



Republic of Iraq
Federal Supreme Court
Ref. 14/federal/2024

Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/1/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Applicant of Interpretation Request: Mohsen Al-Mandalawi / on behalf of the Speaker of the Council of Representatives / being in this capacity.

Subject of the request: A statement of the law applicable in the event that a member of the Council of Representatives loses his seat and the seat becomes vacant, and who replaces him? for a conflict of interpretation between the governing authority of the Independent High Electoral Commission, and the judicial authority of the Electoral Commission.

The Abstract of the request:

The Federal Supreme Court received the request submitted by Mohsen Al-Mandalawi / on behalf of the Speaker of the Council of Representatives/ being in this capacity, entitled Inquiry, according to the letter of the Council of Representatives / President's Office No. Mim.Ra/2 on 8/1/2024, registered in No. (14/Federal/2024), according to which he is required to inquire about the applicable law if a member

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of the Council of Representatives loses his seat and becomes vacant, and who replaces him? there is a conflict of interpretation between the governing authority of the Independent High Electoral Commission and the judicial authority of the Electoral Commission in accordance with the details referred to in the request, the conclusion of which is as follows: Based on the powers vested in the Federal Supreme Court by the Iraqi Constitution in accordance with Article (93) thereof, which states that the Federal Supreme Court is competent to adjudicate cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority, as well as the competence of the Federal Supreme Court to adjudicate on conflicts of jurisdiction between the federal judiciary and other judicial authorities and to consider appeals against the decisions of the Council of Representatives issued, we submit to you this inquiry based on the authority vested in you, what is the applicable law if a member of the Council of Representatives loses his seat and becomes vacant, and who replaces him, because there was a conflict between the interpretation of the administrative authority of the Independent High Electoral Commission in saying that the law applicable to the issue of replacing the candidate is the law on the elections of the Council of Representatives and the Councils of Governorates and Districts No. (12) of 2018 as amended by Law No. (4) of 2023, Article (14/1st) stipulates that: (If a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, he shall be replaced by the next candidate in the number of votes obtained in his list), and the judicial authority of the Electoral Commission in adopting Article II of the amended Law on the replacement of members of the Council of

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Representatives No. 6 of 2006, which stipulates that if a seat in the Council of Representatives becomes vacant, he shall be replaced by any candidate from the same list to which the seat allocated to him was vacant, and he shall be compensated from the bloc to which the covered member belongs replacement within the governorate list, and it is no secret to you the amount of discrepancy in the results that occur if one of the two laws is adopted at the expense of the other, so please indicate the direction adopted by the Council if one of the seats and either of the two laws become vacant is certified)). After reviewing the aforementioned request and conducting its scrutinies, the court reached the following decision:

The Decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the application was submitted for the purpose of inquiring about the applicable law if a member of the Council of Representatives loses his seat and becomes vacant, who will replace him? this is due to a conflict of interpretation between the administrative authority of the Independent High Electoral Commission and the judicial authority of the Electoral Commission, as the administrative authority of the Independent High Electoral Commission considers that the law applicable to the issue of replacing the candidate is the Law on the Elections of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, as amended by Law No. (4) of 2023, which Article (14/I) of which stipulates, however, (if a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, he shall be replaced by the next candidate in the

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number of votes obtained in his list), as for the judicial authority of the Electoral Commission, it considers the adoption of Article (2nd) of the amended Law on the Replacement of Members of the Council of Representatives No. 6 of 2006, which stipulates that if a seat in the Council of Representatives becomes vacant, he shall be replaced by any candidate from the same list to which the seat allocated to him was vacant, and he shall be compensated from the bloc to which the member covered by the replacement belongs within the governorate list. The Federal Supreme Court finds that the application must be rejected for lack of jurisdiction the powers and competences of this court are exclusively stipulated in Articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, Article 4 of the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25 of 2021 and some other special laws, none of these powers gives the Court jurisdiction to interpret the texts of laws, except on the occasion of challenging their unconstitutionality, nor does it have jurisdiction or authority to answer an inquiry received by it from one of the official authorities or one of the authorities in the State, trade unions or federations, especially since the subject inquired about, it is likely that the future will be the subject of an existing dispute and litigation before this court, and the lack of jurisdiction of this court in deciding on what is stated in the application and answering the inquiry contained therein, so the request must be rejected, in view of the above, the Federal Supreme Court decided to reject the application for lack of jurisdiction. The decision has been issued unanimously and final in accordance with the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law

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No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been made clear in the session dated 3/Rajab/1445 A.H. corresponding to 15/1/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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