

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8/5/2024 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 Khalid Taha Ahmed, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Rashid Addai Karo Al-Azzawi-His agents the barristers Jawad Kazim Huwais and Mohammed Akram Ali.

The Defendants:

1. The Speaker of the Council of Representatives, being in this capacity, his agent Director General of the Legal Affairs Department, Sabah Juma Al-Bawi.
2. Habib Hashem Abd Ali Al-Dulaimi- member of the Council of Representatives.

The Claim:

The plaintiff claimed through his agents that he ran for the elections of the Iraqi Council of Representatives/fifth session of 2021, the results of the elections showed that he is the first reserve to occupy one of the membership seats in the Council of Representatives and obtained the highest votes from the losing candidates in the fourth electoral district / Babil governorate sequence (50) and obtained (9002) votes, and since the deputy (Adnan Faihan Musa Al-Dulaimi - for the same governorate and electoral district) had vacated the parliamentary seat he occupied because of his election as governor of Babil governorate, the first defendant replaced him with the second defendant (Habib Hashem Abd Ali Al-Dulaimi) from the second electoral district. The province of Babylon has a sequence of (24) and holds (4910) votes, and he was sworn in as a substitute for the representative (Adnan Faihan Musa Al-Dulaimi), and since this replacement is contrary to the constitution and

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

the law and the right side and unfair to the rights of the plaintiff and the voters of the fourth district, based on Article (52/1st) of the Constitution of the Republic of Iraq of 2005, the plaintiff objected before the first defendant to the validity of the membership of the second defendant and the objection was registered in number (1112 on 18/2/2024) and for not deciding on it within thirty days, the plaintiff initiated the lawsuit before this court to challenge the validity of the membership of the second defendant, which contradicts the provisions of the Constitution and the law, as the defendant violated the Constitution in Articles (14, 16, 20, 38 /1st and 49 /1st) as he did not take into account Equality between Iraqis for preferring the second defendant (the list candidate from the second electoral district) over the plaintiff to be an alternative in filling the vacant parliamentary seat belonging to the former representative (Adnan Faihan Musa Al-Dulaimi), the candidate of the fourth electoral district, and did not take into account the principle of equal opportunities, which is a right guaranteed to all Iraqis, and ignored and neglected the votes of voters in the fourth electoral district of Babil province, which directed their will to elect the plaintiff and deprived them of their right to participate in public affairs it is their political right to vote to another candidate who does not represent them, as well as not taking into account the issue of (representation) despite as it is the main pillar on which the current democratic political process is based in Iraq, as the text of article (49/1st) of the Constitution was not applied, the democracy of the political process was not taken into account, nor did the court's decision (144/Federal/2021) be taken into account on 14/11/2021, which stipulated ((ruling on the unconstitutionality of the phrase (otherwise the alternative to it shall be the one who obtained the highest votes of the losing candidates from his list in his electoral district) and the phrase (individual candidate) of Article 46 of the Iraqi Council of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

Representatives Elections Law No. 9 of 2020, and its cancellation, 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 will be the highest loser in his constituency)), notwithstanding 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, it was canceled under Article (25/1st) of Law No. (4) of 2023, (Third Amendment Law to the Council of Representatives, Governorate Councils and Districts Elections Law No. 12 of 2018) however, the applicable law remains in the event of a vacancy in one of the seats in the council, and article 15/1st/3rd of it remains which stipulated (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) is applicable, as the electoral process that took place in 2021 was organized and implemented under Law No. (9) of 2020 all processes, procedures and regulations promulgated for this process under this law continue to exist and not with the fifth electoral cycle, and the electoral system adopted under it is the majority system and the first-past-the-post system, that is, voters have given their votes to the candidate directly away from the list to which he belongs, while the Electoral law No. (4) of 2023 adopts the proportional representation system and the (Saint Lego) system, meaning that voters give their votes to the list and the votes go to the list in order to be transformed to seats by the percentage of votes obtained by the list, and the number of constituencies under law No. (9) of 2020 is (83) electoral districts, and the winning candidate in the constituency shall be responsible to the voters for that constituency as he represents them in the Council of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

Representatives, under law No. 4 of 2023, the number of districts is 18, meaning that each governorate is one district therefore, it is not logical that the alternative should be from the governorate and not from the electoral district, and that the reasons for the issuance of the aforementioned law are to hold free, fair and fair elections for the Council of Representatives and to ensure a fair distribution of seats among the competing lists and not retroactive application of the law, in particular, 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 the Replacement of Members Law No. (6) of 2006 cannot be applied to the fifth parliamentary session, as it deals with the proportional representation system and not with the majority system adopted by Law No. (9) of 2020 it does not have an impact on him because it was disrupted by the issuance of the aforementioned law, which means that Law No. (9) of 2020 is the applicable law in replacing members of the Iraqi Council of Representatives, so the plaintiff asked this court to rule to cancel the membership of the second defendant (Habib Hashem Abdul Ali Al-Dulaimi) from the Iraqi Council of Representatives for its unconstitutionality and legality, and to rule for him as an alternative to the former representative (Adnan Faihan Musa Al-Dulaimi) in occupying the parliamentary seat and charging the defendants fees, expenses and efforts fees. After registering the case with this court No. (96/Federal/2024), collecting the legal fee thereon, 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 first defendant's agent replied with the regulation dated 3/4/2024, which concluded: The Elections Law No. (9) of 2020 the third amendment law to the Elections Law of the Council of Representatives, Provincial Councils and

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

Districts No. 12 of 2018 has been repealed by virtue of Article (25/1st) of Law No. 4 of 2023, and article (8/1st) of it stipulates that (if a member of the Council of Representatives or a member of the provincial council loses his seat for any reason, the next candidate shall replace him in the number of votes obtained in his list), article (2) of the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006, as amended, stipulates that (if one of the seats in the Council of Representatives becomes vacant for one of the reasons mentioned in the first article, he shall be replaced by a candidate from the same list that vacated the seat allocated to her in the Council of Representatives...), the implementation of these two texts will make (Habib Hashem Abd Ali) an alternative to (Adnan Faihan Musa) whereas they belong to the Fatah Alliance / Al-Sadiqoun Movement, and the Judicial Authority for elections had previously reversed the decision of the Board of Commissioners in a similar case because it was based on a repealed law in addition to other reasons, and also ruled that it should 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 that Law No. (4) of 2023 was implemented on 26/3/2023, article (25/5th) thereof stipulates that no text that contradicts its provisions shall be applied, and whereas (Adnan Faihan Musa) his membership ended with the issuance of Presidential Decree No. (13) dated 13/2/2024 appointing him to the position of Governor of Babil, so Law No. (4) of 2023 is the one that applies to the replacement process because it occurred after the law came into force, so he requested to reject the plaintiff's lawsuit and charging him fees, expenses, and advocacy fees, the second defendant replied with the reply dated 3/4/2024 and its conclusion: that his

Zainab



nomination came based on the letter of the Independent High Electoral Commission No. (Kha/24/162) on 11/2/2024, considering that the Commission is the competent authority to certify candidates in accordance with the electoral laws, and the Judicial Authority for Elections has previously settled the special controversy regarding the applicable law by Resolution No. (57 / Judicial Authority for Elections/2023) and considered that the amended Law No. 12 of 2018 is the applicable law in the event that a member of the Council of Representatives is replaced as it came in accordance with the Replacement Law No. 6 of 2006 as amended, and that Law No. 9 of 2020 has become Repealed based on Law No. (4) of 2023, and since Article (19) of the Independent High Electoral Commission Law No. (31) of 2019, as amended, allowed the appeal of the decisions issued by the Board of Commissioners before the Judicial Authority for Elections and may not be appealed before any other party, and its decisions are final, so he requested to reject the plaintiff's lawsuit and charging him the expenses. After completing the procedures required by the Court's Rules of Procedure, 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 plaintiff's requests, his substantiations and defenses of the defendants were examined after completing its scrutinies the end of the minutes has been made clear and issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Rashid Addai Caro) filed the lawsuit before this court against the two defendants (the first Speaker of the Council of Representatives/ being in this capacity, and the second

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

representative Habib Hashem Abd Ali) 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 of the second defendant (Habib Hashem Abdel Ali) and requesting a ruling to cancel the membership of the second defendant from the Council of Representatives, for its unconstitutionality and legality, and to rule on the plaintiff as an alternative to the former MP (Adnan Faihan Musa) in filling the vacant parliamentary seat due to his constitutional and legal right to occupy this seat the defendants shall be charged with fees, expenses and attorneyship fees, and the plaintiff shall base his claim on the provisions of Article (52/2nd) from the Constitution of the Republic of Iraq of 2005, and to the Iraqi Council of Representatives Elections Law No. (9) of 2020 whereby the elections of the Iraqi Council of Representatives for the fifth session were held, the plaintiff believes that the law is applicable in the event of a vacancy in one of the seats of the Council of Representatives in application of the provisions of Article (15/5th) which stipulated 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 it is applicable for the reasons referred to in the lawsuit petition even after the aforementioned law is repealed under Article (25/1st) of Law No. 4 of 2023 (Third Amendment Law) for the Elections Law of the Council of Representatives, Governorate 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 registered in number (1112) on 18/2/2024 based on the objection submitted, the first defendant's department issued the letter No. (43) on 26/2/2024, and the Council of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

Representatives did not issue a decision to accept or reject the objection, and that the lawsuit under which the plaintiff challenges the negative decision of the Council of Representatives was filed before this court and registered in number (96/federal/2024) and the legal fee was collected on 20/3/2024, this means that it is held within the period necessary for its stay before this court in application of the provisions of Article 52 of the Constitution of the Republic of Iraq of 2005, which stipulated: ((First: The Council of Representatives shall decide on the validity of the membership of its members, within (30) 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 appealed before the Federal Supreme Court within (30) 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 of 2005 within (30) thirty days from the date of its issuance)), and in accordance with 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 stated 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

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

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 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 sets a date to issue 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, in accordance with Article (31) of the Court's Rules of Procedure, the plaintiff also has an interest in filing the case before this Court it is a direct and influential case in his legal status, and both the plaintiff and the defendants are eligible to litigate as plaintiffs and a defendant because each of them has the necessary legal personality, in addition to the plaintiff being a legal opponent to the defendants and vice versa, as the defendants' acknowledgment entails a judgment, in application of the provisions of Articles (4) and (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, this 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

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

that the plaintiff filed his lawsuit before this court to challenge the validity of the membership of the second defendant, the representative (Habib Hashem Abd Ali Al-Dulaimi), who replaced the former representative (Adnan Faihan Musa Al-Dulaimi), and 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 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 of the 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 who obtained the highest votes in the electoral district) as it considers that it is applicable even after the aforementioned law is repealed under Article (25/1st) of Law No. (4) of 2023 (the Third Amendment Law to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. 12 of 2018), which stipulated that (the Iraqi Council of Representatives Elections Law shall be repealed. No. 9 of 2020), on the basis that the substitution that came under the provisions of Law No. (4) of 2023 and the Substitution Law No. (6) of 2006, is invalid and contrary to the provisions of the Constitution, which means that the membership of the second defendant in the Council of Representatives is invalid, and when the request for a ruling to cancel the membership of the second defendant is not valid, and the ruling to replace him as a member of the Council of Representatives, the court finds that the plaintiff's claim must be rejected for the following reasons: Alif- 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

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

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), and paragraph (fifth) of the same article stipulates that (no text that contradicts the provisions of this law shall apply), Therefore, the provisions of Article (15/5th) of the Iraqi Council of Representatives Election Law No. (9) of 2020 are not applicable when a seat in the Council of Representatives becomes vacant for any reason and another member replaces or replaces any member, as the provisions of a repealed law cannot be relied upon when there is a necessity that requires replacement. 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 in his list)), as stipulated in Article (2) of the Law No. (6) of 2006 on the replacement of members of the Council of Representatives. amended as (if one of the seats in the Council of Representatives becomes vacant for one of the reasons mentioned in the first article, he shall be replaced by a candidate from the same list that vacated the seat allocated to him in the Council of Representatives...), these two texts 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, for their enforcement, as it is not possible to rely on the provisions of a canceled law in order to replace the vacancy of the seat, and this means the Iraqi Council of Representatives Elections Law No. (9) of 2020, which was

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

canceled in accordance with the detail contained in paragraph (Alif) of this provision, and the implementation of the two texts makes the second defendant (Habib Hashem Abdul Ali Al-Dulaimi) an alternative to the former representative (Adnan Faihan Musa Al-Dulaimi) being from One list, and the second defendant has the highest votes in the list after the former representative (Adnan Faihan Musa Al-Dulaimi), so the replacement in the manner referred to above and based on the provisions of the laws in force it is true and there is nothing to prejudice its health. Jim- The second defendant (Habib Hashem Abd Ali) belongs to the same list as the former deputy (Adnan Faihan Musa), who was replaced by the second defendant by (5199) votes, and the application of Article (8/1st) from Law No. (4) of 2023 (Law of the Third Amendment to the Law on the Elections of the Council of Representatives, Provincial Councils and Districts No. 12 of 2018) and Article (2) of the Law No. (6) of 2006 amending the replacement of former representative (Adnan Faihan Musa Al-Dulaimi) with another It is required that the second defendant replace the replaced former representative for obtaining the highest votes after the replaced the representative and from the same list. Dal- The Judicial Authority for Elections, which is the judicial authority competent to consider appeals against the decisions of the Board of Commissioners, has previously settled the special controversy regarding the applicable law under the decision No. (57/Judicial Authority for Elections/2023) and considered that the amended Law on the Election of the Council of Representatives and Provincial Councils No. (12) of 2018 is the applicable law in the event of replacing a member of the Council of Representatives as it was in accordance with the Replacement Law No. (6) of 2006 as amended and that Law No. (9) of 2020 became repealed based on Law No. (4) of 2023 (Law No. (12) of 2018 on the third

Zainab

Republic of Iraq
Federal Supreme Court
Ref 96/ federal/2024



Kurdish text

amendment to the Council of Representatives and Governorate Councils Elections Law) for the foregoing, 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 second defendant Council of Representatives, so the Federal Supreme Court decided to rule as follows:

First: Reject the plaintiff's lawsuit (Rashid Addai Caro) for lack of prejudice to the validity of the membership of the representative objecting to the validity of his membership, the second defendant (Habib Hashem Abd Ali).

Second: The plaintiff shall charge the fees, expenses and advocacy fees to the first defendant's agent, the Speaker of the Council of Representatives, in addition to his position as Director General of the Legal Affairs Department, Sabah Juma Al-Bawi, 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 and (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 in the session dated 28 Shawwal 1445 A.H. corresponding to 8/5/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

Zainab