

Republic of Iraq
Federal Supreme Court
Ref. 93 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16/8/2023 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, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Anwar Fahim Kassar – his agent the barrister Ahmed Saeed Mousa.

The Defendant: Speaker of the ICR/ being in this capacity – his agents, the Director-general of the legal department Asst. Prof. Dr. Sabah Jumaa Al-Bawi, the legal counselor Haytham Majid Salim, the official jurist Saman Muhsin Ibrahim, and the barrister Ahmed Majid Ahmed.

The Claim

The plaintiff claimed through his agent that the defendant refrained from deciding on the validity of the membership of representative (Zainab Rahim Taima) despite the lapse of (30) days from the date of registering his objection with the Council of Representatives following Article (52/1st) of the Constitution, and since this abstention is a negative decision to dismiss the objection as a judgment, so he took the initiative to challenge it before this court, as Article (49/4th) of the Constitution obligated the enactment of an electoral law that guarantees the achievement of a percentage of representation of women of not less than a quarter of the number of members The number in the Council of

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Representatives has reached (95) women and the Constitution does not prevent this, and it was not necessary to achieve this percentage in each governorate, nor did the election law abide by that, despite the stipulation in the law. The court applied Article (2/3) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 in its decision (244/Federal/2022), which includes that replacing the resigned representative with a man does not affect the minimum representation of women in the Council of Representatives, and the MP objecting to the validity of her membership has been replaced by the resigned MP despite not obtaining enough votes, especially after completing the required number of women in the Council, and that this contradicts the principles of equality and equal opportunities and violates Article (2/3) of the Replacement Law, and the plaintiff believes that he obtained the highest votes in (the second constituency in Muthana Governorate - after correction) that he is entitled to the parliamentary seat and that replacing the resigned representative does not affect the minimum representation of women in the Council, therefore, he requested the annulment of the defendant's decision to dismiss his objection in a judgmental response and to rule on the invalidity of the membership of representative (Zainab Rahim Taima) to replace the resigned representative. The case was registered with this court No. (93/Federal/2023), and the legal fee was collected for it, and the defendant was informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Court's Rules of Procedure No. (1) of 2022, his agent replied with the two response regulations dated 21/5/2023 and 25/7/2023, the conclusion of which is: The significance of the text of Article (49/4th) of the Constitution is that women must be represented in the Council of Representatives concerning Article (16 / 1st and 2nd) of Law No. (9) of 2020 in force at the time of the swearing-

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in of representative (Zainab Rahim Taima), it is clear that the minimum number of women must be met by at least a quarter of the seats in the Council of Representatives and from the seats allocated to the governorate According to the table attached to the law above, the number of seats allocated to Muthanna Governorate is (7) seats, of which (2) are for women - and currently occupied by The two deputies (Khadija Wadi Mazer and Zainab Rahim Taima) - If there is a change in replacing the plaintiff or other men with the representative (Zainab Rahim), this will affect the percentage of women's representation, what was stated by the plaintiff's agent is based on meeting the percentage of a quarter of women at the level of the Council of Representatives as a whole without meeting the percentage at the governorate level, which violates Article (16/2nd) of Law No. (9) of 2020, and the court obligated in its decision No. (244/Federal/2022) that the ruling on the invalidity of the membership of (woman) should not affect the percentage of women's representation in the Council and the percentage in the governorate, whereas the Law on Elections of the Council of Representatives, Governorate Councils, and Districts No. (12) For the year 2018, as amended, it adopted a new mechanism for replacing members of the Council of Representatives that differs from the mechanism adopted by Law No. (9) of 2020 under Article (14) thereof, which stipulated that when the vacant seat belongs to a woman, she must be replaced by a woman from the same electoral list, the Council of Representatives also voted to approve the amendment of the Law No. 6 of 2006 on the replacement of members of the Council of Representatives, according to which item (3) of Article (2) was repealed and replaced by a new text, so it was requested to dismiss the lawsuit and charge the plaintiff the expenses. After completing the procedures required by the court's rules of procedure, a date was set for the

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consideration of the case without pleading in accordance with Article (31/5th) thereof, and on the specified day, the court was formed and the case was considered, the court scrutinized the plaintiff's requests and substantiations, and the defendant's attorneys' defenses and the court noted that the agent of the representative challenged the validity of its membership had applied for the entry of a third person into the suit alongside the defendant and that this was not legally justified, the court decided to reject the application. The court examined the case papers and completed 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, it was found that the plaintiff Anwar Fahim Kassar's lawsuit focuses on challenging the negative decision of the defendant to dismiss his objection to the validity of representative Zainab Rahim Taima's membership and demand its cancellation and the ruling on the invalidity of its membership, to replace the resigned representative as the candidate with the highest votes in the second constituency in Muthanna Governorate and the highest votes, the Court finds that Article (49/4th) of the Constitution of the Republic of Iraq for the year 2005 stipulates: (Fourth: The Electoral Law aims to achieve a percentage of representation of women not less than a quarter of the number of members of the Council of Representatives), while paragraph (5th) of the same article stipulates: (The Council of Representatives shall enact a law dealing with cases of replacement of its members upon resignation, dismissal or death)), through the advanced texts, the law dealt with the issue of women's representation and how to replace members of the

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Council of Representatives in general and replace members of the Council of Representatives from women in particular, and it came with a firm text in the second amendment under Article first/ paragraph (3) mentioned above regarding the issue of replacing the vacant seat that belongs to a woman and explicitly stipulated that, stipulating that the replacement should be a woman in the same constituency, even if the number of women in the electoral district exceeds the minimum representation of women in the Council stipulated in Article (49/4th) of the Constitution, and thus the plaintiff's claim is dismissable for lack of prejudice to the validity of the membership of the representative whose membership is challenged, in light of what is stated in Law No. (15) of 2023 - the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, and for the foregoing, the court decided to dismiss the lawsuit of the plaintiff Anwar Fahim Kassar and charge him the fees, expenses, and fees of the defendant's agents an amount of one hundred thousand dinars. The decision has been issued with the majority, 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) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 28/Muharram Al-Haram/1445 Hijri coinciding 16/August/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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