

Republic of Iraq  
Federal Supreme Court  
Ref. 108 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 13.6.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Galib Ammer Shnen, 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:**

Ektifaa Abdel Kassar Al-Hasnawi - her attorney, Alaa Balsam Fahd.

**The defendants:**

1. Speaker of the Iraqi Council of Representatives / in addition to his post - his two attorneys, Legal Counsel Haitham Majid Salem and human rights employee Saman Mohsen Ibrahim.
2. Chairman of the Board of Commissioners of the Independent High Electoral Commission / in addition to his position his agent is legal advisor Ahmed Hassan Abd.
3. Khaled Miteb Yassin Al-Obaidi.

**The claim:**

The plaintiff claimed, through her attorney, that on 10/11/2021, the second defendant issued the decision to announce the results of the Iraqi Parliament elections for the year 2021. It violated Article (49/4) of the Constitution of the Republic of Iraq for the year 2005, which states (The election law aims to achieve the percentage of

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women's representation of no less than a quarter of the number of members of the Council of Representatives.) whereas Article (16/second) of the Council Elections Law Iraqi Representatives No. (9) for the year 2020 stipulated (the representation of women shall be at least 25% of the number of members of the Council of Representatives in each governorate), and Article (15/Second) of the same law states that (the order of candidates in the constituency shall be rearranged). And since the Board of Commissioners did not replace the fourth winning male candidate in the aforementioned constituency, as required by Articles (14 and 15) according to the number of votes obtained by each of them. and 16) of the law of The aforementioned elections, and since the women who win their votes are not considered among the women's quota, and since the representation of women by at least a quarter of the number of members of the Council of Representatives was not achieved in the aforementioned constituency, the plaintiff took the initiative to file an objection to the Iraqi Council of Representatives with the number (Mim. Ra /90) dated 15.2.2022, and it was not decided upon, and because the Council of Commissioners and the Council of Representatives have violated the text of the Constitution and the laws as shown above, so the plaintiff requested the Federal Supreme Court to rule that the membership of the third defendant (Khaled Mutaib Yassin Al-Obaidi) is invalid. And replacing it with her, as she received the highest votes within the women's quota in the sixth electoral district in Baghdad. The case was registered with this court in No. (108/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) of 2005 and informs the defendants of its

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petition and documents in accordance with Article (2/first) of the same rules of procedure were mentioned above. The first defendant's attorney (the Speaker of the Council of Representatives / in addition to his position) answered the answer list dated 4/25/2022, its conclusion is that the representative (Khaled Mutaib Yassin Al-Obaidi) is a member of the Council of Representatives for the fifth electoral cycle, and the election results have been approved. In accordance with Federal Supreme Court Decision No. (175/Federal/2021) dated 27/12/2021, the distribution of seats was made in accordance with the provisions of Parliament Elections Law No. (9) of 2020 and the relevant regulations issued by the Independent High Electoral Commission, and that The minimum proportion of women is achieved in the governorate, and according to the table attached to the Council of Representatives (electoral districts) elections law and Article (16/second, third and fourth) thereof, it is not permissible to add a quota for women if the presence of a female component for that electoral district is achieved if the quota is exhausted. A feminist in the governorate, there will be no replacement process, and that the quota for women was an exception to the original principle of equality stipulated in Article 14 of the Constitution, and that the rule is that the exception is not expanded upon and is not measured and estimated. Therefore, they requested that the plaintiff's case be dismissed and that all judicial fees be charged. expenses and attorneys' fees. The second defendant (the Chairman of the Board of Commissioners of the High Electoral Commission/in addition to his position) responded to the answer list in the number (kh/22/298) dated 4/24/2022, which summarizes that the Independent High Electoral Commission Law No. (31) of 2019

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has drawn the legal way to appeal the decisions issued by the Board of Commissioners, in accordance with Articles (18 and 19) thereof, according to which the competent authority to consider objections to these decisions are the Judicial Authority for Elections, whose decisions are final according to Article (19/Third) of the aforementioned law, and it is not permissible to appeal before any party, Therefore, the Federal Supreme Court is not competent to consider that case. And it was stated in Article (16/Third) of the Parliament Elections Law that the quota for women for each governorate is determined as specified in the attached table. With reference to the table attached to the law, the sixth district in Baghdad governorate is (4) seats, and this table has specified that it be a woman. One of those seats, and with reference to the election results, there is a female candidate who won her votes in one of the constituency seats, and therefore that constituency has exhausted the women's seat with the victory of that candidate, which is consistent with the application of Article (16) of the election law and the instructions for distributing seats, in addition to that the plaintiff she had previously submitted an appeal before the Judicial Commission for Elections against the decisions of the Board of Commissioners related to the preliminary results of the elections. The decision of the Judicial Commission for Elections No. (317/1336/ Judicial Commission for Elections/2021) dated 11/21/2021 was issued, which includes ratification of the contested decision of the Board of Commissioners the court had previously ruled, by virtue of its decision No. (183/federal/2021), in the lawsuit filed by the same plaintiff and on the same subject, to dismiss the case for lack of jurisdiction. Therefore, he requested that the plaintiff's lawsuit be

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dismissed and that it be charged with the expenses. The third defendant (Representative Khaled Mutaib Yassin Al-Obaidi) responded according to the answer list dated May 13, 2022, which included formal defenses that are the same as those contained in the lists of the first and second defendants, as well as with regard to substantive defenses, and added that the exception aimed at Article (49/fourth) of the constitution Which came as an exception to the provisions of Article (14) of it. It is not permissible for the votes of the voters who gave their votes to be sacrificed in numbers greater than what the woman who wants to replace him obtained under the (women's quota), because this contradicts the will of the voter and the freedom of expression that is guaranteed by Articles (20). And (38/first) of the constitution, so the ruling was requested to dismiss the plaintiff's lawsuit and charge her all fees, expenses, and attorney's 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 parties were informed of it. (The Speaker of the Council of Representatives/in addition to his post) and his two attorneys, the legal advisor Haitham Majed Salem and the human rights employee Saman Mohsen Ibrahim, and the second defendant (the Chairman of the Independent High Electoral Commission/in addition to his post) attended on behalf of the second defendant (the head of the Independent High Electoral Commission/in addition to his post) and his deputy, the legal employee Ahmed Hassan Abd, and the third defendant, Khaled Miteb Yassin, or his agent did not attend. Despite being notified in accordance with the law, and the public pleading was initiated, the plaintiff's attorney repeated what was stated in the

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lawsuit's petition and requested a judgment according to which the first and second defendants' attorneys answered and requested that each of them reject the lawsuit on behalf of his client for the reasons stated in the answer regulations attached to the lawsuit file. It is said, I understand the conclusion of the pleading, and the court issued the following ruling:

**The decision:**

Upon review and deliberation by the Federal Supreme Court and its review of the plaintiff's lawsuit, which summarized the request to rule that the membership of the third defendant, Khaled Mutaib Yassin Al-Obeidi, was invalid and replaced by the plaintiff, as she had the highest votes within the women's quota in the sixth electoral district in Baghdad, the court noted that the lawsuit was submitted within the period The legal provisions stipulated in Article 52/Second of the Constitution of the Republic of Iraq for the year (2005), so the court decided to accept it in form, and in consideration of the reasons for the lawsuit and the requests contained therein, and informing the court of the defenses of the first defendant, the Speaker of the Council of Representatives, in addition to his post in his list submitted on 27/4/2022, as well as the list submitted on 5/15/2022, as well as the court's review of the list of the second defendant, the Chairman of the Board of Commissioners at the Independent High Electoral Commission, in addition to his position dated 4/24/2022, as well as the list submitted by the third defendant, the MP Khaled Miteb Yassin Al-Obaidi on 5/15/2022, where the defendants requested that the case be dismissed for the reasons stated in their aforementioned regulations, as well as the court's review of the

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statements of the attorneys of the parties to the case recorded in the record and the court's decision Included in the plaintiff's attorney's refusal to enter (Jihan Abdullah Abbas, Ola Oda Laith, Noura Hikmat Abdel Aziz, Amal Attia Abdel Rahim, and Duha Reda Hashem Al Qasir) as third persons in this lawsuit besides the plaintiff for the lack of legal basis for their admission, and through scrutiny, the court noted that the plaintiff was a candidate In the sixth constituency in Baghdad / Al-Rusafa, and that the seats allocated to this constituency are four, and one seat has been allocated to the women's quota, and that this seat was won by a woman with her votes, and since Article (16/fourth) of the Council of Representatives Elections Law No. (9) of 2020 stated, If the women's quota is exhausted according to the results of the elections in the governorate, there will be no replacement process, as well as what was stated in the instructions for distributing seats for the Council of Representatives elections issued by the Independent High Electoral Commission in Article (3/Second/C) which states (If the quota for women is exhausted according to the results of the elections in the electoral district, so those results will be approved and there will be no replacement process), and therefore the court finds that there is no legal basis for the plaintiff's claim, in order to achieve the quota for women in the electoral district in which she was nominated, and there is no legal basis for her request (by replacing her with the MP Khaled Miteb Yassin and the ruling invalidating his membership in the Council of Representatives), and when all of the above and the request were submitted, the court decided to dismiss the plaintiff's claim Ektifaa Abdel Kassar Al-Hasnawi because there was no legal basis for her claim and charged her with fees, expenses, and attorney

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fees for the attorneys of the first and second defendants, in addition to their positions Legal Counsel Haitham Majed Salem And the legal employee Saman Mohsen Ibrahim on behalf of the first defendant in addition to his post, and the legal employee Ahmed Hassan Abd on behalf of the second defendant, in addition to his post, an amount of one hundred thousand dinars distributed among them according to the legal ratios. And Articles (4/ ninth and 5/second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and publicly understood on Dhul-Qa'dah 13 / 1443 AH corresponding to 6/13/2022 AD.

Signature of  
The president

***Jasem Mohammad Abboud***

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