

Republic of Iraq  
Federal Supreme Court  
Ref. 129 / 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: Mandeel Noomi Rawi Wadi – his agent the barrister Ahmed Saeed Mousa.

The Defendant: Speaker of the ICR/ being in this capacity – his agents the Director-General of the legal department Sabah Jumaa Al-Bawi and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff claimed through his agent that the defendant refrained from deciding on his objection to the validity of the membership of the Representative (Suad Jabbar Mohammed) within (30) days of registering the objection following Article (52/1<sup>st</sup>) of the Constitution, so he took the initiative to challenge the negative decision of the defendant, as Article (49/4<sup>th</sup>) of the Constitution obligated the Council of Representatives to enact an election law that guarantees the achievement of a percentage of representation for women of not less than a quarter of the number of members of the Council, and it has reached the Council of Representatives (95) women and the Constitution does not prevent that, and did not the constitution requires achieving this percentage in each governorate, article (16/6<sup>th</sup>) of the Electoral Law stipulates that the process of adding women should be repeated until the total number of women reaches the number

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allocated to the Council and not to the governorate or the electoral district, and the plaintiff believes that replacing the resigned Representative (Suad Jabbar Mohammed) with the objecting to her membership with the resigned Representative (Hadeel Mahmoud Kazim) despite not obtaining enough votes and after completing the required number of women in the Council contradicts the principle of equality and equal opportunities, it violates paragraph (3) of Article (2) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 as he is the candidate who obtained the highest votes in the second district in Najaf Governorate, and his replacement of the resigned Representative does not affect the minimum representation of women in the Council, so he asked this court to rule to cancel the defendant's decision to dismiss his objection in a judgmental response and to rule the invalidity of the membership of Representative (Suad Jabbar Muhammad) to replace the resigned Representative. The case was registered with this court No. (129/Federal/2023) and the legal fee was collected for it, and the defendant is informed of its petition and documents in accordance with Article (21 / first and second) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the defendant's agents replied with two response lists on 18/6 and 26/7/2023 in their conclusion: The significance of the text of Article (49/4<sup>th</sup>) of the Constitution is that the representation of women in the Council of Representatives must be at least a quarter of the number of its members and the possibility that the number of women in the Council of Representatives is more than a quarter, and it also indicates that the reference in determining the minimum number of women in the Council is the Electoral Law, and Article (16 / 1<sup>st</sup> and 2<sup>nd</sup>) of the Council of Representatives Elections Law has confirmed Iraqi No. (9) of 2020 in force at the time of the swearing-in of Representative (Suad Jabbar Mohammed), provided that the percentage of women's representation is not less than (25%) of the number of members of the Council of Representatives and the same percentage of the number of members of the Council of Representatives in each governorate, and the Federal Supreme Court

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confirmed in its decision (244 / Federal / 2022) on 29/3/2023 the inevitability of ensuring the percentage of women's representation at the governorate level And that the replacement of any member of the Council of Representatives in any governorate shall not prejudice that percentage according to the text of Article (16/2<sup>nd</sup>) of the Iraqi Council of Representatives Elections Law, as stipulated in Article (16/3<sup>rd</sup>) of the Elections Law, provided that (The quota for women is determined for each governorate as specified in the attached table) Referring to this table regarding the distribution of parliamentary seats in Najaf Governorate, it is clear that the number of seats allocated to this governorate is (12) parliamentary seats, and that the number of seats allocated to the women's quota is (3) seats divided based on one seat for each electoral district, and it is currently only (3) seats as required by law, which is the minimum necessary to achieve the quota for women in Najaf Governorate according to the attached table. the Council of Representatives Elections Law and the Instructions for the Distribution of Seats issued by the Independent High Electoral Commission, prejudice to the seat of Representative (Suad Jabbar Mohammed) or any of the other women will prejudice the percentage of women's representation that must be guaranteed by law and court decision, the Council of Representatives, Provincial and District Councils Elections Law 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 the Iraqi Council of Representatives Elections Law No. (9) of 2020, where Article (14) of it stipulates: (Third: If the vacant seat belongs to a woman, she must be replaced by another woman from the same electoral list), and the Council of Representatives voted to approve the second amendment to the law on the replacement of members Council of Representatives No. (6) of 2006, according to which item (3) of Article (2) thereof was abolished and replaced by a new text, so the defendant's agent requested the dismissal of the plaintiff's lawsuit and to burden him with the expenses. After completing the procedures required by the court's rules of procedure and based on Article

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(31/5<sup>th</sup>) thereof, the court set a date for considering the case without pleading, and on the specified day, the court was formed and the case began to be considered, the court checked the requests and evidence stated in its petition and the defendant's defenses, and after the court completed its checks, 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's lawsuit Mandil Nomi Rawi Wadi focuses on challenging the negative decision of the defendant to dismiss his objection to the validity of the membership of Representative Suad Jabbar Muhammad and demand a ruling to annul its membership and oblige the defendant to allow him to take the constitutional oath in her place as a deputy in the Iraqi Council of Representatives for its fifth 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 (fifth) of the same article, it stipulates that: (The Council of Representatives shall enact a law that addresses cases of replacing its members upon resignation, dismissal or death), while Article (1) of Law No. (15) of 2023, 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), stipulates 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)), 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

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replace members of the Council of Representatives from women in particular, and it came with a firm text 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 explicitly stipulated that, stipulating that the replacement for her should be a woman in the same constituency even if the number of women in the electoral district exceeds the minimum representation of women in the stipulated Council Accordingly, in Article (49/4<sup>th</sup>) of the Constitution, thus, the plaintiff's lawsuit must be dismissed for lack of prejudice to the validity of the membership of Representative Suad Jabbar Muhammad in 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, When the court decided to dismiss the plaintiff's lawsuit Mandeel Nomi Rawi Wadi and to burden him with the fees, expenses, and fees of the defendant's agents an amount of one hundred thousand dinars to be distributed among them in accordance with the law. The decision has been issued with the majority, final, and binding for all authorities according to the provisions of Articles (52 and 94) 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 18/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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