

Republic of Iraq  
Federal Supreme Court  
Ref. 247 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/11/2022 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 Applicant: Muhsin Ali Akbar Al-Mandalawi/ first deputy of the Speaker of the ICR.

The Request Subject: request to issue an opinion and the legal interpretation about how far to continue implementing the provisions of article (46) of the ICR elections law No. (9) for 2020.

### **The Request**

The Federal Supreme Court received the request of the First Deputy Speaker of the Council of Representatives, Mohsen Ali Akbar Al-Mandalawi, according to the letter of the Iraqi Council of Representatives / Office of the First Vice President No. (1/3/480) on 3/11/2022, addressed to the President of the Federal Supreme Court, entitled (Interpretation), which includes: ((1- Based on the provisions of item (fifth) of Article (15) of the Iraqi Council of Representatives Elections Law No. (9) of 2020, which stipulates (If any seat in the Council of Representatives becomes vacant, it shall be replaced by the candidate who obtained the highest votes in the constituency). 2- Based on the provisions of Article (46) of the Council of Representatives

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Elections Law No. (9) of 2020, as amended, which stipulates (the winning candidate in the parliamentary elections shall be obliged to take the constitutional oath within a maximum period of one month from the date of the first session, otherwise, the substitute for him who obtained the highest votes from the losing candidates from his list in his electoral district, and in the event that the winner does not take the oath of the candidate individually, the substitute for him is the highest loser in his electoral district). 3- The esteemed Federal Supreme Court has previously argued in its decision No. (17/Federal/Media/2015) dated 14/4/2015 to (the possibility of being guided by the provisions of the Law on the Elections of Members of the Council of Representatives when applying the provisions of the Law on the Replacement of Members if this law is free to address a case). 4- The State Council clarified by its resolution No. (40/2021) dated 6/7/2021 that the text of item (fifth) of Article (15) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 is applied to cases of replacement of members of the Council of Representatives)), and based on the foregoing, the request was submitted to clarify the opinion and legal interpretation regarding the extent to which the provisions of Article (46) of the House of Representatives Elections Law No. (9) of 2020 continue to be applied to the substitutes who obtained the highest votes from the losing candidates from the list of the winning candidate in his constituency if the winning candidate in the parliamentary elections refrains from taking the constitutional oath within one month from the date of the first session of the Council, then the next candidate in the number of votes from the losing candidates from the list of the winning candidate in his constituency abstained from taking the oath within one month from the date of the first subsequent session, and so on, and the statement of judgment if the number of candidates from the list of the

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winning candidate in his constituency is exhausted due to refraining from taking the constitutional oath.

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the submitted request lies in expressing an opinion and legal interpretation regarding the extent to which the provisions of Article (46) of the House of Representatives Elections Law No. (9) of 2020 continue to be applied to the substitutes who obtained the highest votes from the losing candidates from the list of the winning candidate in his electoral district if the winning candidate in the parliamentary elections refrains from taking the constitutional oath within one month from the date of the first session of the Council, then the abstention of the candidate who follows him in the number of votes from the losing candidates from the list of the winning candidate in his electoral district from taking the oath within a period of one month from the date of the first subsequent session, and so on, and the statement of judgment in the event that the number of candidates from the list of the winning candidate in his electoral district is exhausted due to refraining from taking the constitutional oath, and the Federal Supreme Court finds that its competences and powers are limited by what is stated in Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005 and 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, and these competencies and powers did not include jurisdiction of the Federal Supreme Court under which legal opinion and interpretation are expressed, regarding the extent to which the provisions of Article (46) of the Council of Representatives Elections Law No. (9) of 2020 continues

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to be applied to the case subject of the request in accordance with the detail referred to therein, which means that the decision on the application falls outside the jurisdiction of this court, in addition to the above, the jurisdiction of this court to interpret the laws in force on the occasion of deciding on their constitutionality, and to interpret the articles and provisions of the Constitution of the Republic of Iraq for the year 2005, based on what is stated in Article (93/2<sup>nd</sup>) thereof and Article (4/2<sup>nd</sup>) of the Court Law Federal Supreme Council No. (30) of 2005, as amended by Law No. (25) of 2021, when submitting a written request from one of the three federal authorities stipulated in Article (47) of the Constitution, ministries, independent bodies, the Prime Minister of the Region, or entities not associated with a ministry and governors, when the constitutional text to be interpreted raises a real disagreement in the application and divergent views have emerged regarding it, provided that the application shall be sent by a letter signed by the President of the Authority or the head of the aforementioned authorities based on the details and procedures stipulated in Article (24) of the Bylaw No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022 and in accordance with Article (19) thereof, and since the applicant is not a representative of one of the bodies entitled to request the aforementioned interpretation, and the request was not sent to this court by a letter signed by the Speaker of the Council of Representatives. It includes a request to interpret one of the articles contained in the Constitution, but it focused on a request for opinion and legal interpretation, regarding the extent to which the provisions of Article (46) of the Council of Representatives Elections Law No. (9) of 2020, as amended, continue to be applied to the case subject of the request, according to the details referred to therein, without noting that Law No. (9) of 2020 mentioned above was not amended as of the date of its

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issuance and publication in the Iraqi Gazette No. (4603) on 9/11/2020, but some of the tables attached to it were corrected based on the correction statement published in the Iraqi Gazette No. (4606) of 2020, the judgment issued by this court No. (144/Federal/2021) on 14/11/2021, which is final and binding on all authorities, was not observed based on the provisions of Article (94) of the Constitution and Article (5/2<sup>nd</sup>) of the amended Federal Supreme Court Law, which was decided ((ruling on the unconstitutionality of the phrase (otherwise the substitute for him who obtained the highest votes from the losing candidates from his list in his electoral district) and the phrase (the individual candidate) of Article (46) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 and its cancellation, and the article remains as follows (the winning candidate in the parliamentary elections is obligated to take the constitutional oath within a maximum period of one month from the date of the first session, and if the winner does not take the oath, the substitute for him will be the highest loser in his electoral district)), As for the judgment issued by this court No. (17/Federal/2015) on 14/4/2015, it referred to the Council of Representatives Elections Law No. (45) of 2013, as amended, repealed, and in force at the time, as it was annulled by virtue of Article (48) of the law in force (Elections Law of Members of the Council of Representatives No. (9) of 2020), and thus the aforementioned repealed law referred to in the aforementioned judgment decision cannot be applied, and since expressing opinion and advice is not within the competence and powers of this court, which requires the application to be rejected in the form, accordingly, the FSC decided to reject the request. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93/2<sup>nd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and

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5/2<sup>nd</sup>) 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 dated 26/Rabee Al-Akhir/1444 Hijri coinciding 21/November/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abboud**