

Republic of Iraq
Federal Supreme Court
Ref 103/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali and Khaled Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Bayader Qasim Mohsen , her agent the barrister Ahmed Saeed Musa.

The Defendant: Speaker of the Council of Representatives / being in this capacity, his agent Deputy Director General of the Legal Affairs Department Sabah Juma Al-Bawi.

The Claim:

The plaintiff claimed, through the mediation of her agent, that she submitted an appeal to the defendant regarding the validity of the membership of the deputy (Khadija Wadi Mazer) in accordance with the provisions of Article (52) of the Constitution, for losing one of the conditions of membership and registered on 1/2/2024, and despite the passage of the period of (30) days since its submission, the defendant did not present it to the Council for decision, and this is a judicial rejection of the appeal, and because the defendant is obligated to terminate the membership of the representative whose membership is objected to based on Article (1) of the Law on the Replacement of Members of the Council of Representatives due to her loss the conditions of membership specified in accordance with the law, so the plaintiff initiated this lawsuit for the following reasons: First- On 31/12/2023, the Integrity Court in Al-Muthanna issued its decision to include the representative whose membership is objected to and others in the

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General Amnesty Law No. (27) of 2016, in accordance with the provisions of Article (331) of the Penal Code, which is one of the corruption crimes specified in Article (1) of the Integrity and Illicit Gains Commission Law No. (30) of 2011, as amended, for the crime of acquiring an amount of (30) million dinars allocated by the Muthanna Provincial Council in accordance with its decision No. (61) for the year 2011, for orphans and families of the poor and distributing it at the rate of (50) thousand dinars for each family after it was received from the deputy (Khadija Wadi Mazer) and other members of the Muthanna Provincial Council within the committee for the distribution of those amounts without handing them over to those who deserve them, and thus the crime committed by the member objecting to its membership represents a crime of financial corruption, and therefore it is missing the condition of Article (7/3rd) of the Law on the Elections of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018 as amended by the Court's decision (73 and its units/federal/2023). Second: The loss of the member objecting to its membership of the condition of good conduct and behavior due to forging a confirmation of continuation of service for the purpose of obtaining a bachelor's degree from the Open Education College. She had previously held the position of a member of the Iraqi Council of Representatives for the third session, and during her tenure in office, she submitted an application to study at the Open Education College, Al-Qadisiyah branch, and because the college requires that the applicant for study be one of the educational staff in the Ministry of Education, and who are continuing education according to the text of Article (First) of the College Law No. (169) of 1998, which referred to ((First-Alif- college called (Open Educational College) shall be established in the Ministry of Education that adopts the method of distance education for teachers, to obtain an initial university

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degree (Baccalaureate degree) In-service education equivalent to the initial university degree granted by Iraqi public universities)), she took advantage of her position and submitted a false endorsement by continuing to serve despite the fact that she is a member of the Council of Representatives and supported by the Director General of Muthanna Education and the supervisor, and was accepted after submitting the false endorsement and obtained her impact on a Baccalaureate degree from the Open Education College, which she used to nominate for membership of the Council of Representatives, and thus her submission of support contrary to the truth with the intention of cheating makes her lose the condition of good conduct and behavior specified in Article (7/3rd) of the Law on Elections to the Council of Representatives and Provincial Councils. Third: When a member of the Council of Representatives takes the constitutional oath, he undertakes to respect the Constitution and perform his legal responsibility provided for by the Constitution and other laws, and the violation of the Constitution is achieved by committing any act that constitutes an explicit or implicit violation of any provision of the Constitution, and acting contrary to what is stated therein by using the authority granted to him under those texts leads to committing a violation, and that the violation of the Constitution also results from any illegal violation of the law in accordance with Article (50) of the Constitution, and that the member objecting to her membership took advantage of her position and the powers granted to her in the third session to influence the Director General of Muthana Education, as well as the Supervision Department to accept the false support she submitted by being continuing in the education corps despite being a member Council of Representatives, there by violating Article (50) of the Constitution by violating the law, therefore, she asked this court to rule on the annulment of the negative

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decision of the Council of Representatives to reject the request to terminate the membership of the representative (Khadija Wadi Mezar) and to order the termination of her membership. After registering the case with this court with the number (103/Federal/2024) and collecting the legal fee for it, and informing the defendant of her petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his agent replied with the reply list dated 14/4/2024, its conclusion: that the decision of the Integrity Court in Muthanna dated 31/12/2023 is a decision that is overturned by the decision of the Cassation Authority in the Muthanna Court of Appeal on 19/2/2024, whereas the Integrity Court has decided on its own initiative to convict, and then to include the amnesty law without taking the necessary measures, including the need to approach the local councils of the districts and districts to provide the court with the names of the families nominated to receive the grant under investigation and to verify that those families received the amounts of the grant allocated to them, and that the amount of the grant for orphans and poor families was distributed to the beneficiaries under the minutes of delivery signed by the Distribution Committee and the heads of the administrative units covered, and an investigative committee has already been formed in the Muthanna Provincial Council to investigate the mechanism of disbursement of the amounts allocated to orphans and poor families, receipts and official documents that support the disbursement in accordance with the decision of the Muthanna Provincial Council No. (61) of 2011, the investigative committee recommended that the investigation be closed because there was no negligence, due to the existence of instruments and disbursement orders, and the amounts were distributed to the beneficiaries according to the original delivery records, as for the claim filed against the

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representative (Khadija Wadi Mezar) to submit a false support that is not proven by evidence or even a presumption, which makes the claim unproductive, after approaching the Open Educational College according to the letter No. (1/13/4182) on 4/4/2024, as it requested the priorities for accepting the referred to in the college, and the extent to which she submitted support for her continued service in the education of Muthanna, the aforementioned college responded according to its letter No. (295) dated 7/4/2024 that the nodded did not provide endorsement including her continuation of service and attached to her letter all the special priorities since her submission for the study in college and until her graduation, so the defendant's agent requested to reject of the lawsuit and the plaintiff to be charged with the expenses, after completing the procedures required by the rules of procedure of the Federal Supreme Court, a date was set for the consideration of the case without pleading in accordance with the provisions of Article (31/5th) thereof, in which the court was formed and the case was considered, the court scrutinized the plaintiff's requests and supports and the defenses of the defendant's agent and after completing 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 plaintiff (Bayader Qasim Mohsen) filed the lawsuit before this court to quarrel with the Speaker of the council of Representatives / being in this capacity and claiming that she had previously filed an appeal to the defendant that the membership of the representative (Khadija Wadi Mezar) was invalid due to her loss of one of the conditions of membership, and the appeal was registered with the

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Council on 1/2/2024 despite the passage of the period of (30) days from the submission of the appeal, the defendant, being in this capacity, did not present it to the Council for decision, and thus he has issued an implicit decision to reject the request, and because the aforementioned representative has been issued a decision against her to include her in the amnesty law on 31/12/2023, the Muthanna Investigative Court issued a decision that includes its coverage in the General Amnesty Law No. (27) of 2016 after it took investigative measures against it in accordance with the provisions of Article (331) of the Penal Code, it is one of the corruption crimes specified in Article (1) of the Integrity and Illicit Gains Commission Law No. (30) of 2011, as amended, the aforementioned representative has also lost the condition of good conduct due to her falsification of the endorsement of her continuation of service for the purpose of obtaining a bachelor's degree from the Open College of Education, taking advantage of her membership in the Council of Representatives, and thus she has broken the constitutional oath she took based on the provisions of Article (50) of the Constitution, so she requested to invite the defendant / being in this capacity to plead and rule to cancel his negative decision to reject the request to terminate the membership of the representative (Khadija Wadi Mezar) and to order the termination of her membership and replace her with the plaintiff, as she is the first reserve of women for the (Rights Bloc) in Muthanna Governorate for obtaining (3061) votes. The Federal Supreme Court finds that the plaintiff's lawsuit falls within the jurisdiction of this court based on the provisions of Article (52) of the Constitution of the Republic of Iraq of 2005, and that it is filed within the period stipulated in Article (31) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and that both the plaintiff and the defendant, being in this capacity, are legal opponents who meet the conditions of litigation

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and have the legal capacity to litigate, so the plaintiff's lawsuit is formally admissible on the merits, the court found that the plaintiff had based her claim on the fact that the deputy (Khadija Wadi Mezar) has lost one of the conditions for membership due to its coverage in the General Amnesty Law No. (27) of 2016 for one of the corruption crimes specified in the Integrity and Illicit Gain Commission Law No. (30) of 2011, for exploiting her membership in the Council of Representatives and forging her letter of continuity in service in order to be admitted to the Open Education College, and to inform the court of the defendant's agent's answer being in this capacity dated 14/4/2024, which includes that the decision of the Integrity Court in Muthanna issued on 31/12/2023 including the inclusion of the deputy (Khadija Wadi Mezar) in the provisions of the General Amnesty Law No. (27) of 2016 it was overturned by the Muthanna Court of Appeal in its discriminatory capacity according to its decision dated 19/2/2024, which was reviewed by the court, which includes that ((The decision of the Integrity Court in Muthanna to include the representative Khadija Wadi Mazer and other defendants in the provisions of the General Amnesty Law No. 27 of 2016 is incorrect and contrary to the law because it was issued prematurely, as it is proven from the progress of the ongoing investigation in the case that the distinguished defendants were members of the committee in charge of distributing the gift approved by the Muthanna Provincial Council for the families of orphans according to its decision No. (61/2011) amounting to 30,000,000 thirty million dinars and 50,000 fifty thousand dinars for each family... The names of the families are sent by the local councils of the districts and sub-districts it is the most needy families, the investigating court had to approach these councils to provide them with a copy of the nominated families a statement as to whether the gift was received or not, and if it is proven to

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be true, then the crime is null and void and there is no reason to include them in the pardon, if it is proven otherwise, it must take the appropriate decision, and where the court missed that, so it decided to overturn the distinguished decision and return the case to its court to follow this based on the provisions of Articles 264 and 265 of the Code of Criminal Procedure in accordance with Resolution No. (104) of 1988), so the reason on which the plaintiff relied in her lawsuit regarding the inclusion of the representative (Khadija Wadi Mezar) in the General Amnesty Law was denied by the reversal of the decision by the Muthanna Court of Appeal in its discriminatory capacity, as for the plaintiff's claim that the deputy the aforementioned has exploited her membership in the Council of Representatives and falsified her letter of continuation of service as a teacher in one of the schools of the Ministry of Education, it was confirmed to the court through the letter of the Open Educational College No. (295) on 7/4/2024 addressed to the General Secretariat of the Iraqi Council of Representatives, Department of Legal Affairs, that (Khadija Wadi Mezar Al-Jabri) did not submit any endorsement of the continuation of service to the said college, but the support of its continuity came in the admission form prepared by the concerned departments in the General Directorate of Muthana Education, and the court reviewed the aforementioned admission form, and it was found that the field of the school it was stated that the teacher (Khadija Wadi Mezar is a teacher at the Rouh Al-Amin School for Boys and teaches technical subject while she is currently emptied as a member of the Iraqi Council of Representatives for the third session), and thus the reason on which the plaintiff relied has been denied by the official letters referred to and attached to the list of the defendant's agent/ being in this capacity, and through all of the above it was not confirmed by the court that the deputy (Khadija Wadi Mezar) had lost

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any of the conditions of her membership and the plaintiff's claim is due to be rejected, for all of the foregoing and by request, the Federal Supreme Court decided to rule as follows:

First: Rejecting the plaintiff's lawsuit (Bayader Qasim Mohsen), for lack of prejudice to the validity of the membership of the representative (Khadija Wadi Mezar).

Second: Charging the plaintiff with the expenses, fees and attorneyship fees of the defendant's agent, the Speaker of the Council of Representatives, being in this capacity Director General of the Legal Affairs Department, Sabah Juma Al-Bawi, an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding based on the provisions of Articles (52, 93 and 94) of the Constitution of the Republic of Iraq of 2005 articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) for the year 2021, and it has been made clear in the session dated 29/Shawwal/1445 AH corresponding to 8/5/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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