decision of the Judicial Commission for Elections referred to him above, which led to him submitting the votes against the objection to the validity of his membership and his obtaining of a seat in the electoral district. 3- The Commission revoked its decision by a new decision issued by the Board of Commissioners in the number (S.M./1 exceptional 73) on November 22, 2021, in which it justified the reasons for delaying the closure of stations after the scheduled time, while the Commission's cancellation of the two polling stations referred to above It came in implementation of the Judicial Authority's Decision No. (1631/ Judicial Authority/2021) in accordance with Clause

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(Third) of Article 19 of the Independent High Electoral Commission Law No. 31 of the year 2019 Which stipulated that the decisions of the judicial body are final, so it is not permissible to not implement them by the Commission, as it has violated the text of this article, and committed a constitutional violation represented by not applying a legal text, and for the data provided, and because the dispute is the subject of the objection related to a constitutional violation as It violated the principle of equality and equal opportunities and the right of citizens to participate in public affairs, including the right to vote, elect and be nominated, those rights stipulated in Articles (14-16-20) of the Constitution. Therefore, the plaintiff asked the Federal Supreme Court to oblige the defendant, in addition to his job, to implement Article (52) of the Iraqi constitution and to enable him to obtain the parliamentary seat in the second electoral district in Babil Province instead of the deputy (Amir Kamel Muhammad). The case was registered with this court in No. (102/Federal/2022), and the legal fee was collected for it in accordance with Article (1/Third) of the Federal Supreme Court's internal system No. (1) for the year 2005. (2/First) of the same bylaw as above. His two attorneys responded with the answer list dated 4/25/2022, summarizing that the representative (Amir Kamel Muhammad) is a member of the Council of Representatives for the fifth electoral cycle, and the election results were approved in accordance with the Federal Supreme Court Decision No. 175 / Federal / 2021) on December 27, 2021, and that invalidating and canceling electoral papers in an electoral district in the event of appeals or complaints is at the heart of the work of the Independent High Electoral Commission based on the provisions of Article (38) of the Council of Representatives Elections Law No. (9)

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) for the year 2020, and the Judicial Commission for Elections, in accordance with its decision No. (1631 / Judicial Commission for Elections/2021) dated 11/25/2021, had previously ratified the decision of the Board of Commissioners regarding the response to the appeal submitted by the plaintiff, and that the decisions of the Judicial Commission are final based on Article (1) 9) From the High Electoral Commission Law No. (31) of 2019, so they requested that the plaintiff's lawsuit be dismissed and that he be charged with all judicial fees, expenses and attorney fees. After completing the procedures stipulated in the bylaw of the Federal Supreme Court, mentioned above, a date for the pleading was set in accordance with Article (2/Second) of it, and the two parties were informed of it. On the appointed day, the court was formed, so the plaintiff's attorney, Walid Kased Al-Zaidi, attended and attended on behalf of the defendant and his counselor The legal Haitham Majed Salem, and the public pleading, the plaintiff's attorney repeated what was stated in the lawsuit's petition and requested a ruling according to which the defendant's attorney answered and requested that the lawsuit be dismissed for the reasons stated in the answer list dated 4/25/2022 as well as the decision of this court No. (204/Federal/2021), which Addressing the same subject matter of this lawsuit, the court noted that Representative Amir Kamel submitted a request through his attorney, lawyer Ali Ghati, that included a request for him to enter a third person in this lawsuit, linking the request within the lawsuit documents. What is being said, the court decided on the conclusion of the pleading, and issued the following ruling:

### **The decision:**

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Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focused on the demand to obligate the defendant (the Speaker of the Council of Representatives / in addition to his job) to implement and implement the provisions of Article (52) of the Constitution of the Republic of Iraq for the year 2005 and to enable the plaintiff to obtain a representative seat in the Council of Representatives within the constituency The second election in the province of Babil and his replacement of the deputy (Amir Kamel Muhammad) after ruling that his membership in the Council of Representatives is invalid for the reasons and justifications mentioned in the lawsuit petition and the regulations highlighted therein. 2021) requesting the cancellation of the decision of the Board of Commissioners of the Independent High Electoral Commission No. (Sadiq Madaloul Hamad Jassem) for lack of jurisdiction, and this court finds that although this lawsuit was filed under Article 52 of the Constitution and that the extension In the case of the Speaker of the Council of Representatives, in addition to his position, however, the content and content of the lawsuit is the same as what the plaintiff raised in the lawsuit No. (204/Federal/2021) and the plaintiff relied on the same defenses and reasons, all of which relate to the electoral process that took place on 10/10/2021 and the content of the lawsuit. The case is in essence a challenge to the decisions of the Board of Commissioners of the Independent High Electoral Commission and the decisions of the Judicial Authority for Elections that were issued as a result of the appeals and complaints submitted to it within the second electoral district in Babil Governorate, and where the court finds that the content of Article (52) of the Constitution refers to challenging the validity of the

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membership of the members of the Council of Representatives Regarding the conditions for membership, starting from the nomination and for the duration of his stay in the Council of Representatives, but this does not include what is related to the technical aspects of the electoral process in terms of calculating the number of votes and canceling stations and other things that fall within the powers of the Independent High Electoral Commission, and the appeal against them shall be before the Commission Judicial elections, and the decisions of the commission are final and not subject to review and appeal, based on Article (19) of the Independent High Electoral Commission Law No. (31) of 2019 and this is what this court has separated in the merits of its decision No. (204 / Federal / 2021) and since the plaintiff in this case Nothing new was raised that was not raised in the aforementioned lawsuit, and that the content of this lawsuit refers to issues related to technical issues related to the electoral process. Thus, the plaintiff did not submit anything that would undermine the validity of the membership of the deputy (Amir Kamel Muhammad). (52) of the Constitution on him and for all of the above, the court decided to dismiss the claim of the plaintiff (Sadiq Medoul Hamad Jassem) and charge him all expenses and attorney fees for the defendant's attorney, in addition to his job, an amount of one hundred thousand dinars. 94) of the Constitution of the Republic of Iraq for the year 2005 and articles (4 / ninth) and (5) of the Federal Supreme Court Law No. (30) for 2005, as amended by Law No. (25) of 2021 and publicly understood on 1 Dhul Qi'dah / 1443 AH corresponding to 1/6/2022 AD.

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Signature of  
The president

***Jasem Mohammad Abbood***

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