

Republic of Iraq
Federal Supreme Court
Ref 100/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalaf 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:

Plaintiff: Mohammed Jassim Al-Khafaji / Member of the Parliamentary Legal Committee.

Defendant: Speaker of the Council of Representatives / in addition to his job – His two agents the human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed that the Law Regulating the work of advisors No. (3) of 2022 has undergone many amendments to the original draft law received from the government and was expanded to include determining the number of advisers in both the Presidency of the Republic and the Council of Ministers, and in ministries and entities not associated with a ministry, and determining the fate of advisers appointed by proxy before and after its entry into force, and this affects the functions of the federal executive authority, which is formed in accordance with the provisions of Article (60) of the Constitution by the President of the Republic and the Council of Ministers, and involves constitutional and legal violations and contradictions in its provisions, for example: restricting the number of advisers to specialized offices for each adviser in each of the three presidencies to no more than (6) advisers, while it restricted this number of advisers in ministries and entities not associated with a ministry to no more than (3) advisers, which is not commensurate with the type, size and nature of the large tasks and the many competencies entrusted in the

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Council of Representatives, the Council of Ministers and the Presidency of the Republic, it also approved the appointment of previously appointed advisers before its expiry and issued a presidential decree, parliamentary order or Office order to appoint him, regardless of the fulfillment of the conditions required by law in Article (2) thereof, or not, and then returned to call them in Article (4 / Second) the expression (consultants appointed as proxy), and request the concerned authority to recommend their appointment, and that the conflict and contradiction in the provisions of the provisions of the law makes their application it is not legally possible, since the conflict in the law itself makes it impossible to resort to means of interpretation and removing ambiguity and confusion between the legal texts, which was also confirmed by the State Council in its letter No. (781) dated 7/3/2023, which includes an opinion regarding the interpretation of the provisions of the aforementioned law in addition to the absence of legal texts regulating the mechanism for dealing with the case of increasing the number of advisers appointed originally over the number specified therein, in addition to that it did not indicate the aspects, criteria and bases of differentiation and weighting between advisers, and that this deficiency, deficiency and legislative omission is it would grant absolute discretionary discretion to the Presidency of the Council of Representatives in the selection and differentiation between advisers whose number exceeds the number specified in Article (1/I) of the law without adopting any objective criteria or bases therefore, the choice entails prejudice to the constitutional rights to equality, equal opportunities and fair administrative treatment stipulated in Articles (14, 16 and 19) of the Constitution, so the plaintiff requested this court Ruling on the unconstitutionality of the provisions of Articles (1/I) and (4) of the Law Regulating the Work of Consultants No. (3) of 2022 as of

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the date of entry into force of the law and the repeal of all its effects, and addressing the ruling on the unconstitutionality of other provisions of the same law, which have legislative omissions or deficiencies as of the date of entry into force of the law and the cancellation of their effects, based on the provisions of Articles (36), (37/I) and (46) of the rules of procedure of the Federal Supreme Court No. (1) of 2022, (93/I) and (94). of the Constitution, and after registering the case with this court No. (100/Federal/2024), collecting the legal fee for it, and informing the defendant of its petition and documents, his agents replied with the reply list dated 15/4/2024, its conclusion: Failure to meet the conditions stipulated in Article (20) of the Rules of Procedure of Court No. (1) of 2022 there is no interest for the plaintiff to file the lawsuit, and the text (subject to challenge) was issued in accordance with the competencies of the Council of Representatives in legislating federal laws based on Article (61/I) of the Constitution, and the plaintiff's claim of formal reasons for challenging the constitutionality of the law based on the amendments made to the original law submitted by the government do not constitute an challenge to the constitutionality of the law if these amendments are consistent with the Constitution and do not affect the principle of separation of powers, and assuming that these amendments include anything that affects this, the person concerned with filing the lawsuit is the Council of Ministers and not the plaintiff, but the Council of Ministers has committed to these amendments, and this is evident through the cabinet's disapproval of the draft law on the first amendment to the Law Regulating the Work of Advisors No. (3) of 2022 under Cabinet Resolution No. (23479) of 2023, Article 130 of the Constitution stipulates that ((legislation in force shall remain in force unless repealed or amended in accordance with the provisions of this Constitution))therefore, the reasons contained in the plaintiff's list

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indicate the contradictions and the lack or deficiency of the law that it imagines assuming that it is proven controversially, it does not arise as a reason to challenge the law before the Federal Supreme Court, but rather a reason to amend the law in accordance with the constitutional mechanism stipulated in Article (61) of the Constitution, and that what the law went to is fully consistent with what the legal base should enjoy from generality and abstraction, as the law did not consider the differentiation between advisers as much as he looks at the differentiation between the competencies and leaving the determination of what is useful from these competencies to this or that authority to the discretion of each entity, in particular, the legal system, in particular (Civil Service Law No. 24 of 1960 and staffing law No. 25 of 1960), as amended), included articles regulating the basis for dealing with the employee whose job is canceled, while the letter of the State Council does not exceed that it is an opinion of the State Council that is not binding in accordance with the text of Article (4) of the State Shura Council Law No. (65) of 1979, as amended, in addition to the fact that the end of the opinion went to is the existence of a need for legislative intervention, which does not amount to a reason to challenge the constitutionality of the law, the plaintiff's request to rule the unconstitutionality of the provisions of the articles (subject to challenge) as of the date of entry into force of the law is illegal it is unconstitutional and contradicts the provisions of Article (19/IX) of the Constitution, which stipulates that ((The laws do not Retroactive unless otherwise specified..)) Article (37) of the Court's Rules of Procedure No. (1) of 2022, which stipulates: (The effect of the judgment issued in non-penal texts shall apply from the date of its issuance, unless the judgment stipulates otherwise), so the defendant's agent requested to reject the lawsuit and charging the plaintiff fees, expenses and attorneyship fees.

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After completing the procedures required by the Court's Rules of Procedure, a date has been set for the pleading in accordance with Article (21/III) thereof and the parties were notified, and the court was formed, so the plaintiff attended by himself and the agent of the defendant attended the human rights employee Saman Mohsen Ibrahim, after hearing the statements and requests of each party and completing its scrutinies, the conclusion of the pleading has been understood, and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's requests were summarized in a ruling of unconstitutionality the text of articles 1/first and (4) of the Law Regulating the Work of Consultants No. 3 of 2022, as of the date of entry into force of the aforementioned law and the cancellation of all its effects, and addressing the ruling that other provisions of the same aforementioned law are unconstitutional, this is because it violates the provisions of the constitution and the principles of equality before the law, the right to equal opportunities, and the right to fair administrative treatment affirmed by the constitution in articles (14, 16, and 19/VI) thereof, and for the conflict in the drafting of its texts and the lack and legislative omission in regulating perceived cases in which regulation is only complete, thus violating constitutional guarantees, in addition to other reasons stated by the plaintiff in his petition the court finds that the legislator's determination in article (1/first) of the law (subject to appeal) to determine the number of advisers in the Council of Representatives, the Presidency of the Republic, and the Council of Ministers, and to indicate their grades and affiliation does not constitute a constitutional violation, nor is it a violation of the constitutional principles mentioned by the plaintiff in the petition, and that not obliging those authorities to a

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certain number of advisers constitutes a waste of public money and the consolidation of disguised unemployment so that we are in front of large numbers of advisers without most of them having real work to do, and therefore the legislator has the discretionary power to determine the number of advisers in government agencies commensurate with the real need for those agencies, whether presidencies, ministries, or other state departments and independent authorities not associated with a private ministry, and that the highest degrees in the state cost the state billions annually without providing any added value to the national economy, as for the plaintiff's request to rule the unconstitutionality of article 4 of the law (subject to appeal) the court finds that the said article was issued in accordance with the competences of the Council of Representatives contained in article (61/I) of the Constitution the legislator's determination of the fate of the proxy advisers before and after the entry into force of the law (subject to appeal) does not constitute Constitutional violation, in addition to the formal and substantive reasons stated by the plaintiff in his petition to challenge the constitutionality of the law does not amount to a reason to challenge and rule that it is unconstitutional, and the plaintiff's request for a ruling the unconstitutionality of the articles (subject of the challenge) as of the date of entry into force of the law contradicts the principle of stability of legal centers unless otherwise stipulated, the plaintiff's claim must be rejected accordingly, and in view of the foregoing, the Federal Supreme Court has decided the following:

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First: Rejecting the plaintiff's lawsuit (Mohammed Jassim Al-Khafaji), due to the absence of a constitutional violation.

Second: Charging the plaintiff with the expenses, fees and attorneyship fees of the defendant's agent, the Speaker of the Council of Representatives, in addition to his job an amount of one hundred and fifty thousand dinars to be distributed in accordance with the law.

The decision was issued by agreement final and binding on all authorities in accordance with the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005, and Articles (4 and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and done in the session dated 23 / Muharram / 1446 AH corresponding to 30/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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