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Federal Supreme Court  
Ref 128/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/6/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, Khaled Taha Ahmed, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Hamid Abd Ali Saleh Hadi.

The Defendants:

1. The Speaker of the Council of Representatives, being in this capacity - His two agents the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.
2. Chairman of the Board of Commissioners of the Independent High Electoral Commission / being in this capacity - His agent the legal adviser Ahmed Hassan Abed.

**The Claim:**

The plaintiff claimed that the representative (Mukhtar Mahmoud Yusuf Salman Al-Moussawi) had previously been sworn in before the Speaker of the Council of Representatives in his session No. (13) dated 10/3/2024 and began his membership duties as a deputy for Nineveh Governorate instead of the deputy who served as Governor of Diwaniyah according to the letter of the second defendant / being in this capacity No. (Kha/24/220) on 6/3/2024 and according to the decision of the Board of Commissioners No. (6) of the extraordinary minutes No. (11) dated 4/3/2024, and since these procedures were contrary to the provisions of the Constitution and the law, and prejudice and prejudice to his rights, he took the initiative to challenge them before the first defendant according to the law and within the legal period according to

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his registered request No. (1782) on 12/3/2024 and due to the passage of the constitutional period and the failure to respond to the request, he took the initiative to challenge the validity of the membership of the aforementioned representative before this court for several reasons, including that the plaintiff occupied for Diwaniyah Governorate for the 2021 Iraqi Council of Representatives elections / fifth parliamentary session and obtained (8701) votes Valid by the final results and certified by the second defendant, according to this number, it is the highest loser of votes over the rest of the candidates of Diwaniyah province, and the candidates of the Fatah list in the province have exhausted all the names of the candidates on their list accordingly, there is no second alternative to succeed representative (Abbas Shuail Odeh Thajeel Al-Zamili) after holding the position of Governor of Diwaniyah, and that the nomination of the second defendant for representative (Mukhtar Mahmoud Yusuf Salman Al-Musawi) as a substitute for representative (Abbas Shuail Odeh Al-Zamili) is legally correct in several legal respects, including that the seat that was vacated is one of the seats in Diwaniyah governorate constitutionally, and that it was occupied by a candidate from Nineveh governorate it is a paradox and constitutional violation of the provisions of Article (49/1<sup>st</sup>), where the winning candidate for the electoral district represents one hundred thousand people from this governorate, whose votes were wasted and became without parliamentary representation, which violates Article (14) of the Constitution, and Article (15/1<sup>st</sup>) of the Elections Law of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, as amended, where the number of seats allocated to Diwaniyah Governorate became (10) instead of (11) seats, and a seat was added to Nineveh Governorate this is due to the imbalance of parliamentary representation, and the decision of the second defendant contradicts the

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fact of replacing the members of the Sadrist bloc, who after their resignation did not apply the provisions of the aforementioned law when replacing them with new members, as it was - according to what was stipulated in that law - to replace the members of the Council of Representatives from the Sadrist bloc who resigned from the same bloc, where there are members of the aforementioned bloc numbering (22) losing candidates and they are the first members of the Council of Representatives according to the provisions of the aforementioned law, and the law on replacing members of the Council of Representatives Deputies No. 6 of 2006, as amended, has conflicted with the Constitution of the Republic of Iraq of 2005 in the text of Article (14) regarding equality among Iraqis before the law without discrimination for any reason, as the seat allocated to Diwaniyah Governorate was stolen in favor of Nineveh Governorate because of political discrimination - In the text of the third paragraph of Article (49) of the Constitution, which referred the conditions of the candidate, the voter and everything related to the election to be regulated by law, the law in force, whose articles regulate this, is Law No. (4) of 2023 amending Law No. (12) of 2018, where Article (6/4<sup>th</sup>) of it included that the candidate must be a citizen of the governorate under the civil status registry or a resident therein continuously for a period of not less than ten years, and therefore Law No. 6 of 2006, as amended, has violated the text of the said article, therefore, this applies to the violation of Article (49/3<sup>rd</sup>) of the Constitution, and since the Constitution is the supreme and the highest law in Iraq it is not permissible to enact a law that contradicts it under Article (13) thereof, so the plaintiff requested from this court to order the defendants to cancel Article (2) of the amended Law No. (6) of 2006 to replace members of the Council of Representatives, and the invalidity of the membership of representative

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(Mukhtar Mahmoud Yusuf Salman Al-Musawi) from Nineveh Governorate and to be a substitute for the replaced representative (Abbas Shuail Odeh Al-Zamili) from Diwaniyah Governorate and to charge them judicial fees and expenses After registering the case with this court No. (128/Federal/2024) and informing the defendants of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Rules of Procedure No. (1) of 2022, the first defendant's agent responded with the reply list dated 15/5/2024, which concluded: The article - the subject of the challenge came as a legislative option in accordance with the competencies of the Council of Representatives based on the provisions of Articles (49/5<sup>th</sup>) and (61/1<sup>st</sup>) of the Constitution, and the plaintiff's request to cancel it is outside the jurisdiction of the court according to Article (93/1<sup>st</sup>) as that the cancellation request responds to administrative decisions Article (8/1<sup>st</sup>) of Law No. (4) of 2023 stipulates that (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) and Article (2/2) of the amended Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as amended, stipulates that (if the vacant seat is within the governorate seats specified by the electoral law, and it shall be replaced by the bloc to which the member covered by the replacement belongs within the governorate list...) this applies to (Mukhtar Mahmoud Yusuf Salman Al-Musawi), as he belongs to the (Badr) bloc within the (Fatah) electoral alliance, and it is the same entity to which the resigned representative (Abbas Shuail Odeh Al-Zamili) belongs, and this is what was indicated in the book of the Independent High Electoral Commission / Board of Commissioners No. (Kha/24/220) on 6/3/2024, and the Federal Supreme Court has gone in more than one decision,

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including decision No. (143/Federal/2023) that the law regulating cases of termination of membership and replacement is Law No. 6 of 2006, as amended, therefore, the replacement of (Mukhtar Mahmoud Yusuf Salman Al-Musawi) in place of the resigned representative (Abbas Shuail Odeh Al-Zamili) is in accordance with the law the second defendant's agent replied with the reply list dated 19/5/2024, which included: that after approaching the High Electoral Commission from the Council of Representatives (Office of the First Vice-President) according to the letter No. (Mim. Kha 1/3/453) on 13/2/2024 to provide them with the alternative candidate who obtained the highest votes from the bloc to which representative belongs (Abbas Shuail Odeh Thajeel Al-Zamili - within the Al-Fatah list / Badr bloc, who became governor of Diwaniyah Governorate), and based on the text of Article (14/I) of Law No. ( 12) For the year 2018 amended article 2/2 of the amended Law No. 6 of 2006 of the Replacement of Members of the Council of Representatives No. 6 of 2006, which stipulates: (If the vacant seat is within the governorate seats specified by the electoral law, it shall be replaced by the bloc to which the member covered by the replacement belongs from the governorate list, and in the event that the candidates in a governorate are exhausted, the entity concerned must submit the name of another candidate, provided that he is among those nominated by the entity within the electoral list in another governorate and those whose candidacy has already been approved by the Commission) after referring to the list of candidates affiliated to (Al-Fateh List / Badr Bloc), which is the same list and bloc to which the candidate with the vacant seat belongs, it was found that the list had exhausted all its candidates in the governorate and in application of the legal text, another candidate belonging to the list (Al-Fateh / Badr Bloc) was resorted to who obtained the highest votes from another governorate, which is the

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candidate (Mukhtar Mahmoud Yusuf Al-Musawi), the candidate of the list and the bloc in Nineveh Governorate, and accordingly, the Commission applied the Elections Law and the Replacement of Members Law No. (6) of 2006 amended in this procedure, also, the plaintiff does not apply to the text of Article (14/1<sup>st</sup>) of the Elections Law of the Council of Representatives, Governorate Councils and Districts, nor the text of Article (2/2) of the Replacement Law, as he is not one of the candidates of the (Al-Fateh List), but rather a candidate for the (Sadrist Bloc), and he has previously challenged the decision of the Board of Commissioners No. (6) of the extraordinary record (11) dated 4/3/2024 before the Judicial Authority for Elections, and the Commission's decision No. (349 / Judicial Authority for Elections/2024) was issued to reject the appeal, and based on the text of Article (19/3<sup>rd</sup>). From the amended Independent High Electoral Commission Law No. (31) of 2019, the decisions of the Judicial Authority for Elections are binding, as for the plaintiff's request to oblige his client's department to cancel Article (2<sup>nd</sup>) contained in the Law on the Replacement of Members of the Council of Representatives and replace him with MP (Mukhtar Mahmoud Yusuf), it is not competent to do so and is not suitable to be a litigant in this lawsuit according to the reasons for its establishment and the plaintiff's requests, which requires the dismissal of the lawsuit, because the litigation is not directed from this side, so and for the above reasons for requesting to reject the lawsuit after completing the procedures required by the court's internal regulations, a date was set for the consideration of the case without pleading based on Article (31/4<sup>th</sup>) thereof, in which the court was formed and the case was considered, the court examined the plaintiff's requests and supports and the defenses of the defendants' agents after completing its scrutinies the

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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's lawsuit focused on a request to cancel Article (2) of the amended Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as well as the ruling on the invalidity of the membership of the representative (Mukhtar Mahmoud Yusuf Salman Al-Musawi) and his replacement as a deputy in the Council of Representatives instead of the representative (Abbas Shuail Odeh Al-Zamili), and then charging the defendants in addition to their jobs all judicial fees and expenses, and through scrutinizing the lawsuit file and its documents, it was found that the plaintiff's request Judgment to cancel Article (2) of the Law on the Replacement of Members of the Council of Representatives, as the competencies of this court are determined by articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, and article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, among these competencies are what is stipulated in item (first) of Article (93) of the Constitution, and item (first) of article (4) of the Court Law this court is competent to monitor the constitutionality of laws and regulations in force, as this control extends to all laws and legislation issued by the legislative authority as the constitutionally competent authority to carry out this task, as well as regulations issued by the executive authority in accordance with the provisions of the Constitution or issued by the legislative authority or other institutions in implementation of its laws or to regulate its work, and that the purpose of this control is to protect rights and freedoms and to ensure that the legislative and executive

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authorities do not exceed the limits set for each of them in accordance with the provisions of the Constitution, the Federal Supreme Court's control of the constitutionality of the laws and regulations in force does not exceed its limits in accordance with the principle of separation of powers stipulated in Article (47) of the Constitution of the Republic of Iraq as the Court exercises its authority in accordance with the provisions of item (first) of Article (93) of the Constitution and examines the contested text whether it is contrary to the provisions of the Constitution or not, and then issues its judgment either on its constitutionality or unconstitutionality and its judgment does not exceed otherwise, and it does not have the authority to cancel or amend the contested text, whereas the enactment of legislation and its amendment or repeal is the prerogative of the legislative authority represented by the Council of Representatives, and therefore the repeal of the contested text is outside the competence of this court, as for the plaintiff's request by ruling on invalid the membership of the representative (Mukhtar Mahmoud Yusuf) it is also must be rejected; because there is nothing that prejudices the validity of his membership, especially since the plaintiff he had previously taken the path set by the amended Independent High Electoral Commission Law No. 31 of 2019, and appealed against the decision of the board of commissioners of the Judicial Authority for Elections and the latter rejected his appeal, in addition to that the plaintiff is from outside the list and the bloc to which the member covered by the replacement belongs, and therefore the provisions of Article (14/1<sup>st</sup>) of the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, as amended, and accordingly to the foregoing, the Federal Supreme Court decided the following:

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First: Ruling on rejecting the plaintiff's lawsuit regarding the claim to cancel the text of Article (2) of the Law No. (6) of 2006, as amended, for lack of jurisdiction.

Second: Ruling on rejecting the plaintiff's lawsuit (Hamid Abd Ali Saleh) regarding the challenge to the validity of the membership of the representative objecting to the validity of his membership in the Council of Representatives (Mukhtar Mahmoud Yusuf Salman Al-Musawi), because there is nothing to prejudice it is correction.

Third: Charging the plaintiff with all judicial fees and expenses and advocacy fees of the agents of the defendants being in their capacity an amount of one hundred thousand dinars to be distributed in accordance with the law.

The decision has been issued unanimously, final and binding on all authorities in accordance with the provisions of Articles (52, 93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been edited in the session dated 4/Dhu al-Hijjah/1445 A.H. corresponding to 11/6/2024 AD.

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

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