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Federal Supreme Court  
Ref. 130 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/7/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Turki Jada'an Abid Mahmood/ his agents the barristers Ahmed Saeed Mousa and Hayder Saeed Mousa.

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff claimed through his agent that he registered an objection to the membership of the Representative (Nahida Zeid Manhal Al-Dayni) in the Council of Representatives on 3/4/2022 and did not submit it to the Council for a vote within the period specified in Article (52/1<sup>st</sup>) of the Constitution, and where this is considered a judgmental rejection of this objection, so he challenges the decision of the defendant and requests its reversal and the ruling invalidating the membership of the objected Representative and replacing it for the following reasons: The quota for women is complementary as Article (16/5<sup>th</sup>) of the Council of Representatives Elections Law No. (9) of 2020 established a calculation to complete the required number of women in the Council, and if this number is not achieved after counting and sorting the votes, according to Article (16/6<sup>th</sup>), which stipulates that "this process shall be repeated until the total number of women reaches the number allocated to the

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Council", this confirms that the goal that corresponds to the Constitution and the electoral law seeks to achieve is that the number of women in the Council of Representatives reaches (83) women regardless of the number of women in the electoral district or their number in the province, because the Constitution requires that the representation of women be at least a quarter in the Council of Representatives, and this is a constitutional exception that may not be expanded at the provincial level, nor at the level of electoral districts, and that the results of the application of Article (16/2<sup>nd</sup>), which stipulated that the percentage of women should be at least (25%) of the number of members of the Council of Representatives in each governorate, and this is an expansion of the exception, and the application of this provision requires adding a woman to the number of women in the province of Babylon, where this percentage has not yet been achieved, because the number of seats (17) of which (4) was allocated only to women, as well as the addition of Another woman to the six winning women, because the 6th is equal to less than a quarter of the number (25), and that the allocation of a quarter of the seats of each governorate to women leads to the minimum number of women in the Council of Representatives in the event that women are unable to win a percentage higher than a quarter with their voting power, is (88) women and not (83) as required by the Constitution, and this proves mathematically the unconstitutionality of this text, while his claim to challenge the unconstitutionality of this clause was rejected by the court's decision by the number (149/Federal/2021) for not achieving its interest, while the application of the text of Article (16/3<sup>rd</sup>) on the distribution of seats according to the electoral tables, it led to an increase in their number from the required number in the Council of Representatives, (83) women, where their number in this session reached (95) women although they were unable

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to win more than (55) seats, and this violates the Constitution. The foregoing proves that the expansion of the constitutional exception at the provincial level leads to results contrary to the Constitution, as well as its expansion at the level of electoral districts, not to mention that the expansion of the legal text contained as an exception is absolutely impermissible, under the legal rule (what is stated as an exception may not be expanded and others are not measured against it), and that the application of the equation contained in the article (16/5<sup>th</sup>) and its repetition in accordance with item (6<sup>th</sup>) of the same article until the total The number of women to the required number in the Council prevents the allocation of its seat to the deputy objecting to its membership, so the Federal Supreme Court was asked to reject the challenged decision and to annul it, and to judge by invalidating the membership of the challenged representative and replacing it. The case was registered with this court in the number (130/federal/2022) and the legal fee for it was met based on the provisions of Article (1/3<sup>rd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2005, and informs the defendant of its petition and documents in accordance with Article (2/1<sup>st</sup>) of the same rules of the procedure mentioned above, and his agent replied with the answer list dated 5/6/2022 concluding that the Representative (Nahida Zeid Manhal Al-Dayni) is a member of the Council of Representatives for the fifth electoral cycle, and the results of the elections have been approved in accordance with the decision of the Federal Court Supreme No. (175/Federal/2021) dated 27/12/2021, and the distribution of seats was based on the provisions of the Council of Representatives Elections Law No. (9) of 2020 and the relevant regulations issued by the Independent High Electoral Commission, and the Court has approved the results of that distribution of seats in accordance with the provisions of the Constitution, and Article (3/1<sup>st</sup>/Jim) of the instructions for the

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distribution of seats for the elections of the Council of Representatives that organized the parliamentary elections for the year 2021 stipulates that "Candidates in the electoral district, whether they are on an open list or individually, shall be rearranged according to the number of valid votes obtained. Every candidate in the constituency from the highest to the lowest and is considered a winner who has received the highest votes (men or women)), also article (3/2<sup>nd</sup>/Dal) of the same instructions also stipulates that "if a woman does not win one of the seats in the electoral district according to the votes obtained following article (3/1<sup>st</sup>/Jim) of these instructions, the winning male candidate for the last seats in the electoral district shall be replaced by a woman who obtained the highest votes from women in the same electoral district." The Independent High Electoral Commission No. (31) of 2019 has stipulated that "the political party or candidate may appeal the decision of the Board of Commissioners within (3) three days starting from the day following its publication. The challenge shall be submitted to the National Office or any electoral office of the Commission or directly to the judiciary) and where no political party or candidate has appealed in accordance with Article (3/2<sup>nd</sup>/Dal) in question within three days, the instructions for the distribution of women's quota seats stipulated therein are binding on all, as the Federal Supreme Court has considered several appeals that focused on the electoral law in force, including Article (16) of its paragraphs and issued its decision No. (44/Federal). 2021) which ordered the dismissal of appeals for lack of constitutional violation, and that the Commission applied the provisions of the Electoral Law correctly and adhered to its provisions, and the Federal Supreme Court approved all the final results of the elections by its aforementioned decision, the defendant's agents attached an answering draft No. (605) on 31/5/2022 submitted by the Representative whose membership is

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challenged (Nahida Zeid Manhal) and requested that it be considered an integral part of their answering draft, the conclusion of which is that Article (49/4<sup>th</sup>) specified that the electoral law should target the representation of women not less than a quarter of the number of members of the Council of Representatives and nothing was required to restrict the number to exceed a quarter and that the two deputies (Asma Hamid Kanbash and Suzanne Mansour Karam) won their votes and the quota was completed for two seats, which became the number of The quota seats and the winners (4) four seats, and thus the number of seats for women in Diyala governorate was completed based on the seats allocated to the governorate and according to the table of the distribution of seats, so they requested the dismissal of the plaintiff's claim and the charging of fees and expenses. After completing the procedures stipulated in the Bylaw of the Court aforementioned, a date for the argument was scheduled according to the article (2/2<sup>nd</sup>) of which, and both parties were notified of it, on the appointed day the Court convened, on behalf of the plaintiff the barristers Ahmed Saeed Mousa and Hyder Saeed Mousa attended, and on behalf of the defendant the legal counselor Hyatham Majid Salim and the official jurist Saman Muhsin Ibrahim attended. The public in the presence argument proceeded. The agents of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it, the agent of the defendant replied and requested to reject the case for the reasons listed in the answering draft dated 15/6/2022, and the agents of both parties repeated their previous requests and sayings. Whereas nothing was left to be said, the end of the argument has been made clear and the Court issued the following decision:

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### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the conclusion of the plaintiff's case was that he had previously submitted his objection to the membership of the Representative Nahida Zeid Manhal Al-Dayni in the Council of Representatives on 3/4/2022 and the objection was not presented to the Council of Representatives, so it is considered a judgmental rejection and an appeal before this court during the legal period requesting the reversal of the decision and the ruling on the invalidity of the membership of the Representative above and his appeal was based on the fact that the expansion of the constitutional exception to the quota for women is contrary to the provisions of the Constitution and this is reflected in the results of the application of Clause (2<sup>nd</sup> and 3<sup>rd</sup>) of Article (16) of the Council of Representatives Elections Law No. (9) of 2020 by requiring the percentage of women to be at least 25% of the number of members of the Council of Representatives in each governorate as well as the distribution of women's seats according to the electoral schedule, as the application of both provisions will lead to an increase in the number of women in the Council from the required number of (83) women and this violates the provisions of the Constitution and that the equation contained in clause (5<sup>th</sup> and 6<sup>th</sup>) of Article (16) above must be applied to reach the constitutionally required number and through mutual defences between the parties to the lawsuit submitted in writing and recorded officially, this court finds that the plaintiff is a candidate in the second electoral district in Diyala province, to which three seats were allocated, including one seat for the women's quota, and since it is established that the Representative objecting to the validity of its membership obtained the seat allocated to the women's

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quota because it obtained the highest votes for the women losers in the This constituency instead of the plaintiff who received the least votes for the winning candidates in this constituency, although the number of votes he received was more than the votes obtained by the Representative who objected to the validity of its membership. The Independent High Electoral Commission has applied the legal provisions contained in Articles (16/2<sup>nd</sup> and 3<sup>rd</sup>) of Law No. (9) of 2020, the Federal Supreme Court ruled on the constitutionality of what is contained in this Article by its decision No. (44/Federal/2021) on 21/9/2021, and its application was in line with the instructions for the distribution of seats for the elections of the Council of Representatives contained in Article (3/2<sup>nd</sup>/Dal), which stipulates that "In the event that a woman does not win one of the seats in the electoral district according to the votes she obtained according to the votes she received according to the votes. Article (3/1<sup>st</sup>/Jim) of these Instructions the winning male candidate for the last seats of the electoral district shall be replaced by a woman who received the highest votes from women in the same constituency, and that the shortcomings mentioned by the plaintiff in his petition as well as in his written defenses to determine that the application of what is stated in article (16/2<sup>nd</sup> and 3<sup>rd</sup>) of Law No. (9) of 2020 and what is contained in the instructions for the distribution of seats for the elections of the Council of Representatives, which in essence leads to an expansion of the constitutional exception contradicts the principle of equality of Iraqis stipulated in article (14) of the Constitution, this is rejected. This is because the aforementioned Article (16) has ruled the Federal Supreme Court on the constitutionality of what is stated in it as mentioned above and therefore there is no way to raise the issue of the unconstitutionality of its application again because the decisions of this Court are final and binding based on the provisions

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of Article (94) of the Constitution, as for what is stated in the instructions referred to above, these instructions were issued by the Board of Commissioners of the Independent High Electoral Commission based on Article (47) of the Electoral Law No. (9) of 2020 and item (1<sup>st</sup>) From Article (1) and Clause (8<sup>th</sup>) of Article (10) of the Independent High Electoral Commission Law No. (31) of 2019, and these instructions are issued following the law, they are binding on the Commission on the issue of the distribution of seats and other matters organized by it unless they are challenged under Article (20/1<sup>st</sup>) of the Commission's Law above within the legal period and where their challenge and revocation have not been legally proven by the Electoral Judicial Committee, the Commission has no way but to apply what is stated therein. Accordingly, the Court finds that there is no defect with the membership of the Representative (Nahida Zaid Manhal), therefore, the case of the plaintiff should be rejected for the aforementioned reason. Therefore, the Court decided to reject the case of the plaintiff Turki Jada'an Abid Mahmood and to burden him with the judicial expenses and the advocacy fees for the agents of the defendant/ being in this capacity the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim amount of one-hundred thousand Iraqi dinars to be divided between them according to the law. The decision has been issued unanimously and decisive according to the provisions of article (52) of the Constitution of the Republic of Iraq for 2005 and article (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 26/Dhul Hijja/1443 Hijri coinciding 26/July/2022 AD.

**Signature of**

**The president**

**Jasem Mohammad Abbood**

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