

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/5/2024 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, Dyar Mohammed Ali, and Khaled Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. The representative Youssef Bair Alwan Al-Kalabi - his agent the barrister Ibrahim Abdullah Mohsen.

2. Faleh Hassan Al-Khazali- his agent the barrister Hatem Falah Azab.

3. Hussein Moans Faraj- his agent the barrister Mahdi Abdul Redha Jassim.

The Defendant: the representative Shaalan Abdul-Jabbar Al-Karim – his agent the barrister Shawkat Sami Fadel.

### **The Claim:**

The plaintiffs claimed that the defendant in his capacity as (a representative in the Council of Representatives) ran for the position of Speaker of the Council of Representatives in the Council of Representatives session No. (1) held on 13/1/2024 - in which the door for nomination for the aforementioned position was opened, and the constitutional and legal conditions necessary to occupy this sovereign position were not scrutinized, and through checking his biography, it became clear that there were many photos and videos in which he appeared glorifying the head of the former regime (the Saddam regime grave) and his presence at the funeral of the execution of the tyrant Saddam in 2006, these practices were repeated after several years in 2012-2013, where he appeared in the demonstrations in some Iraqi provinces and in several videos for the purpose of overthrowing the

**Zainab**

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

political system and inciting the overthrow of the regime established in the constitution, and since the aforementioned acts demonstrate the adoption of the defunct Saddamist and takfiri Baathist approach, and thus makes the conditions for membership of the Council of Representatives unavailable in it, as its continuation on this approach violates the constitution and the laws in force, especially the violation of Article (7/1<sup>st</sup>) of the Constitution, which states (each entity is prohibited or an approach that adopts racism, terrorism, takfir or sectarian cleansing, incites, prepares, glorifys, promotes or justifies it, especially the Saddamist Baath in Iraq and its symbols under any name...), in addition to the constitutional violation of the condition of good reputation that must be met in the position of Speaker of the Council of Representatives, similar to the position of President of the Republic and Prime Minister, because by glorifying the symbols of the Saddam regime, he makes him commit a crime punishable under Article (9) of the Law No. (32) of 2016 on the Prohibition of the Baath Party and Racist, terrorist and takfiri entities parties and activities, which stipulates that (whoever contributes or assists through the media to spread ideas shall be punished by imprisonment for a period of no less than (6) six years and the views of the Baath Party...), the decision of the Council of Representatives to accept the nomination was not based on significant constitutional and legal reasons, as it did not take into account the verification of the conditions of (good reputation) from the Speaker of the Council, Nor from the Council of its own accord, whether by approaching the Supreme Judicial Council or other authorities for the purpose of verifying the existence of news and lawsuits related to the cases attributed to the candidate, or by asking the respondent for documents and evidence proving the soundness of his position, as the decision of the Council of Representatives implicitly violated Article

**Zainab**



(50) of the Constitution, which obliges the representative to perform his legal duties and responsibilities with dedication and sincerity, and to ensure the safety of his wealth and commitment to the application of legislation honestly and impartially, in addition, accepting his candidacy and voting on his election violates the principle of considering the Council of Representatives as the representative of all the Iraqi people, it also violates the principle of popular sovereignty, as Article (49/1<sup>st</sup>) of the Constitution explicitly approved the representation of the entire Iraqi people by the Council of Representatives, and that the continuation of the defendant's membership is contrary to the principle of the supremacy of the Constitution stipulated in Article (13) of the Constitution, as well as its violation of the Law of the Council of Representatives and its formations No. (13) of 2018, as Article (27) of it stipulates:

(The Council shall exercise its supervisory powers contained in the Constitution, the laws in force and the internal system in accordance with the procedures stipulated in this law and its rules of procedure by the means available, including the following: Seventh: Requesting information and documents from any official authority, on any subject related to the public interest, citizens' rights, or the implementation or application of laws from the institutions of the executive authority and independent authorities), and since candidacy for a sovereign position must apply the legal conditions, including (good conduct), by relying on judicial decisions and analogy with them in interpretation of the condition (good reputation), including the court's decision No. (17/Federal/2022 on 13/2/2022) as well as the decision of the Judicial Authority for Elections No. (46/2014) issued on 16/3/2014, according to which it confirmed that the crime attributed to the candidate constitutes a violation of the condition of good conduct and behavior stipulated in the first part of Article (8/3<sup>rd</sup>) of the Iraqi Council of Representatives

**Zainab**

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

Elections Law No. (45) of 2013, and constitutional jurisprudence in Iraq and comparative countries has settled on the lack of correlation between the condition (good reputation) and between the condition (not to be convicted for a crime involving moral turpitude), and each of them has a distinct concept from the other, and it is not correct to combine them, the fact that a person has not been finally sentenced for a crime involving moral turpitude does not preclude the possibility of the Council of Representatives approving the non-fulfilment of the condition of good reputation for him, moreover, the concept of good reputation refers to the set of qualities enjoyed by the candidate so as to make him a trusted object in social circles in general and in public authorities in particular, therefore, and in accordance with Article (93/3<sup>rd</sup>) of the Constitution, the plaintiffs requested a ruling to revoke and revoke the membership of the respondent, this is due to the absence of the constitutional and legal conditions that must be met by a member of the Council of Representatives and the continuation of his path in the defunct confrontational approach, and charging him fees and advocacy fees, and they also requested the issuance of a state decision to prevent the defendant from practicing his parliamentary work until the subject matter of the lawsuit is resolved in accordance with Article (151) of the Civil Procedure Law, and after registering the case with this court No. (20/Federal/2024), collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Court's Rules of Procedure No. (1) of 2022, his agent replied with the response regulation dated 21/1/2024 and its conclusion: that the case is subject to reject, due to the court's lack of jurisdiction to consider it in accordance with the text of Article (93) of the Constitution, and it also lacks the necessary data stipulated in the Civil Procedure Law and the Internal Regulations of the Federal

**Zainab**

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

Supreme Court No. (1) of 2022, as well as the lack of litigation against his client, and that all accusations and descriptions are incorrect and in a timing chosen in bad faith, as his client is one of the heads of the tribes of Salah al-Din and the Samarra judiciary and that all charges against him were the subject of scrutiny and scrutiny by the National Commission for accountability and Justice and the Cassation Authority competent to consider appeals submitted against the decisions of the Accountability and Justice Commission with its final decision No. (140 / Discriminatory Commission / 2014) on 11/3/2014, and it was also the subject of scrutiny by the Federal Supreme Court and three judicial decisions to ratify the final results of the elections, in accordance with its competence provided for in Article (93/7<sup>th</sup>) of the Constitution, which has acquired the degree of definitive and the excuse of the over thing in accordance with Article (105) of the Evidence Law, the competent federal cassation authority decided to overturn the contested decision (the decision of the Supreme National Authority for Accountability and Justice), which ruled that his client was included in its provisions, his client does not belong at all to the ranks of the banned Baath Party or any of the repressive or security agencies before (9/4/2003) or terrorist or takfiri organizations after this date, and his record sheet is devoid of any criminal record, his client ran for membership in the Council of Representatives and won membership for three terms (2010, 2014 and 2021), after meeting all the conditions for the validity of membership in his candidacy, the plaintiffs have overlooked that the subject of the condition of good conduct and reputation was the subject of scrutiny and scrutiny by the Accountability and Justice Commission and may not be legally discussed again in line with the principle of the authenticity of the provisions stipulated in Article (105) of the Evidence Law, and it is also linked to existence and non-existence with the proven accusations

**Zainab**



by judicial rulings against his client and his conviction under them in order to preserve his constitutional and legal rights, this was not achieved by the Federal Court of Cassation, followed by the Federal Supreme Court's verification of the final results of the 2014 elections by decision (31/The Qaf/2014), on 16/6/2014, the final degree, and based on the principle stipulated in the Constitution in Article (19/5<sup>th</sup>) thereof, that (the accused is innocent until proven guilty in a fair legal trial, and the accused shall not be tried for the same charge again after his release, unless new evidence emerges), the right to litigation is guaranteed to all in accordance with the provisions of Article (19/3<sup>rd</sup>) of the Constitution and others, article (19/9<sup>th</sup> and 10<sup>th</sup>) of the Constitution affirms that laws are not retroactive unless they are more suitable for the accused, and that the act attributed to his client occurred in (2006, 2011 and 2012), which are dates prior to the entry into force of the law (Banning the Baath Party) which was published in the Iraqi Gazette on 17/10/2016 and which confirmed in Article (18) thereof, that the law shall enter into force from the date of its publication in the Official Gazette, and that the participation of his client in the demonstrations and sit-ins that happens throughout the northern, central and western governorates was peaceful, with official approvals and with the knowledge of all authorities and security agencies, and that it was not demanding the overthrow of the political system, and the court's judgment in the lawsuit (9/Federal/2023) was settled on 14/11/2023, that the constitution set a scope for the non-responsibility of a member of parliament in the Council of opinions and ideas during the session session in accordance with Article (63/2<sup>nd</sup>/Jim) thereof, otherwise, the full responsibility of a member of parliament for any act that violates the constitution and the law, and the actions of the plaintiffs through the abuse of their constitutional and legal powers or deliberate abuse and defamation on

**Zainab**



Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

all media channels and social networking sites have caused damage to his client's personal and parliamentary reputation, and violate the constitution and the law in the text of Article (10/7<sup>th</sup>) of the Council of Representatives Law and its formations No. (13) of 2018, which stressed the need to maintain respect for the Council of Representatives, its prestige and other constitutional institutions, the court according to decision No. (143/Federal/2022) on 27/7/2022, which confirmed the procedures of this court when challenging the decision of the Council of Representatives before it regarding the validity of the membership of the representative or not, due to the lack of constitutional and legal supports, therefore, he requested to reject the lawsuit in form and substance and charging the plaintiffs the fees and expenses. After completing the procedures required by the Court's Rules of Procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties have been notified of it in which the court was formed, and the first and second plaintiffs and agents attended, and the third plaintiff's agent attended, and the defendant and his agent attended, and began to conduct the public presence pleading, the court heard the statements and requests of the parties and reviewed the deflating record of the of the CD produced by the plaintiffs and what was stated in video No. (5) within the deflating record, according to the request of the first plaintiff the disc was shown in the court hall, the court found that the first paragraph of it is identical to what was stated in the deflating record of video No. (5), whereas the Court has completed its scrutinies, the end of the argument has been made clear and the court issued the following decision:

*Zainab*

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

### **The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court and after reviewing the statement of claim and the requests contained therein, on the defenses of the defendant's agent proven in the highlighted lists, it became clear that the plaintiffs filed the lawsuit before this court against the defendant the representative (Shaalan Abdul-Jabbar Al-Karim) to demand a ruling to drop and revoke his membership in the Council of Representatives due to the absence of the constitutional and legal conditions that must be met by a member of the Council of Representatives, issuing a state order prohibiting him from practicing his parliamentary work until the case is resolved, and charging him fees, expenses and attorneyship fees, for the reasons detailed in the lawsuit petition, the Federal Supreme Court finds regarding the demand to issue a state order to prevent the defendant, the representative (Shaalan Abdul-Jabbar Al-Karim) from practicing his parliamentary work until the lawsuit is resolved, that it decided by virtue of the decision issued by it No. (20 / federal /State Order/2024 dated 17/1/2024) rejected the application, as the justifications for its issuance were not met, due to the lack of urgency nor the state of necessity that requires its issuance, especially since responding to its content means entering into the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court related to its subject matter and the lack of conditions for issuing a state order in application of the provisions of articles 151 and 152 of the Civil Procedure Law No. 83 of 1969, as amended, according to the details referred to in the aforementioned decision, as for the plaintiffs' lawsuit, the Federal Supreme Court finds that it is admissible in form in terms of jurisdiction, interest and litigation, as it falls within the jurisdiction of this court in application of the provisions of Article (93/3<sup>rd</sup>) of the

**Zainab**



Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

Constitution of the Republic of Iraq for the year 2005, and in accordance with Article (50) thereof, and Article (4/3<sup>rd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, which stipulated that (the Federal Supreme Court shall have the following competencies: Third: Adjudication of cases arising from the application of federal laws...) In accordance with Article (25) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, which stipulates that (any interested party shall have a direct appeal against a lawsuit, submitted to the Court to adjudicate cases arising from the application of federal laws...) and in accordance with Article (12/3<sup>rd</sup>) of the Law of the Council of Representatives and its formations No. (13) of 2018, the plaintiffs also have an interest in filing the lawsuit, which is a case, direct and influential in their legal status as members of the Council of Representatives, since the member's representation ends in the Council if it is proven that he has lost one of the conditions of the representation stipulated in the Constitution, the Elections Law, and the Law of the Council of Representatives and its formations in application of the provisions of Article (12/3<sup>rd</sup>) of the aforementioned Law of the Council of Representatives and its formations, and in accordance with Article (50) of the Constitution, which stipulates that (a member of the Council of Representatives shall take the constitutional oath before the Council, before starting his work, ...), the loss of a member of one of the conditions of the prosecution in accordance with the foregoing and the continuation of his remaining a member of the Council of Representatives affects the constitutional and legal value of Parliament and its members and would offend them collectively, considering that the Council of Representatives represents one of the pillars of the legislative authority stipulated in the Constitution, whose members must enjoy a high level

**Zainab**

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

of the special qualities at the forefront of patriotism, discipline, integrity, good conduct, behavior, reputation and avoidance of suspicion, in addition to the above, the litigation of the plaintiffs against the defendant is considered realized, especially since the constitutional lawsuit it must be based on a deduction whose approval entails a judgment, based on the provisions of Articles (4 and 80/1) of the aforementioned Civil Procedure Law, and that each of them is eligible to litigate as a plaintiff or defendant, which requires the acceptance of the plaintiffs' lawsuit in form, and upon consideration of its subject matter, it was found that it must be answered, because there is nothing that requires the annulment or revocation of the membership of the defendant, the representative (Shaalán Abdul-Jabbar Al-Karim) from the membership of the Council of Representatives, as Article (12/3<sup>rd</sup>) of the Council Law the members and their aforementioned formations stipulate that (the prosecution shall be terminated in the following cases: Third: It is proven that he has lost one of the conditions of the prosecution stipulated in the Constitution, the Elections Law and this Law), article 50 of the Constitution stipulates that a member of the House of Representatives shall take the constitutional oath before the Council before commencing his work in the following form: ((I swear by Almighty God to perform my legal duties and responsibilities with dedication and sincerity, to preserve the independence and sovereignty of Iraq, to safeguard the interests of its people, to ensure the safety of its land, sky, water, wealth and federal democratic system, and to work to preserve public and private freedoms and the independence of the judiciary, and I am committed to the application of legislation honestly and impartially, and God is a witness of what I said)), on the basis of the foregoing, the member in the Council of Representatives, his representation shall be terminated

**Zainab**



by virtue of the law, if he loses the conditions of the prosecution stipulated under the Constitution or the laws in force, and the Federal Supreme Court shall disclose this by ruling to revoke or revoke his membership because it is terminated by virtue of the law, and upon examining the plaintiffs' lawsuit, their defenses and the defendant's defenses, and by reviewing the regulations exchanged between the two parties and the documents presented, the Federal Supreme Court finds that the topics and accusations raised against the defendant included in the lawsuit petition in accordance with the details mentioned therein, it was the subject of consideration by the Supreme National Authority for accountability and Justice and the subject of scrutiny by the Cassation Authority competent to consider appeals submitted against the decisions of the accountability and Justice Commission in the Federal Court of Cassation, which issued its decision No. (140 / Cassation Authority / 2014 on 11/3/2014) through which it upheld that the defendant was not included in the accountability and justice procedures, in particular, the judgments issued by the Iraqi courts, which are acquired to the degree of bits, shall be an argument in what they have decided, it is not permissible to accept evidence that contradicts the authority of the final judgment based on the provisions of Articles (105 and 106) of the Evidence Law No. (107) of 1979, as amended, nor has it been proven to this court that the defendant is covered by the provisions of the Law No. (32) No. (32) of 2016 on the prohibition of the Baath Party and racist, terrorist and takfiri entities, parties and activities, in addition to the foregoing and according to the letter of the Independent High Electoral Commission / Department of Political Parties and organizations No. (Shin/Ha.Kha/632) on 25/3/2024 addressed to this court and attached to it a certified copy of the complaint submitted to the said circuit against the defendant,

**Zainab**

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

through which it confirmed that the investigative committee recommended the closure of the investigation based on the provisions of Article (2/4<sup>th</sup>/Beh) of instructions No. (2) of 2019, facilitate the implementation of the Law No. 32 of 2016 on the Prohibition of the Baath Party and Racist, Terrorist and Takfiri Entities, Parties and Activities for the reasons detailed in the recommendation, from the foregoing, this court finds that the charges against the defendant were prior to 2014, and were the subject of scrutiny by the Supreme National Authority for Accountability and Justice and the Independent High Electoral Commission as well as the subject of scrutiny of the discriminatory authority competent to hear appeals against decisions of accountability and justice in the Federal Court of Cassation, and did not result in the conviction or exclusion of the plaintiff, and there are no new charges attributed to the defendant after the mentioned date, especially after he became a member of the Council of Representatives for the fifth session, and therefore all the accusations raised against the defendant were the subject of scrutiny by the competent authorities and did not result in his conviction or inclusion in the provisions of the punitive laws in force, which stipulates its criminalization and this court did not support him to commit acts that would make him lose one of the conditions of the prosecution in the membership of the Council of Representatives, in application of the provisions of Article (12/3<sup>rd</sup>) of the aforementioned Law of the Council of Representatives and its formations, starting from the date of practicing his work as a member in the Council of Representatives in the fifth session until the lawsuit is filed the Federal Supreme Court decided the following:

*Zainab*

Republic of Iraq  
Federal Supreme Court  
Ref 20/ federal/2024



Kurdish text

First: Ruling to reject the plaintiffs' lawsuit (1- Youssef Bair Alwan Al-Kalabi 2- Faleh Hassan Al-Khazali 3- Hussein Munis Faraj) because there is nothing that requires the annulment or revocation of the membership of the defendant, the representative Shaalan Abdul-Jabbar Al-Karim, its membership is considered valid.

Second: Charging the plaintiffs with the expenses, fees and advocacy fees of the defendant's agent the barrister Shawkat Sami Fadel an amount of one hundred thousand dinars to be distributed in accordance with the law.

The decision has been issued unanimously, final and binding on the basis of the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq of 2005, and articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. 30 of 2005, as amended by Law No. 25 for the year 2021, and it has been made clear on 29/Shawwal/1445 A.H. corresponding to 8/5/2024 A.D.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

*Zainab*