

Republic of Iraq
Federal Supreme Court
Ref. 157 / 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: Waleed Mohammed Abdul Khudhir – his 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 the validity of the membership of the representative objecting to the validity of its membership, Intisar Hamad Shendi Al-Maliki, which replaced the resigned representative in the sixth district in Basra Governorate, contrary to the Constitution and the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as after the resignation of the deputies of the Sadrist bloc, the number of women in the Council of Representatives became (64) women, and according to the Constitution and the Replacement Law, the number of women in the minimum in the Council must reach (83) woman, according to the results of the elections, nine substitutes reached the Council of Representatives without focusing on the women's quota, bringing the number of women to (73) women, this requires ten losing women to replace ten of the resigned representatives to reach the minimum representation of women, and because

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2023



Kurdish text

the constitution required that the minimum representation of women be one quarter in the Council of Representatives, and obligated that women and men be equal before the law, the only way to achieve this is the application of the replacement law, which does not require the replacement of one woman with another unless the replacement of a man affects the minimum representation of women, and article (16/5th and 6th) of the law Elections are a mathematical equation to achieve the minimum representation of women in the Council, without infringing on the rights of the winners, therefore, the plaintiff requested from the court to cancel the defendant's decision to dismiss his objection to the membership of representative Intisar Hamad Shendi Al-Maliki in a judgmental response and to rule that its membership is invalid to replace the resigned representative. The lawsuit was registered with this court at number (157 / federal / 2023) and the legal fee was collected for it and the defendant is informed of its petition and documents based on the provisions of Article (21 / first and second) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and the defendant's agent replied by virtue of the regulations dated 23/7 and 26/7/2023 their conclusion: The significance of the text of article 49/4th of the constitution is that the representation of women in the Council of Representatives must be a quarter of the number of members of the Council of Representatives as a minimum, in reference to the possibility of the number of women in the Council should be more than the indicated percentage, it also has significance however, the reference in determining the minimum number of women in the council is the electoral law, and article 16 of the Iraqi Council of Representatives Elections Law No. 9 of 2020, in force at the time of the swearing-in of representative (Intisar Hamad Shendi Al-Maliki), stipulated that the percentage of women's representation should be at least 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, in its decision No. (244/Federal/2022 on 29/3/2023), the Federal Supreme Court affirmed the imperative of ensuring the percentage of women's representation

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2023



Kurdish text

at the governorate level and that the replacement of any member of the Council of Representatives in any governorate would not prejudice that percentage in accordance with the text of Article (16/2nd) of the Iraqi Council of Representatives Elections Law, and Article (16/3rd) of the Election Law stipulates that: (The quota for women is determined for each governorate as specified in the attached table), and by referring to the table, it is clear that the number of seats allocated to the governorate of Basra is (25) seats, of which (6) seats are allocated to the women's quota, divided on the basis of one seat for each electoral district, which is currently occupied by six female deputies, which is the minimum necessary to achieve the quota for women in Basra Governorate in accordance with the table attached to the Council of Representatives Elections Law and the instructions for the distribution of seats issued by the Independent High Electoral Commission. The amended Law of the Council of Representatives, Provincial Councils and Districts No. 12 of 2018 has adopted a new mechanism to replace members of the Council of Representatives that differs from the mechanism adopted by the Iraqi Council of Representatives Elections Law No. 9 of 2020, as it stated in Article 14 of it (Third: If the vacant seat belongs to a woman, it is required that she be replaced by another woman from the same electoral list), and the Council of Representatives voted to approve the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as amended, according to which item (3) of Article (2) thereof was canceled and dissolved replaced by a new text, so the request to dismiss the lawsuit and charge the plaintiff fees and expenses. After completing the procedures required by the rules of procedure the court set a date for the consideration of the case without pleading based on Article (31/5th) thereof, in which the court was formed and checked the plaintiff's requests, his grounds, and the defenses of the defendant's agent, and after completing its audits and reviewing all the case papers, the end of the minutes has been made clear and the court issued the following decision:

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2023



Kurdish text

the distribution of oil products fairly, and because the plaintiff is a resident of Sulaymaniyah province within the Kurdistan region, he was affected by this procedure, so he took the initiative to file this lawsuit based on Article (93/3rd) of the Constitution, requesting a ruling on the invalidity of the decisions and procedures of the Ministry of Oil under the two letters above in distinguishing between the citizens of the region and other governorates in Iraq with regard to the processing of petroleum products and their prices, the lawsuit was registered with this court No. (156/Federal/2023) and the legal fee was collected and the defendant was informed of its petition and documents based on the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) for the year 2022, for the lapse of the period stipulated in item (3rd) of the preceding article, a date was set for the consideration of the case without pleading, and on the specified day, the court was formed and checked the plaintiff's requests and supports, and after completing its scrutinies, 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 Walid Muhammad Abdul Khader's lawsuit focuses on challenging the negative decision of the defendant, the Speaker of the Council of Representatives, being in this capacity, rejecting his objection to the validity of the membership of representative Intisar Hamad Shendi Al-Maliki and demanding a ruling on the invalidity of its membership to replace the resigned representative as a deputy in the Iraqi Council of Representatives for its fifth session, the Court finds that Article 49/4th of the Constitution of the Republic of Iraq of 2005 stipulates (Fourth: The Electoral Law aims to achieve a percentage of representation of women not less than one quarter of the number of members of the Council of Representatives), while paragraph (5th) of the same article stipulates that (the Council of

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2023



Kurdish text

Representatives shall enact a law dealing with cases of replacement of its members upon resignation, dismissal or death), Article (1) of the 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) provided that: ((The text of paragraph (3) of Article 2nd of the law shall be repealed and replaced by the following: 3. If the vacant seat belongs to a woman, she must be replaced by a woman in the same electoral district, regardless of exceeding the minimum representation of women in the Council)), through the above 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 came with a firm text in the second amendment under Article 1st / 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 Article (49/4th) of the Constitution, thus, the plaintiff's claim is subject to dismissal, because there is nothing that prejudices the validity of the membership of the deputy who objects to the validity of its membership 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) for the year 2006, and when the foregoing, the court decided to dismiss the lawsuit of the plaintiff Walid Mohamed Abdel Khader and to charge him the fees, expenses, and fees of the defendant's agents an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued with 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 (4/9th and 5) of the FSC's law No. (30) for 2005 which was amended by law No.

saady

Republic of Iraq
Federal Supreme Court
Ref. 157 / federal /2023



Kurdish text

(25) for 2021. The decision has been edited on the session dated 28/Muharram Al-Haram/1445 Hijri coinciding 16/August/2023 AD.

Judge
Jassim Mohammed Abbood
President of the Federal Supreme Court