



The Federal Supreme Court (F S C) has been convened on 1/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, 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 Appellant: Aras Habeeb Mohammed Kareem – his agent the barrister Sadiq Abdul Hasan Nusaif Al-Lami.

Whom Challenged Against 1- the Speaker of the ICR/ being in this capacity – his agents, each of the Director-General of the legal department Dr. Sabah Juma'a A'-Bawi, the legal counselor Haytham Majid Salim, and the official jurist Saman Muhsin Ibrahim.

2- Hussein Ali Murdan Al-Nujaimi/ member of the ICR.

The Claim

The Appellant claimed through his agent that he ran for the Faili Kurds component (quota share) in Wasit Governorate in the 2021 Iraqi Council of Representatives elections, based on Article (13/2nd/Heh) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, which granted the said component a quota of one seat in Wasit Governorate, and after running in the elections, the results of the counting of the quota list showed that the second Respondent (Hussein Ali Al-Nujaimi) obtained (20832) votes and came in the first place, and won the aforementioned seat by a very large margin from the appellant who came in second place and obtained (4411) votes for the same list (quota), Whereas the second Respondent is not a component of the Faili Kurds and does not represent them because he is of Arab origin and acquired the seat allocated to the

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Faili Kurds, and this contradicts the Constitution in Article (49/I) which affirmed that all components of the people must be represented in the Council of Representatives, and Article (125) which affirmed the guarantee of administrative, political, cultural and educational rights of the various nationalities, as well as contradicts with Article (13/2nd/Heh) which stated ((Components shall be granted). The following is a quota calculated from the allocated seats, provided that this does not affect their percentage in the event of their participation in the national lists and is as follows: The component of the Faili Kurds (1) one seat in Wasit Governorate)), Therefore, Appellant submitted to the Council of Representatives an objection challenging the validity of the membership of the second Respondent and registered in number (4259) on 31/5/2022 and it was not decided contrary to Article (52/1st) of the Constitution, which stipulated (The Council of Representatives shall decide on the validity of the membership of its members within thirty days from the date of registering the objection by a two-thirds majority of its members) and that this is considered a rejection based on Article (31/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, so and based on Article (52/second) of the Constitution and Article (31/4th) of the Court's Bylaw Appellant submitted this appeal accompanied by documents and sources to prove his claim that the second Respondent is of Arab origin and not of the Faili Kurds, and belongs to the Albu Najm (Nujaimi) clan, which is an ancient Arab clan from the Thabet clan from Sinjara from the Zubaa of the Shammar tribe, and he is also a member of the State of Law Coalition under the Register of Members in the Department of Political Parties and Organizations Affairs at the Independent High Electoral Commission, he took advantage of his political affiliation to win over the candidates of the Faili Kurds component (quota), because he presented himself as a candidate for the State of Law

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Coalition in addition to his candidacy for the quota within Wasit Governorate, and through his electoral propaganda bearing the slogan of the State of Law, he was able to win the votes of supporters and masses of the State of Law Coalition from outside the Fayli component and win over the candidates of the Faili Kurds component in Wasit, including the plaintiff, ahead of him by a margin of (16,217) votes, Through the foregoing, the second Respondent lost one of the conditions of prosecution stipulated in the Constitution and the Elections Law as he is of Arab origin, and that the process of his election took place in an improper manner and thus a reason for terminating his membership was achieved based on Article (12/3rd) of the Law of the Council of Representatives and its Formations No. (13) of 2018, so the Appellant requested this court to rule that the membership of the second Respondent (Representative Hussein Ali Mardan Al-Nujaimi) is invalid, and the respondent shall be charged fees, expenses, and advocacy fees. The appeal was registered with this court No. (173/Federal/2022) and the legal fee was collected for it in accordance with Article (21/I) of the Court's Bylaw No. (1) of 2022 and the Respondent shall be informed of the appeal petition and its documents following paragraph (second) of the same Article above, and the agents of the first Respondent replied with the reply list dated 12/9/2022 and another additional dated 22/9/2022 concluding that the Council of Representatives did not decide on the objection of the objector because the quorum of two-thirds could not be achieved following the provisions of Article (52/1st) of the Constitution and that the reasons that Stated by Appellant are within the competence of the Independent High Electoral Commission, as Article (5/7th) of the Registration and Approval of Candidates for the 2021 Council of Representatives Elections No. (6) of 2020 gave every interested party - including the Appellant - the right to challenge the candidacy of the aforementioned Representative because of

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the type of his seat (faili) within the legal period, Law No. (9) of 2022 and the aforementioned registration system did not stipulate special requirements for candidacy for the quota of components, and it is known that many Iraqi Arab tribes include among their sons those belonging to other non-Arab nationalities, and the challenged Representative submitted a document signed and stamped by the sheiks of the Fayli Kurdish tribes attesting to his original belonging to the Fayli component, with a video recording of a group of sheiks of those tribes to do so, as for the electoral campaign. It is also within the competence of the Independent High Electoral Commission in accordance with Article (22) of Regulation No. (5) of 2020, The court had previously considered a lawsuit identical to this lawsuit under which the validity of the membership of a Kurdish deputy who won the elections with a seat from the share of the Fayli Kurds was challenged in the elections on the basis that he was not a Faili Kurd but an Arab, and the court decided to dismiss it from the jurisdiction authority under the decision (85/Federal/2018) on 27/6/2018, and since the appellant did not use the tools guaranteed by the law and the relevant regulations to challenge the candidacy of the deputy and his procedures during the election campaign and that he filed the appeal late after he lost the elections By a difference of thousands of electoral votes, Therefore, they requested that the appeal be dismissed in form and substance and that the appellant be charged the judicial expenses. The second Respondent replied according to the reply list dated 26/9/2022, which included the same defenses stated by the agents of the first Respondent, and added that the Appellant had previously challenged the decision of the Board of Commissioners related to the announcement of the preliminary results of the elections on 10/10/2021 before the Judicial Authority for Elections, specifically by winning and with arguments similar to what was stated in the statement of

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appeal before this court, and the Commission decided to dismiss it by virtue of Resolution (1136/Judicial Authority/2021 on 21/11/2021), and finally requested to dismiss the appeal in form and substance and to charge Appellant the expenses. After completing the procedures required by the Court's Bylaw, a date was set for the consideration of the appeal without pleading in accordance with Article (31/5th) thereof, in which the Court was formed and the appeal was considered, the Court examined what was stated in the appeal petition, its supports, Appellant's requests and what was stated in the reply lists submitted by Respondent linked to the case papers, and after the Court completed its scrutinies, the end of the minutes has been made clear and the Court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the Appellant filed an appeal before this court to challenge the validity of the membership of the Representative (Hussein Ali Mardan Al-Nujaimi, the second Respondent), and requested a ruling to invalidate it, as he ran for the Faili Kurds component (quota share) in Wasit Governorate in the 2021 Iraqi Council of Representatives elections, based on Article (13/2nd/Heh) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, which granted the said component a quota. (Quota) one seat in Wasit Governorate, and after the elections and counting the second Respondent won the said seat despite the fact that he is of Arab origin and not of the Faili Kurds and does not represent them, he also put himself forward as a candidate for the State of Law Coalition in addition to his candidacy for the quota within the province of Wasit, and he took advantage of his political affiliation to win over the candidates of the other Faili Kurds (quota), and

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for violating the provisions of the Constitution of the Republic of Iraq of 2005, especially Articles (49/1st and 125) thereof, which stressed the necessity of representing all components of the people in the Council of Representatives, and guaranteeing the administrative, political, cultural and educational rights of the various nationalities, as well as violating Article (13/2nd/Heh) of the Elections Law of the Council of the Representatives No. (9) of 2020, which stipulates that the following components shall be granted a quota calculated from the allocated seats, provided that this does not affect their percentage in the event of their participation in the national lists, and it is as follows: The Faili Kurds are (1) one seat in Wasit Governorate)), and on the basis that the second Respondent lost one of the conditions of prosecution stipulated in the Constitution and the Elections Law as he is of Arab origin and that his election process improperly took place and thus a reason was achieved to terminate his membership based on Article (12/3rd) of the Law of the Council of Representatives and its Formations No. (13) of 2018, the Appellant had previously objected before the Council of Representatives to the validity of the membership of Representative Hussein Ali Mardan Al-Nujaimi (Second Respondent), based on the provisions of Article (52) of the Constitution of the Republic of Iraq for the year 2005 and registered his objection with a number (4259) on 31/5/2022 according to the detail referred to in the appeal petition, and for not deciding on the objection within the legal period, the validity of the membership of the aforementioned Representative was challenged before this court on 28/7/2022, and the Federal Supreme Court finds that the appeal is submitted within the legal period necessary to submit it. The Appellant submitted to the Council of Representatives an application containing an objection to the validity of the membership of the second Respondent, registered in number (4259) on 31/5/2022 and did not decide

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on it within thirty days from the date of its registration by a two-thirds majority, contrary to Article (52/1st) of the Constitution of the Republic of Iraq, which stipulated (The Council of Representatives shall decide on the validity of the membership of its members, within thirty days from the date of registering the objection, by a two-thirds majority of its members), for not achieving the quorum for convening the sessions as acknowledged by the agents of the first Respondent in addition to his function under their regulations submitted to this court, and that this is considered a rejection of the objection based on Article (31/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, which stipulates that ((If the application is not decided within the period mentioned in item (second) of this article, this shall be considered a rejection unless it is submitted during the legislative recess, Therefore, and based on Article 52/2nd of the Constitution and following Article 31/4th of the Bylaw of the aforementioned Federal Supreme Court, which stipulates that ((The appeal shall be submitted to the court by the objector or contested validity of his membership, within thirty days from the date of the decision on the objection by the Council of Representatives or within thirty days from the date of expiry of the period referred to in item (third) of this article)), Appellant filed an appeal before this court on 28/7/2022 attached with documents and sources to prove his claim, so it was decided to accept the appeal in form, and upon consideration of its content, it was found that it focuses on challenging the validity of the membership of the second Respondent the Representative as he is the winner of the Faili component quota for Wasit Governorate despite being of Arab origin and not from the Faili Kurds and does not represent them, and he also presented himself as a candidate for the State of Law Coalition in addition to the quota candidate within Wasit Governorate and he took advantage of his affiliation of the politician to win over the

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candidates of the other Faili Kurds component (quota), and the process of his election took place improperly and thus achieved a reason for terminating his membership based on Article (12/3rd) of the Law of the Council of Representatives and its Formations No. (13) of 2018, and the appellant based his appeal on the provisions of Article (52) of the Constitution, the content of which goes to challenge the validity of the membership of members of the Council of Representatives regarding the conditions of membership starting from nomination and throughout stay in the membership of the Council of Representatives, but this does not include what is related to the technical aspects of the electoral process in terms of calculating the number of Votes, cancellation of stations, quota and other matters that fall within the powers of the Board of Commissioners of the Independent High Electoral Commission, and the appeal shall be before the Judicial Authority for Elections, and the decisions of the Commission shall be final and not subject to review and appeal based on Article (19) of the Independent High Electoral Commission Law No. (31) of 2019, in particular, the Appellant had previously challenged the decision of the Board of Commissioners related to the announcement of the preliminary results of the elections on 10/10/2021 before the Judicial Authority for Elections based on the same reasons stated in the list of appeals, and the decision of the Judicial Authority for Elections No. (1136/Judicial Authority/2021 was issued on 21/11/2021), which included (the dismissal of the appeal, as the announced results, are preliminary and the determination of the winner of the quota seat is determined with the final results of the elections), and therefore there is no place to challenge these procedures before this court, and this What was settled by the judgment of this court in the judgment issued by it No. (51/Federal/2022) on 3/7/2022, based on the foregoing, the jurisdiction of this court is held following the

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provisions of Article (52) of the aforementioned Constitution as far as it is concerned with checking the validity of the membership of members of the Council of Representatives regarding the conditions of membership, starting from nomination and throughout staying in the membership of the Council of Representatives, and this is what was settled by the judgment of this court in its judgment issued by it No. (75/Federal/2022) on 22/6/2022, based on the foregoing, the decision on the appeal submitted by the appellant before this court is within the jurisdiction of this court as it relates to challenging the validity of the membership of the second respondent deputy for the reasons referred to above, and the Federal Supreme Court finds that Article (49/I) of the Constitution of the Republic of Iraq for the year 2005, stipulates that (the Council of Representatives consists of several members at the ratio of one seat per hundred thousand people of Iraq representing the entire Iraqi people, elected by secret universal suffrage). direct, and the representation of the other components of the people therein shall be taken into account.) Paragraph (second) also stipulates that "a candidate for membership of the Council of Representatives must be a fully qualified Iraqi.", paragraph (third) of it, stipulated that (the conditions of the candidate and the voter and everything related to the election shall be regulated by law), and on the basis of that, the Council of Representatives Elections Law No. (9) of 2020 was issued, which adopted the electoral district system based on Article (15/1st) thereof, and Article (8) of it specified the conditions for the candidate for membership of the Council of Representatives, and Article (13/2nd/Heh) of it granted the Faili Kurds a quota of one seat in Wasit Governorate, as it stipulated that ((Components shall be granted). The following is a quota ... Component of the Faili Kurds (1 seat in Wasit Governorate)), Paragraph 2nd (Heh) of the aforementioned Article was effective on the date of the nomination of the

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second Respondent the representative and his winning the seat of the Fileen Kurdish quota, i.e. ((before the decision issued by this court No. (43/Federal/2021) on 22/2/2022 ruled unconstitutional: paragraphs (Beh, Dal, and Heh) of item (second) of Article (13) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 and canceled as of the date of issuance of the decision and reversed its previous decision No. (45/federal/ 2020) for the seat of the Faili Kurds component and the notification of the Council of Representatives to legislate alternative texts to ensure the achievement of the principle of equality between the components mentioned in the above paragraphs with the Christian and Sabian components in accordance with the provisions of item (third) of Article (13) of the same law)), which means that the share of the Faili Kurds quota based on the provisions of Article (13/2nd-Heh) of the Council of Representatives Elections Law No. (9) of 2020 in force at the time and before its cancellation following the aforementioned details, it is represented by one seat in Wasit Governorate exclusively and requires that the candidate for that quota, and who obtained it after the elections and counting, be excluded from the Faili Kurds component, and other components may not nominate or win them, and the purpose of this when legislating the aforementioned text is to ensure that the components are fairly represented in the Council of Representatives, taking into account that the presence of the majority of the Faili Kurds in Wasit Governorate, so one seat has been allocated in it, however, the Federal Supreme Court found that fair representation of the aforementioned component in the Council of Representatives, like the rest of the components (Christian and Sabian), was not achieved, article (12) of the Law of the Council of Representatives and its Formations No. (13) of 2018 specified the cases of termination of the prosecution in the Council of Representatives, including what was stated in

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paragraph (third) thereof, which stipulated (proving the loss of one of the conditions of the prosecution stipulated in the Constitution, the Elections Law, and this law), and since the defenses maintained by the appellant to challenge the validity of the membership of the second Respondent MP are based on two topics, the first (the challenged deputy nominated the Faili Kurds in Wasit Governorate to represent them although he is an Arab in origin and does not represent the Faili Kurds), The validity of this plea was not supported by this court, as the investigations it conducted, after reviewing the documents and documents attached to the appeal and the mutual defenses between the two parties, showed that the second Respondent the representative belongs to the Faili Kurds component in his origins and that his affiliation with the Nujaimi clan in the civil status records was for the purpose of salvation from the persecution, arrest and displacement practiced by the former regime, using the most heinous methods at the time to undermine other components and violate their rights and freedoms, including the Faili Kurds, This affiliation does not change the fact that he is a Faili Kurd in origin, and therefore his candidacy in Wasit Governorate on behalf of the Faili Kurds and his winning of the quota seat allocated to the Faili Kurds component in the said governorate is valid and does not include any legal violation. Other Faili Kurds (quota share), thus, the process of his election improperly took place), so this court finds that what is included in the aforementioned defense is related to the right of electoral propaganda guaranteed by Article (22) of the aforementioned Iraqi Council of Representatives Election Law and that violating its provisions requires submitting a complaint to the Board of Commissioners of the Independent High Electoral Commission based on the provisions of Article (5/3rd) of the Electoral Complaints and Appeals Law No. (7) of 2020, which stipulates that (the complaint requires the

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following: Third: The complaint related to electoral campaigns shall be submitted within a period starting from the date of the violation and until the end of the period specified in accordance with the electoral campaign system, assuming that there is a violation related to electoral propaganda attributed to the second Respondent representative, such violation does not apply to any of the cases that would prejudice the validity of his membership in the Council of Representatives or terminate that membership, provided for in the Constitution and the aforementioned Council of Representatives Elections Law, especially that Appellant could have challenged this at the time before the Board of Commissioners of the Independent High Electoral Commission based on the provisions of Article (5/3rd) of the aforementioned Complaints and Appeals Law. In addition to the above, the Council may impose punitive measures in the event of any violation of the electoral process or when violating the regulations or instructions of the Commission. If no complaint is received in respect thereof, based on the provisions of Article (8) of the aforementioned Law, and the absence of any punitive action by the Board of Commissioners against the Second Respondent representative confirms that there is no violation related to his electoral campaign and that there is nothing that prejudices the validity of the membership of the Second Respondent Deputy, which requires the dismissal of the appeal, and for the foregoing, the Federal Supreme Court decided to rule as follows:

1. Dismissal of the appeal submitted by the appellant (Aras Habib Muhammad Karim) challenging the validity of the membership of a member of the Iraqi Council of Representatives (Hussein Ali Mardan Al-Nujaimi) for lack of prejudice to the validity of his membership.

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2. Appellant charged the expenses, fees, and advocacy fees of the first Respondent's agents in addition to his job an amount of one hundred thousand dinars distributed in accordance with 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 (4/9th) and (5/2nd) 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 6/Rabee Al-Akhir/1444 Hijri coinciding with 1/November/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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