

Republic of Iraq  
Federal Supreme Court  
Ref 115/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/5/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalaf Ahmed Rajab ,Ayoob Abbas Salih, Dyar Mohammed Ali ,Munther Ibrahim Husain and, Jassim Jazaa Jaafir who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ahmed Mahmoud Khalaf Wakaa.

The Defendants:

1. The President of the Republic / being in this capacity - His agent chief of the legal experts Ghazi Ibrahim Al-Janabi.
2. Speaker of the Council of Representatives / being in this capacity - His two agents the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.
3. Prime Minister / being in this capacity - His agent the legal adviser Qasim Suhaib Shakour.
4. Governor of Kirkuk / being in this capacity - His agent the legal adviser Amir Abdullah Ahmed.

**The Claim:**

The plaintiff claimed in the petition that after the Independent High Electoral Commission certified the results of the local elections, and the swearing-in of members of provincial councils, including Kirkuk governorate, he asked the governor of Kirkuk to hold a session whereas the Elections Law for Local Councils did not clearly and explicitly stipulate the legal periods for holding the first session to elect the Chairman of the Provincial Council and its formations, nor the Governor and other executive bodies, which generated an administrative and supervisory vacuum in the province, and the lack of intention to form

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the Council and elect the Governor of Kirkuk like other governorates, therefore, the plaintiff asked this court to issue a state order to withdraw the financial and administrative powers of the current governor of Kirkuk, as he not elected in light of its current powers, which causes harm to the public interest, and also requested to fill the supervisory and service vacuum caused by the absence of a provincial council at the present time, Whereas the law did not explicitly specify a period for holding the session of the provincial council nor the election of the governor, and because the Provincial Council Elections Law did not explicitly refer to the legal periods and procedures that the Council entails in the event that the provincial council session is not held and the chairman of the council, his deputy, the governor and his deputies are elected, and also requested the formation of a fact-finding committee on the legitimacy and legality of the existence of the current governor and his exercise of all administrative and financial powers in the absence of a provincial council, as the law did not clarify what the legitimacy of the administration of Governorate in the event that the chairman and deputy chairman of the council are not elected and a new administration is elected for the governorate. After registering the lawsuit with this court No. (115/Federal/2024) and collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the first defendant's agent responded with the reply regulation dated 8/5/2024 according to which he requested to reject of the lawsuit, because there is no interest for the plaintiff in filing it, and that the court competent for objections and appeals it is the Court of Administrative Justice, in addition to the fact that his client is not suitable as a litigant in the lawsuit, as it is not within the competence of the President of the Republic to oblige those elected to the provincial

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council to hold a session of the provincial council, as the Council of Representatives Elections Law And provincial councils and districts No. (12) of 2018 and the law of provincial councils that are not organized in a region did not stipulate clearly and explicitly on the procedure that requires taking when the elected members of the Council do not attend to complete the quorum for the purpose of holding the first session to elect the head of the provincial council and the governor, so there is no authority to oblige the elected the continuation of the governor in his position to conduct daily affairs until the election of a new governor is a temporary measure to fill the vacuum until the formation of the new council, which is a constitutional and administrative custom followed by most of the elected councils, and has been approved by law in accordance with Article (30) of the Law on Governorates not organized in a Region, which stipulated (the governor, his deputies and the heads of administrative units continue to conduct daily affairs after the end of the electoral cycle of the councils and until the election of their successors by the new councils), and that the presence of a governor to manage the province temporarily and organize the workflow in it in accordance with the powers granted to him by law is better than leaving the administration of the province without an official, therefore, the plaintiff's request to withdraw the powers of the governor means stopping services and causing chaos in the workflow in the governorate, and the State Council issued a fatwa according to its decision No. (46/2024) issued on 23/4/2024 that: (The winning governor of the provincial council membership continues to conduct daily affairs even if he takes the legal oath until a new governor is elected), noting that the governor of Kirkuk won the ongoing elections on 18/12/2023 the second defendant's agents responded with the reply dated 24/4/2024 and requested to reject the lawsuit for the same reasons stated by the first

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defendant's agent, adding that the plaintiff did not indicate the constitutional text that violated the current governor of Kirkuk remaining in office, in addition to the absence of a constitutional violation, and that the essence of the matter needs legislative intervention if its reasons are available the third defendant's agent replied with the reply list dated 6/5/2024, which included the same defenses mentioned above, and added that the litigation was not achieved against his client, and requested to reject the lawsuit, because the merits had previously been decided by the court according to its decision No. (109/Federal/2024), which rejected for lack of jurisdiction, the fourth defendant's attorney replied with the reply statement received by the court on 2/5/2024, its conclusion:

The Governor of Kirkuk has invited the Provincial Council to hold the first session, according to the letter of the Governorate of Kirkuk No. (395) on 31/1/2024, in accordance with the provisions of Article (7/1<sup>st</sup>) of the Law of Governorates not organized in Region No. (21) of 2008, which obligated the governor to convene the provincial council within (15) days, and the disruption of the work of the council It is not caused by the governor because this issue is related to the council itself, due to the lack of consensus among the winning political blocs in the local elections in the province and the request to reject the case. 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 (21/3<sup>rd</sup>) thereof, in which the court was formed and the case was 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 has been made clear and the court issued the following decision:

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### **The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff Ahmed Mahmoud Khalaf Wakaa filed his lawsuit before this court against the defendants (the President of the Republic, the Speaker of the Council of Representatives, the Prime Minister, and the Governor of Kirkuk / being in their capacity) requesting this court to issue a state order to withdraw the financial and administrative powers of the current governor of Kirkuk as he is not elected, he also requested filling the supervisory and service vacuum caused by the absence of a provincial council at the present time, because the election law for provincial councils did not explicitly refer to the legal periods and procedures that the council entails in the event that the provincial council session is not held and the election of the chairman of the council, his deputy, the governor and his deputies, and also requested the formation of a fact-finding committee on the legitimacy and legality of the presence of the current governor and his exercise of all administrative and financial powers in the absence of a provincial council the law did not clarify the legitimacy of the provincial administration in the event that a council chairman and his deputy were not elected and a new governorate administration was elected. Regarding the plaintiff's request (issuing a state order that includes the withdrawal of the financial and administrative powers of the current governor of Kirkuk), the Federal Supreme Court finds that it decided to reject this request by virtue of its decision No. (115/federal/state order/2024 on 16/4/2024) due to the lack of justifications for its issuance, as for the other requests received included in the plaintiff's lawsuit it is obligatory to reject, for lack of jurisdiction, since the powers and competences of this court are provided for exclusively in the two

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articles (52 and 93) of the Constitution of the Republic of Iraq of 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and some other special laws, and not among those competencies the requests contained in the lawsuit petition, therefore, the plaintiff's lawsuit must be rejected, for lack of jurisdiction, In view of the above, the Federal Supreme Court decided as follows:

First: Ruling on rejecting the plaintiff's lawsuit Ahmed Mahmoud Khalaf Wakaa, for lack of jurisdiction.

Second: Charging the plaintiff the expenses, fees and attorneyship fees of the defendants' agents / being in their capacity an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005 and Articles (4 and 5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) for the year 2021, and it has been made clear in the session dated 12/Dhu al-Qi'dah / 1445 A.H. Corresponding to 21/5/2024 AD.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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