

Republic of Iraq
Federal Supreme Court
Ref 79/ federal/2024



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The Federal Supreme Court (F S C) has been convened on 17/4/2024 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 Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Issa Sayer Madhan Al-Issawi - his agents the barristers Jawad Kazem Huwais and Muhammad Akram Ali.

The Defendants:

1. The Speaker of the Council of Representatives, being in this capacity- his agents the Director General of the Legal Affairs Department, Sabah Juma Al-Bawi, and the official jurist Saman Mohsen Ibrahim.
2. Burhan Nasser Mohammed Al-Nimrawi / Member of the Council of Representatives, his agent the barrister Ahmed Majed Ahmed.

The Claim:

The plaintiff claimed through his agents that he is one of the candidates for the 2021 Iraqi Council of Representatives elections, and the election results showed that he is a reserve member to occupy one of the membership seats in the Council of Representatives, and he obtained the highest votes from the losing candidates in the first electoral district of Anbar Governorate in sequence (35) and the number of votes he obtained (5047) votes, and according to Article (52/1st) of the Constitution of the Republic of Iraq for the year 2005, he submitted an objection to the first defendant / being in this capacity challenging the validity of the membership of the second defendant, the objection was registered in number (780) on 1/2/2024, and for not being decided within thirty days, the plaintiff took the initiative to institute proceedings

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before this court challenging the validity of the membership of the second defendant, which contradicts the provisions of the Constitution and the law, as the first defendant / being in this capacity violated the Constitution in Articles (14, 16, 20 and 38 /1st), as he did not take into account the equality between Iraqis for preferring him (the list candidate) - whose votes are less than the plaintiff's votes - to be an alternative in filling the vacant parliamentary seat, and did not take into account the principle of equal opportunities, which is a right guaranteed to all Iraqis, as he enabled the second defendant to take the constitutional oath to fill the vacant parliamentary seat despite obtaining on fewer votes than the votes obtained by the plaintiff, and as a result has overlooked and neglected the voters whose will was directed to elect the plaintiff, and deprived them of their participation in public affairs and of their political rights granted to them by the Constitution, the freedom of expression of citizens who gave their votes to the plaintiff was not respected, by not allowing him to take the constitutional oath and occupy the vacant parliamentary seat despite the fact that he obtained the highest votes, and despite the fact that the Council of Representatives Election Law No. (9) of 2020, according to which the elections of the Iraqi Council of Representatives for the fifth session were held, was canceled under Article (25/1st) of Law No. (4) of 2023 - the third amendment law to the Council of Representatives, Provincial Councils and Districts Elections Law No. (12) of 2018 - except that the law shall remain applicable in the case of a vacancy of a seat in the Council of Representatives, the article remains (15/5th) - which stipulates that (if any seat becomes vacant in the Council of Representatives, it shall be replaced by the candidate who obtains the highest votes in the electoral district) - is applicable, as the electoral process that took place in 2021 was organized and implemented under

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Law No. (9) of 2020, and all the processes, procedures and regulations issued for this process under this law continue to revolve around existence and non-existence with the fifth electoral cycle under which it took place, and the electoral system adopted thereunder is a majority system and a first-past-the-post system, that is, the voters have given their votes to the candidate directly away from the list to which he belongs, and that the number of constituencies under this law is (83) electoral districts, and the lowest number of seats in those constituencies is not less than (3) seats and not more than (5) seats, thus, the winning candidate in the constituency is responsible to the voters of that constituency as he represents them in the Council of Representatives, while Law No. (4) of 2023 adopts the proportional representation system and the (Saint Lego) system that is, voters give their votes to the list, and the votes go to the list in order to turn into seats by the percentage of votes obtained by the list, and there is a difference between the proportional representation system and the majority system, and the number of districts is (18), meaning that each governorate is one district, and therefore it is not logical that the alternative is from the governorate and not from the district, especially since the reasons for the issuance of this law is to hold free, fair and fair elections for the Council of Representatives and ensure a fair distribution of seats among the competing lists, that is, the goal is to hold elections and not to return to elections that have taken place previously, as Article (26) of it stipulates that (this law shall be implemented from the date of its approval in the Iraqi Council of Representatives on 26/3/2023), and therefore it has no retroactive effect for the electoral process that preceded its issuance, and the Law No. (6) of 2006 on the replacement of members of the Council of Representatives cannot be applied to the fifth parliamentary session of 2021; whereas the aforementioned law deals with the proportional

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representation system and not with the majority system adopted by Law No. (9) of 2020 and its impact does not affect it because it was disrupted by the issuance of the aforementioned law, and since the decision of the Federal Supreme Court No. (144/Federal/2021) on 14/11/2021 stipulated ((ruling on the unconstitutionality of the phrase (otherwise the substitute who obtained the highest votes from the losing candidates from his list in his electoral district) and the phrase (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 in the event that the winner is not sworn in, the replacement shall be the highest loser in his constituency)), it reflects the direction of the court and is a judicial precedent to be followed the fact that the court's decisions are final and binding on all authorities and persons and have supremacy over the decisions of courts and judicial authorities so the plaintiff asked this court to rule to cancel the membership of the second defendant (Burhan Nasser Muhammad Al-Nimrawi) from the Iraqi Council of Representatives for its unconstitutionality and legality and the ruling for him (i.e. for the plaintiff Issa Sayer Madhan Al-Issawi) as an alternative in filling the vacant parliamentary seat in the Council of Representatives, for its constitutional and legal right to occupy it and charge the defendants fees, expenses and attorneyship fees, and after registering the case with this court No. (79/Federal/2024), collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the agent of the first defendant / being in this capacity replied with the answering

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draft dated 13/3/2024, which concluded: The Elections Law No. (9) of 2020 has been repealed by virtue of Article (25/I) of Law No. (4) of 2023 - Law of the third amendment to the elections law of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, and Article (25/5th) thereof stipulates that (no provision that contradicts the provisions of this law shall apply), and Article (8/I) thereof stipulates that (if a member of the Council loses Article (2) of the amended Law No. 6 of 2006 stipulates that (if a member of the Council of Representatives becomes vacant for one of the reasons mentioned in Article I, he shall be replaced by a candidate from the same list for which the seat allocated in the Council of Representatives became vacant...) the implementation of these two texts will make Burhan Nasser Muhammad Al-Nimrawi an alternative to Muhammad Rikan Al-Halbousi, as previously the Judicial Authority for Elections reversing the decision of the Board of Commissioners No. (12) of the ordinary minutes (43) dated 27/11/2023, who had named the plaintiff as a replacement for (Mohammed Rikan Al-Halbousi), this is because it is based on a repealed law in addition to other reasons, and it also ruled the need to rely on the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018 amended by Law No. (4) of 2023 in force, and the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as amended, and it is known that the decisions of the Judicial Authority for elections are final based on the provisions of Article (19/3rd) of the Independent High Electoral Commission Law No. (31) of 2019, and accordingly the Board of Commissioners decided to name (Burhan Nasser Muhammad Al-Nimrawi) as an alternative on behalf of (Muhammad Rikan Al-Halbousi), and that the plaintiff's claim regarding the number of votes is contrary to the truth as the second defendant has obtained (6716) votes

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based on the announced results and on the decision of board of Commissioners No. (Mim/2/Exceptional/6) dated 18/1/2024, the plaintiff's claim regarding the number of votes is contrary to the truth as the second defendant obtained (6716) votes based on the announced results and on a decision board of Commissioners No. (Mim/2/Exceptional/6) dated 18/1/2024, so the first defendant's agent requested to reject the lawsuit and charge the plaintiff expenses. The second defendant's agent responded with the reply statement dated 20/3/2024, which included the same defenses as the first defendant's agent, and requested to reject the lawsuit and the plaintiff charged the expenses. After completing the procedures required by the court's internal regulations, a date was set for the consideration of the case without pleading in accordance with Article (31/5th) thereof, in which the court was formed and the case began to be considered, the court scrutinized the plaintiff's requests and his 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 decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court and after reviewing the lawsuit petition and the requests and defenses of the defendants' attorneys under the highlighted regulations, it became clear that the plaintiff (Issa Sayer Madhan) filed the lawsuit before this court against the two defendants (the first Head of the Council of Representatives / being in this capacity, and the second representative Burhan Nasser Mohammed Al-Nimrawi) to challenge the negative decision of the Council of Representatives to refrain from deciding on the objection submitted by the plaintiff to the validity of the membership

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of the second defendant (Burhan Nasser Muhammad Al-Nimrawi) and the plaintiff requested a judgment to cancel the membership of the second defendant from the Iraqi Council of Representatives for its unconstitutionality and legality, the judgment has an alternative in filling the vacant parliamentary seat in the Council of Representatives for its constitutional and legal entitlement to do so, and charging the defendants fees, expenses and attorneyship fees, and the plaintiff bases his lawsuit on the provisions of Article (52/2nd) of the Constitution of the Republic of Iraq for the year 2005, and on the Iraqi Council of Representatives Elections Law No. (9) of 2020, according to which the elections of the Iraqi Council of Representatives for the fifth session were held, as the plaintiff believes that the law is applicable in the event of a vacancy in one of the seats in the Council of Representatives in application of the provisions of Article (15/5th), which stipulates that ((If any seat becomes vacant in the Council of Representatives, it shall be replaced by the candidate who obtained the highest votes in the electoral district)) which is applicable for the reasons referred to in the petition, even after the aforementioned law is repealed pursuant to Article (25/I) of Law No. (4) of 2023 (Third Amendment Law to the Council of Representatives Elections Law) and provincial councils and districts No. 12 of 2018), and the Federal Supreme Court finds the following:

First: From a formal point of view: The plaintiff's claim is admissible in form, as the objection was submitted to the Council of Representatives on 1/2/2024 the lawsuit under which the plaintiff challenges the negative decision of the Council of Representatives was filed before this court and was registered in the number (79/federal/2024) and the legal fee was collected on 3/3/2024, which means that it was filed within the period necessary for its establishment before this court in application of the provisions of Article (52) of the Constitution of the Republic of Iraq for

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the year 2005, which stipulates :((First: The Council of Representatives shall decide on the validity of the membership of its members, within (thirty) days from the date of registration of the objection, by a majority of (two-thirds) of its members. Second: The Council's decision may be challenged before the Federal Supreme Court, within (thirty) days from the date of its issuance) and Article (4/9th) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, which stipulates that (the Federal Supreme Court shall have the following competencies: Ninth: Consider appealing the decision of the Council of Representatives issued in accordance with its powers stipulated in Article (52) of the Constitution of the Republic of Iraq for the year 2005, within (30) thirty days from the date of its issuance)) and in terms of Article (31) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulates that ((The Court shall decide on the appeal against the decision of the Council of Representatives issued as a result of the objection to the validity of the membership of its members in accordance with the following conditions and procedures: First: The objector submits a request to the Council of Representatives to object to the validity of the membership of one of its members. Second: The Council of Representatives shall decide on the objection request within thirty days from the date of its registration by a two-thirds majority of its members. Third: In the event that the application is not decided within the period mentioned in paragraph (2nd) of this article this shall be considered a rejection, unless it is submitted during the legislative recess, and such period shall be calculated as of the date on which the Council commences its work after its expiry. Fourth: The appeal shall be submitted to the court by the objector or contested membership within thirty days from the date of the decision on the objection by the Council

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of Representatives or within thirty days from the date of expiry of the period referred to in item (3rd) of this Article. Fifth: The application shall be registered, the President and members of the Court shall be provided with a copy thereof with all its priorities, and a date shall be set for consideration without pleading. Sixth: The court may summon the objector or contested membership to hear either or both of them in a non-public session. Seventh: The court shall set a date for issuing the decision after completing its procedures and deliberation among its members, and thus the plaintiff's lawsuit falls within the jurisdiction of this court in application of the provisions of Article (52/2nd) of the Constitution, and Article (4/9th) of the amended Federal Supreme Court Law, and in accordance with Article (31). of the rules of procedure of the court, and the plaintiff has an interest in filing the case before this court, which is a case, direct and influential in his legal status, the plaintiff and the first defendants, being in this capacity, and the second, are eligible for litigation as a plaintiff and a defendant because each of them has the necessary legal personality, in addition to the fact that the plaintiff is a legal opponent to the defendants and vice versa, as the defendants' acknowledgment shall result in a judgment in application of the provisions of Articles (4) and (80/1) of the Civil Procedure Law No. 83 of 1969, as amended, which requires the acceptance of the plaintiff's claim in form. Second: From an objective point of view: Upon consideration of the subject matter of the lawsuit, it was found that the plaintiff filed his lawsuit before this court

To challenge the validity of the membership of the second defendant, the representative Burhan Nasser Muhammad Al-Nimrawi, who replaced former representative Muhammad Al-Halbousi, the plaintiff relied on the Iraqi Council of Representatives Elections Law No. (9) of 2020, according to which the elections of the Iraqi Council of

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Representatives for the fifth session were held on the basis that it is applicable in the event of a vacancy in one of the seats in the Council of Representatives, and on the basis that Article (15/5th) thereof remains in force, which stipulates that ((If any seat in the Council of Representatives becomes vacant, it shall be replaced by the candidate with the highest votes in the constituency)) Considering that it is applicable even after the repeal of the aforementioned law under Article (25/1st) of Law No. (4) of 2023 (Law on the third amendment to the law on the Elections of the Council of Representatives, Provincial Councils and Districts No. 12 of 2018), which stipulated that (the Iraqi Council of Representatives Elections Law No. 9 of 2020 shall be repealed), and on the basis that the replacement which came under the provisions of Law No. (4) of 2023 and the replacement law No. (6) of 2006, is incorrect and contrary to the provisions of the Constitution, which means the invalidity of the membership of the second defendant deputy in the Council of Representatives, and when a request was made to cancel the membership of the second defendant, for incorrectness, and the ruling replaced him as a member of the Council of Representatives.

The court finds that the plaintiff's claim must be rejected for the following reasons:

A- The Iraqi Council of Representatives Elections Law No. (9) of 2020 stipulates in Article (15/5th) that (if any seat in the Council of Representatives becomes vacant, it shall be replaced by the candidate who obtained the highest votes in the electoral district), and that this law has been repealed by Article (25/1st) of Law No. (4) of 2023 (Third Amendment Law to the Council of Representatives, Provincial and District Councils Elections Law No. 12 of 2018), which stipulated that (the Council of Representatives Elections Law shall be repealed. Iraqi No. 9 of 2020), paragraph (5th) of the same article stipulates that (no text

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that contradicts the provisions of this law shall apply), and therefore there is no place to apply the provisions of Article (15/5th) of the Iraqi Council of Representatives Election Law No. (9) of 2020, when you take a seat in the Council of Representatives for any reason and another replaces or replaces any member, as the provisions of a repealed law cannot be relied upon when there is a necessity that requires replacement. B- Article (8) of Law No. (4) of 2023 (Law of the Third Amendment to the Law on Elections of the Council of Representatives, Governorate Councils and Districts No. 12 of 2018) stipulates that Article (14) of the law shall be amended to read as follows: First: If a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, he shall be replaced by the next candidate in the number of votes obtained article 2 of the amended Law No. 6 of 2006, stipulates that ((if a seat in the Council of Representatives becomes vacant for one of the reasons mentioned in Article I, he shall be replaced by a candidate from the same list for which the seat allocated in the Council of Representatives became vacant...)), these two provisions must be applied when a seat in the Council of Representatives becomes vacant and there is a need to replace the former member with another, in order to bring them into force, as the provisions of a repealed law cannot be relied upon in order to replace the vacancy of the seat this means the Iraqi Council of Representatives Elections Law No. (9) of 2020, which was canceled according to the detail contained in paragraph (a) of this provision, and that the implementation of the two texts makes the second defendant (Burhan Nasser Muhammad Al-Nimrawi) an alternative to (Muhammad Rikan Al-Halbousi), as they are from one list, and the second defendant has the highest votes in the list after former representative Muhammad Al-Halbousi, and therefore the replacement in the manner referred to

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above and based on the provisions of the laws in force, is valid and there is no what disturbs his health.

C- The second defendant (Burhan Nasser Mohammed Al-Nimrawi) belongs to the same list as the former representative (Muhammad Rikan Al-Halbousi) and holds the highest votes in the list after the former representative replaced by the second defendant by (6716) votes, while the plaintiff obtained (5047) votes, and the application of Article (8/1st) of Law No. (4) of 2023 (Law of the Third Amendment to the Law on the Elections of the Council of Representatives, Governorate Councils and Districts No. 12 of 2018) and Article (2) of the Law No. 6 of 2006, as amended, to replace former representative Mohammed al-Halbousi with another, requires that the second defendant replace the replaced former representative for obtaining the highest votes after the replaced the representative and from the same list.

D- The Judicial Authority for Elections has previously according to its decision No. (57/Judicial Authority for Elections/2023) on 12/12/2023 to overturn the decision of the Board of Commissioners No. (12) of the ordinary minutes (43) dated 27/11/2023, in which the plaintiff was named as a substitute for (Muhammad Rikan Al-Halbousi), as the decision of the Board of Commissioners was based on a canceled law, which is the Iraqi Council of Representatives Elections Law No. (9) of 2020, which requires the application of the text of Article (8/I) of Law No. (4) of 2023 (Third Amendment Law to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. 12 of 2018), which stipulated that ((Article (14) of the law to be read as follows: First: If a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, he shall be replaced bythe next candidate in the number of votes obtained in his list)), and also ruled that it should be based on the provisions of Law

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No. (4) of 2023 mentioned above and the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as amended, and following the cassation decision issued by the Judicial Authority for elections mentioned above, the Board of Commissioners decided to name the second defendant (Burhan Nasser Muhammad Fahd Al-Nimrawi) as a replacement for (Muhammad Rikan Al-Halbousi), and that the decisions of the Judicial Authority for elections are final and not subject to appeal in any way, the appeal prescribed by law based on the provisions of Article (19/3rd) of the Independent High Electoral Commission Law No. (31) of 2019 whereas the judgments issued by the Iraqi courts that have acquired the definitive degree shall be an argument of the rights adjudicated therein, and no evidence may be accepted that contradicts the authority of the final judgments based on the provisions of articles 105 and 106 of the Evidence Law No. 107 of 1979, as amended, this means that it is correct to replace the second defendant and replace the replaced former deputy with a member of the Council of Representatives in view of the above, it is clear that there is nothing that prejudices the validity of the membership of the representative who objected to the validity of his membership in the Council of Representatives, the second defendant, so the Federal Supreme Court decided to rule as follows:

First: Reject of the plaintiff Issa Sayer Madhan Al-Issawi, because there is nothing that prejudices the validity of the membership of the representative objecting to the validity of his membership is the second defendant Burhan Nasser Mohammed Al-Nimrawi.

Second: Charging the plaintiff the fees, expenses and attorneyship fees of the first defendant's agents, the Speaker of the Council of Representatives / being in this capacity, the Director General of the Legal Affairs Department, Sabah Juma Al-Bawi, the official jurist

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Saman Mohsen Ibrahim, and the agent of the second defendant, lawyer Ahmed Majed Ahmed, 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 based on the provisions of Articles (52, 93 and 94) of the Constitution of the Republic of Iraq of 2005 articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it has been made clear on the session dated 8/Shawwal/1445 A.H. corresponding to 17/4/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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