

Republic of Iraq
Federal Supreme Court
Ref. 94 / 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: Mansoor Hussein Mdawar Al-Buaiji – 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 and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed, through the mediation of his agent, that the defendant refrained from deciding on the validity of the membership of the objecting deputy (Donia Abdul-Jabbar Ali Al-Shammari) within (30) days of registering the objection with him in accordance with Article (52/1st) of the Constitution, which is a negative decision to dismiss the objection as a judgment, so he took the initiative to challenge it before this court, as the Constitution obligated the Council of Representatives to enact an election law that guarantees the achievement of a percentage of representation of women not less than a quarter of the number of members of the Council of Representatives under Article (49/4th) thereof, this was not necessary for the governorate, nor was the electoral law necessary to achieve a quarter in

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the governorate or district, and replacing the resigned deputy with the resigned deputy despite not obtaining enough votes, especially after completing the required number of women in the council, contradicts the principles of equality and equal opportunities, and violates Article (2/3) of the Law on the Replacement of Members of the Council of Representatives, and considers (the plaintiff), being the candidate with the highest votes in the third district in the province of Babylon, that his replacement of the resigned representative does not affect the minimum representation of women in the Council, so he requested a ruling to cancel the defendant's decision to dismiss his objection in a judgmental response and to rule on the invalidity of the membership of the representative (Donia Abdul-Jabbar) to replace the resigned representative. The case was registered with this court No. (94/Federal/2023) and the legal fee was paid for it and the defendant was informed 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, and his agent replied with the two response regulations dated 24/5 and 26/7/2023 to summarize: Article (16/2nd) of the Iraqi Council of Representatives Elections Law No. (9) of 2020 stipulated that (the percentage of women's representation shall be no less than (25%) of the number of members of the Council of Representatives in each governorate), and the table attached to the law stipulates that the number of seats allocated to the province of Babylon is (17) parliamentary seats, of which (4) four seats are for women When the representative (Suha Bassem Abdul Amir) resigned, she was replaced by the representative (Donia Abdul-Jabbar Ali) to achieve the percentage of women's representation at the minimum required by law, and the number of those seats may not be prejudiced by replacing the plaintiff or other men with the representative whose membership is contested,

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otherwise the change is contrary to the law because it will affect the percentage of women's representation, and the court's decision No. (244/Federal/2022) is an argument against the plaintiff because it means that it is inevitable to achieve the women's quota by 25%. From all the seats of the governorate and in the presence of a representative (Donia Abdul-Jabbar), the lowest percentage in the quota for the province of Babylon is achieved, and the court obligated in the same decision that the ruling on the invalidity of the membership of (women) whose membership is contested should not affect the percentage of women's representation in the Council of Representatives and the governorate, and that the Council of Representatives Elections Law No. (9) of 2020, based on which the elections for the Iraqi Council of Representatives for the current session were held, article (16/1st) confirmed the percentage of women's representation by no less than (25%) of the number of members of the Council of Representatives. Then he clarified in paragraph (2nd) the percentage of women's representation in terms of the permissibility of increasing and the obligation not to decrease, and since the constitution affirmed in article 14 that Iraqis are equal before the law without discrimination, In addition, Law No. 4 of 2023, the third amendment to the Law on Elections of the Council of Representatives, Provincial Councils, and Districts No. 12 of 2018, has adopted a new mechanism for replacing members of the Council of Representatives that differs from the mechanism adopted by the Iraqi Council of Representatives Elections Law No. 9 of 2020, as Article 14 of the law in force stipulates in paragraph (3rd) thereof that if the vacant seat belongs to a woman, it is required that another woman be replaced from the same electoral list, and since this law entered Effective from (27/3/2023), therefore, the new mechanism included in this article is obligatory to be followed to fill the vacancies that occur after the entry

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into force of the law because it is a subsequent law that canceled the previous one, the Council of Representatives also voted on 18/7/2023 to legislate the Second Amendment Law to the Law on the Replacement of Members of the Council of Representatives, according to which Article (2/3) of it was canceled and replaced by a new text, and requested the dismissal of the lawsuit and charging the plaintiff 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, and on the specified day, the court was formed and began hearing the case, the court checked the plaintiff's requests, his grounds and the defenses of the defendant's agent, and after reviewing all the case papers, it decided to reject the request of the challenged representative for the validity of its membership to enter a third person in the lawsuit, for lack of legal justification for that, and since the court 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 Mansour Hussein Medawar Al-Buaiji lawsuit is focused on challenging the negative decision of the defendant to dismiss his objection to the validity of the membership of representative (Donia Abdul-Jabbar Ali Al-Shammari), and to demand a ruling to invalidate its membership to replace the resigned representative being the candidate who obtained the highest votes in the third district in Babil Governorate, and 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 representation of women of at least one-quarter of the

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number of members of the Council of Representatives), As for paragraph (fifth) of the same article, it stipulates that: (The Council of Representatives shall enact a law that addresses cases of replacing its members upon resignation, dismissal or death), while Article (1) of Law No. (15) of 2023, the Second Amendment Law to the Law on the Replacement of Members of the House of Representatives No. (6) of 2006, published in the Iraqi Gazette No. (4730 on 31/7/2023), stipulates that: ((The text of paragraph (3) of Article 2nd of the Law shall be repealed and replaced by the following: 3. If the vacant seat belongs to a woman, it is required that she be replaced by a woman in the same electoral district, regardless of exceeding the minimum representation of women in the Council)), through the advanced texts, the law dealt with the issue of women's representation and how to replace members of the House of Representatives in general and replace members of the House of Representatives from women in particular, and it came with a firm text in the second amendment under Article 1st/ 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 for her 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 Article (49/4th) of the Constitution, thus, the plaintiff's lawsuit must be dismissed because there is nothing that prejudices the validity of the membership of the challenged deputy in light of what is stated in Law No. (15) of 2023 - Law of the Second Amendment 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 plaintiff's lawsuit Mansour Hussein Medawar Al-Buaiji and charge him fees, expenses, and advocacy fees for the defendant's agents an amount of one hundred thousand dinars distributed

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following the law. The decision has been issued with 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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