

Republic of Iraq
Federal Supreme Court
Ref. 229 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14/11/2023 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, 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 Plaintiff: Zahraa Abbas Ali Mohammed – candidate of the ICR for the fifth cycle of Baghdad governorate/ Al-Khadhimiya, constituency 11 – her agent the barrister Omar Hafidh Jassim.

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agent, the official jurist Saman Muhsin Ibrahim.
2. Chairman of the Board of Commissioners of the Independent High Electoral Commission / being in this capacity – his agent, the legal counselor Ahmed Hasan Abid.

The Claim

The plaintiff claimed, through her agent, that on August 7, 2023, she submitted a request to the Council of Representatives in which she objected to the validity of the membership of the representative (Hamad Al-Moussawi), who replaced the resigned representative (Nisreen Hadi Al-Hajimi), who was occupying the women's quota seat in the Council of Representatives and for the constituency (11).) in Baghdad Governorate, and the issuance of the Second Amendment Law to the Law on Replacement of Members of the Council of Representatives No. (6) of 2006, and since the fifth electoral cycle is continuing its activities and is subject to the enforcement of this amendment, and since the representative (Alia Nassif) obtained the parliamentary seat in the aforementioned district with the amount of money she obtained. Votes (which are higher than what men got) and her seat are considered one of (the men's seats - public seats), so the plaintiff believes that not considering the parliamentary seat as her right is a deprivation of her voters' rights,

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by neglecting the text of Article (16/First and Second) of the Iraqi Council of Representatives Elections Law, the Board of Commissioners violated the text of the Iraqi Council of Representatives Elections Law, which stipulated the minimum level of female representation in the Council of Representatives in each governorate at no less than 25%, without specifying the upper limit for this representation, which confirms the keenness of The Iraqi legislator, on the one hand, maintained this minimum, and on the other hand, opened the door to competition for women for the seats with the highest votes. In order to preserve the right to equality and equal opportunities between the sexes based on Articles (14 and 16) of the Constitution, and because the aforementioned amendment requires the defendants to implement it, the plaintiff asked this court to intervene and oblige them to cancel the membership of the representative (Hamad Al-Moussawi), who replaced the withdrawing representative (Nisreen Hadi Al-Hujaimi) and adopting it as an alternative to complete the representation of the women's quota in the aforementioned constituency. The case was registered with this court under the number (229/Federal/2023), the legal fee was collected and the defendants were notified of its petition and documents based on the provisions of Article (21/First and Second) of the Federal Supreme Court's internal regulations No. (1) of 2022. The attorney for the first defendant responded. In the response list dated 10/5/2023, its conclusion: The plaintiff had previously appealed the membership of the representative (Hamad Yasser Al-Moussawi) before this court under the lawsuit numbered (152/Federal/2022), and the court issued its decision on 8/7/2022 to dismiss the lawsuit from a formal standpoint. Because it was submitted outside the period stipulated in Article (52/Second) of the Constitution, and the validity of his membership is being challenged, the Independent High Electoral Commission had previously appointed him as a replacement for the resigned representative (Nisreen Hadi). The Commission's law allowed interested parties to appeal the decisions of the Board of Commissioners within three days of The date of its issuance before the cassation body responsible for election cases, and since the plaintiff did not obtain a decision overturning the Commission's decision to nominate the representative whose validity of membership was being challenged, and that the representative (Alia Nassif) won from the district (11 - Baghdad Governorate), and therefore the quota for women is achieved in the district, as well

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as At the governorate district level, given the recent amendment to Election Law No. (4) of 2023, the governorate is considered one constituency, whereas the quota for women came as an exception to the principle of equality stipulated in Article (14) of the Constitution, and the rule is that the exception is not expanded upon or measured against, and Article (1) of the Law No. (15) of 2023, the Second Amendment Law to the Law on Replacement of Members of the Council of Representatives, stipulates (that if the vacant seat belongs to a woman, she must be replaced by a woman in the same electoral district), as this paragraph stipulated that there be a vacant seat in the plaintiff's district while all the seats are occupied. The women's quota is met in this department, so he requested the lawsuit be dismissed. The representative of the second defendant responded in the answer list dated 10/8/2023, its conclusion: that after the resignation of the members of the Council of Representatives affiliated with the Sadrist bloc from membership in the Council of Representatives and to redistribute seats following the Council of Representatives Elections Law No. (9) of 2020 (repealed) and instructions on Distribution of seats issued by the Commission, and since the district (11 - Baghdad Governorate) consists of five seats and based on Article (15/Third) - in the order of the sequence of candidates in the electoral district according to the number of votes obtained by each of them, the arrangement will be as follows (Alia Nassif Jassim, Taqi Nasser Majed, Hassanein Qasim Muhammad, Maeen Hamid Abdul Majeed, Hamad Yasser Mohsen), and since the text of Article (16/Third) of the aforementioned law stipulates that the quota for women be determined for each governorate as specified in the attached table, and since the latest ranking of the candidates according to their votes shows a woman winning her votes, therefore the share of women is achieved in this district with the victory of Representative (Alia Nassif Jassim). There is no substantiation for the plaintiff's claim from the Constitution, the law, or the instructions, as Article (49/Fourth) of the Constitution stipulates (The election law aims to achieve a representation rate for women of not less than a quarter of the number of members of the Council of Representatives) and that the (women's quota) system is a measure aimed at Enhancing women's political participation by allocating a number or percentage of parliamentary seats to them. The text of Article (16/Third) of the (repealed) Elections Law made the electoral districts (83) districts and assigned a number of

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seats to each district. A seat was also allocated for women in each district and the instructions for distributing seats issued by the Independent High Electoral Commission guaranteed the presence of a woman in every electoral district. However, if a woman wins the votes, the quota is achieved. Otherwise, the Commission is obligated to remove the male candidate who won the last seat in the district and replace him with a woman who received the highest votes among the women in the same district. The department and according to the “quota for women” system, law No. (15) of 2023 (Law Amending the Law on Replacement of Members of the Council of Representatives No. 6 of 2006, amended) cannot go to District (11) in Baghdad because the quota is achieved in it with the presence of a woman who won her votes, namely Representative (Alia Nassif). Therefore, the resignation of the Representative (Nisreen Hadi Jawad) did not affect the representation of women in that district, even if the candidate won (Hamad Yasser Mohsen) had a natural victory as the first reserve in that district, noting that the total votes he obtained were (5513) votes, while the total votes obtained by the plaintiff was (2472) votes, therefore, the ruling requested that the plaintiff’s lawsuit be dismissed and that she be charged the costs. After completing the procedures required by the court’s internal regulations, a date was set to hear the case without pleading in accordance with Article (31/Fifth) thereof, and the court was formed and the case began to be heard. The court reviewed the plaintiff’s requests and supports and the defenses of the defendants’ agents, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following ruling:

The decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff’s lawsuit was focused on binding the defendants (Speaker of the Council of Representatives and Chairman of the Board of Commissioners of the Independent High Electoral Commission in addition to their positions) by canceling the membership of the representative (Hamad Al-Moussawi) who replaced the withdrawing representative (Nisreen Hadi Al-Hujaimi) and approving her as a replacement for the resigned member to complete the representation of the women’s quota in the 11th district in Baghdad Governorate/ Al-Kadhimiya), and

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this court finds that the contested representative (Hamad Yasser Al-Moussawi) has replaced the resigned representative (Nisreen Hadi) for the 11th district of Baghdad Governorate, and since the representative (Alia Nassif Jassim) has won for this district, and therefore a quota Women are achieved and implemented in this district, as well as at the level of the Baghdad Governorate district, given that the latest amendment to Election Law No. (4) of 2023 considered (the governorates to be one electoral district) since the quota for women was an exception to the principle of equality stipulated in Article (14) of the constitution and the rule that the exception cannot be expanded, nor can it be measured against, nor should it be measured according to its extent, also, Law No. (15) of 2023, the Law Amending the Law on Replacement of Members of the Council of Representatives No. (6) of 2006, as amended, cannot be applied to the eleventh district in Baghdad Governorate because the quota for women is achieved in this district through the presence of a woman who won her votes, and she is Representative (Alia Nassif Jassim), and therefore the resignation of Representative (Nisreen Hadi Jawad) will not affect the representation of women in that district, and the victory of the candidate (Hamad Yasser Mohsen) was natural as he is the first reserve in that district, and thus the plaintiff's lawsuit must be rejected due to the lack of It violates the validity of the membership of the representative (Hamad Al-Moussawi), and based on the above, the court decided to dismiss the claim of the plaintiff (Zahraa Abbas Ali Muhammad) and charge her the fees, expenses, and fees of the two defendants' 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 (48/9th and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 29/Rabea Al-Akhir/1445 Hijri coinciding with 14/November/2023 AD.

Judge

Jassim Mohammed Abboud

President of the Federal Supreme Court

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