

Republic of Iraq  
Federal Supreme Court  
Ref. 143 / 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: Fadhil Mawwat Kassar – 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, the official jurist Saman Muhsin Ibrahim, and the barrister Ahmed Majid Ahmed.

### **The Claim**

The plaintiff claimed through his agent that the defendant refrained from deciding on the validity of the membership of the representative (Nour Nafie Al-Jalihawi), which replaced the resigned representative contrary to the Constitution and the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, so he took the initiative to appeal before this court in this negative decision, as the Law No. (6) of 2006 on the replacement of members of the Council of Representatives is the law that deals with cases of replacement and resignation, and the Federal Supreme Court has issued two decisions regarding the seats of Wasit Governorate, namely (55/Federal/2022) And (244/Federal/2022), according to which the third circuit was emptied of women, the replacement law was weighted over the electoral law in dealing with cases of resignation, as for the consequences of the requirement to achieve a percentage of not less than a quarter in each governorate, the Federal Supreme Court ratified the results of the elections that did not achieve a quarter in the province of Babil and Basra, and

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adhering to Article (16/2<sup>nd</sup>) of the Elections Law means that the approved results were contrary to its provisions, and Article (16/9<sup>th</sup>) of this law confirmed that the losing woman does not replace the resigned deputy unless the replacement of a man affects the percentage of women's representation in the Council, therefore, the plaintiff asked this court to cancel the defendant's decision to dismiss his objection to the membership of representative (Nour Nafi Al-Jalihawi) in a judgmental response and to rule that its membership is invalid, so that the plaintiff replaces the resigned representative. The case was registered with this court, and the legal fee was paid, and the defendant was informed of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Bylaw of the Federal Supreme Court No. (1) of 2022, his agents replied with two answering draft on 4/7 and 25/7/2023, which included detailed formal and substantive defenses in which they concluded the request to dismiss the lawsuit, as the Council of Representatives voted to approve the legislation of the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, and under Article (1) thereof, paragraph (3) of Article (2) of the law was repealed and replaced by the text (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 limit. minimum representation of women in the Council), therefore, they asked to dismiss the lawsuit and charge the plaintiff the expenses. After completing the procedures required by the court's rules of procedure and based on Article (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 scrutinized the plaintiff's requests and grounds and the defenses of the defendant's agents, the court reviewed the request of the agent of the representative which her membership is challenged, lawyer Ahmed Majed Ahmed, to introduce his client as a third person in the lawsuit, the court decided to reject it because there was no justification for that, and since the court reviewed the case

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papers and 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 Fadel Mowat Kassar's lawsuit is focused on challenging the negative decision of the defendant to dismiss his objection to the validity of the membership of representative Nour Nafi Ali Al-Jalihawi and to demand a ruling to invalidate its membership to replace the resigned representative as a member of 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 (the Council of Representatives shall enact a law that addresses cases of replacement of its members upon resignation, dismissal or death), while Article (1) of Law No. (15) of 2023 stipulates 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) 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 replace members of the Council of Representatives from women in particular, and it came with a firm text in the second amendment under Article 1<sup>st</sup> - 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

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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 Article (49/4<sup>th</sup>) of the Constitution, thus, the plaintiff's lawsuit must be dismissed because there is nothing that prejudices the validity of the membership of representative Nour Nafie Al-Jalihawi 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, and for the foregoing, the court decided to dismiss the plaintiff's lawsuit Fadel Mowat Kassar and charge him the fees, expenses and fees of the defendant's agents an amount of one hundred thousand dinars to be distributed among them according to the law. The decision has been issued unanimously, 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 made clear on 28/Muharram Al-Haram/1445 Hijri coinciding with 16/August/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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