



The Federal Supreme Court (F S C) has been convened on 2/5/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Adobo Abbas Salah, Abdul-Rahman Suleiman Ali and Dyer Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Basin Khaza'al Khashan – his agent the barrister
Waleed Shayal Khudhim.

The defendant: the Speaker of the ICR/ being in this capacity-his
agent the legal advisor Haytham Majid Salim and
the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed that the defendant/ being in this capacity had already issued Law No. (10) Of 2018 the Third Amendment Law of the governorates not incorporated into a region Law No. (21) Of 2008 (amended), where article (14/1st) of the amendment stipulated (the governorates and current districts councils continue to operate until the results of the elections for the new councils are issued), as well as the article (15) of the same amendment stipulated (the texts of articles (3,4,5,12,14,15) of the Law shall be annulled, and the term "district council" is removed wherever it is mentioned in the law, and he challenges the unconstitutionality of article (14/1st) and article (15) regarding its annulling of the article (4) of the above amendment for the following reasons:

1. Annulled article 4 of the governorates not incorporated into a region law No. 21 of 2008, specified the duration of the electoral cycle of councils for four calendar years, starting with its first

session), which corresponds to the most important principles of democracy, the principle of peaceful alternation of power through the ballot box. The continuation of the work of the governorates' councils based on the provisions of article (14/1st) above-mentioned and the annulment of Article 4 and the failure to specify a term for the duration of the work of the aforementioned councils is contrary to the provisions of article (2/1st/Bah) of the Constitution of the Republic of Iraq of 2005, which stipulated that (No. law may be enacted that contradicts the principles of democracy), as well as, it contradicts with the article (13/1st) of the Constitution which stipulated (this Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception).

2. Amending the electoral cycle duration retroactively is also contradicts article (5) of the Constitution which stipulated (the law is sovereign. The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their Constitutional institutions) and the people had exercised this authority during the elections of the governorates' councils in 2013 and elected its representatives based on the law of governorates not incorporated into a region No. (21) For 2008 for four calendar years only, according to the article (4) which challenged for its unconstitutional annulment.
3. Violating the amendment of the article (19/9th) of the Constitution, whereas the aforementioned article stipulated (Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees) and article (16) of the third amendment of the governorates not incorporated into a region Law had stipulated (this law shall be executed from the date of its issuance in the gazette).

Therefore, the plaintiff requested from the FSC to call upon the defendant/ being in this capacity for argument and to judge by unconstitutionality of the article (14/1st and article 15 for its annulling the article (4) of the law No. (10) For 2018, the third amendment law of the governorates not incorporated into a region No. (21) For 2008. This lawsuit had been registered at this Court by the number (117/federal/2019) and he paid the legal fee of it, according to paragraph (3rd) of the article (1) from the FSC's

Bylaw No. (1) For 2005. The defendant/ being in this capacity has been notified by the petition of the lawsuit according to the provisions of paragraph (1st) of the article (2) of the Bylaw. His two agents answered by the draft dated 22/10/2019, both of the legal advisor Haytham Majid Salim and the official jurist Salim Taha as following:

1. Extending the electoral cycle of the governorates' councils was for reasons out of the ICR's will which is represented by the delay of the elections process of these councils. This matter obliged the ICR to extend the electoral cycle of these councils to guarantee the legitimacy of its legal tasks exercising till electing new councils.
2. The ICR previously issued the first amendment of the governorates councils' elections and districts associated with it and scheduled 1/Mars/2020 as the end date of all governorates councils' custody. Then, the Council to proceed with the procedures of amending the aforementioned law to accelerate the date of the governorates council's termination, which was in its session convened on 8/October/2019.
3. The issuance of the ICR the law (challenge subject) is within its Constitutional legislative competence which stipulated in the article (61/1st) of the Constitution. The will of the ICR by enacting the law (challenge subject) has its subjective justifications and claiming that the extension of the governorates' councils cycle without returning to the people. The ICR is representing the people according to the Constitution and has enacted the law according to the Constitution.
4. As for the request of the plaintiff to annulling of including article (4) of the article (15) of amendment No. (10) For 2018, the third amendment law of the governorates not incorporated into a region, what listed in the article (15) of the third amendment law is representing a legislative choice.

The agents of the defendant/ being in this capacity requested to reject the lawsuit and to burden the plaintiff all the judicial expenses. After completing the required procedures according to paragraph (1st) of the article (2) of the FSC's Bylaw No. (1) For 2005. The day 29/4/2021 has been scheduled as a date for

argument, and to notify the lawsuit parties by this according to the provisions of paragraph (2nd) of the article (2) of the aforementioned Bylaw. On the scheduled day of argument, the Court has been convened and the plaintiff and the agents of the defendant/ being in this capacity attended. The public in presence of all parties' argument proceeded. The plaintiff repeated the petition of the lawsuit and he requested to judge according to it, he added that the electoral cycle period of the governorates councils is four calendar years which regarded as an electoral contract between the voter and the State because it's already set in the general policy frame of the State the period of the cycle by four years. This law had granted the right for the voter to choose a replacement after the expiration of the aforementioned period, granting this competence by the ICR to these councils to extend their period, this matter is representing an opposite direction for the voter's will. If the Constitution had determined the age of the parliamentary cycle of the ICR by four years, a fortiori to determine the cycle of governorates councils, not to keep it open endless. The agents of the defendant/ being in this capacity answered that law No. (27) For 2019 the second amendment law of the governorates councils and districts elections No. (12) For 2018 had terminated the work of the governorates councils, districts, and sub-districts associated with it. Therefore, the challenge of unconstitutionality of article (14) of law No. (10) For 2018 the third amendment of the governorates not incorporated into a region is regarded useless, as well as the article (15) of the aforementioned amendment about its annulling for the article (4) of the last law, they requested to reject the lawsuit. The plaintiff repeated his requests and sayings, and the agents of the defendant/ being in this capacity repeated their sayings and requests as well. Whereas nothing is left to be said, the end of the argument has been made clear and the decision was recited publicly during the session.

The Decision

During scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's case contained a request to judge

that Article (14) of Law No. (10) of 2018, the Third Amendment Law of the Governorates not incorporated into a region Law of 2008, as well as the challenge of unconstitutionality of article (5) of the same amendment above-mentioned about their annulment of for the article (4) of the Governorates not incorporated into a region Law because they contradict with the provisions of articles (2/1st/Bah) and (5) and (13/1st) and (19/9th) of the Republic of Iraq Constitution for 2005. The FSC had listed the case of the plaintiff and all the substantiations, in addition to the defends and drafts presented by the agents of the defendant/ being in this capacity under scrutiny and deliberation, and the Court had reached the following results:

1. Based on the provisions of Article 4 of the Federal Supreme Court Law No. (30) Of 2005 amended and Article (6) of the Bylaw No. (1) Of 2005, which in all its paragraphs required the plaintiff to have a direct and influential case interest in his legal, financial or social status, and the plaintiff should present an actual proof of the aggrieve he suffered because of this enactment which requested to annul it. This aggrieve must be direct and independent, not futuristic or unknown and the plaintiff had No. advantage by a part of the text which requested to annul it. Moreover, the text which requested to annul it should be implemented on the plaintiff or desired to be implemented on him. The Federal Supreme Court finds that betaking to the Constitutional judiciary should not be random for everyone desired it, and the interest must be available in the case and the case will not be correct without it. This matter is the basis of the case, the necessity of the legal protection required in assault or threat with assault on a right or legal post, and the practical advantage exists which the plaintiff desired to get from initiating the case. This direct interest in the Constitutional case must be a legal interest, which means that the Constitution guarantees its protection because this right protected by the Constitutional case is a right guaranteed by the Constitution and approved by the law, and implementing for this matter to regard the interest legal, there must be a violation by one of the Constitutional rights, not enough to consider the direct personal interest as a basic reason to accept the

Constitutional case that the challenged text should violate the Constitution. This text when implemented on the plaintiff had violated one of the Constitutional rights guaranteed by the Constitution. The abstract theoretical interest is not enough to accept direct Constitutional cases, as is the case with the interest of determining a Constitutional provision abstractly on a particular subject for academic purposes or in defense of ideal values to be established or some kind of expression of a personal point of view or to establish a certain concept in a particular matter that did not result in harm to the challenger and the interest must exist and available once the case is conducted and until a judgment is issued. Therefore, the interest of the people is achieved by holding periodic elections for elected councils and ending their electoral cycle by the end of the periods specified following the law, and that right is guaranteed by the Constitution and approved by law, as each member of society must exercise his Constitutional right to be a voter or elected at the time of the elections and exercise his Constitutional right to vote, vote and nominate and to extend the work of these councils after the end of their session which is legally defined causes harm to the deprivation of practice and enjoyment of the aforementioned political rights, and since the plaintiff, in this case, who is challenged by unconstitutionality, his interest requires that it be judged by unconstitutional.

2. Article 1 of the Constitution of the Republic of Iraq of 2005 stipulates (the Republic of Iraq is a single federal, independent, and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq) and the aforementioned system is achieved through the peaceful circulation of power through the democratic means stipulated in this constitution, following what listed in the article (6) of it. Therefore, enacting any law that contradicts the principles of democracy will be contrariwise the principle of peaceful circulation of power. Paragraph (1st/Bah) of the article (2) of the Constitution stipulated (no law may be enacted that contradicts the principles of democracy), as well as, no law may be enacted that contradicts with rights and the basic freedoms listed in this

Constitution according to what mentioned in the item (Jim) from the same above-mentioned paragraph which stipulated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution).

3. One of the most important rights listed in the Constitution is what stipulated in article (20) of it (Iraqi citizens, men, and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office). The existence of the Governorate Council and the districts Councils is a form of the parliamentary democratic system forms, whereas these councils are created by the elections practiced by the people during the secret direct public ballot and through its constitutional institutions. Therefore, the source of these councils and their legitimacy is the people themselves according to what is listed in the article (5) of the constitution. This peaceful circulation of power, and the people practicing for their basic freedoms in the voting, election, and run for office required two important things, the first is the separation between powers, and the second is to determine the electoral cycle period for all the elected councils. This matter was confirmed by the constitutional legislator in the article (56/1st) of the Constitution which stipulated (the electoral term of the Council of Representatives shall be four calendar years, starting with its first session and ending with the conclusion of the fourth year).
4. The will of the voter is based on the principle of the periodical in the elections, and the opinion of the voter by the elected Representative, the Council's member or the elected councils' members is changing positively or negatively according to what presented by the winner in the elections and what the voter is aiming to. Therefore, a lot of the ICR members and the Governorates councils members not gaining the votes that qualify them to win when they are nominated for the second time in the later cycles.
5. One of the Governorate council powers is electing the Mayor and his two deputies, whereas the article (7/7th/1) of the Governorates not incorporated into a region Law No. (21) For 2008 stipulated (elect the governor and his two deputies by an

absolute majority of the members within a maximum of 30 days from the date of its first session). The order of his appointment shall be issued with a Republican Decree within 15 days from the date of his election, and after taking these procedures he will proceed with his tasks according to the provisions of the article (26/1st) of the Governorates not incorporated into a region Law. The continuation of the Governor in his post by the continuation of the expired Governorate Council is contradicting the principle of peaceful circulation of power, therefore, the article (30) of the above-mentioned Law (the governor, his two deputies, and the heads of the administrative units shall continue to discharge their daily responsibilities after the expiration of the electoral term of the councils until their respective successors are elected by the new councils). This means that the work of the Governor is ended by the end of the Governorate Council term, and continues to discharge the daily responsibilities. This matter is corresponding with what article (122/3rd) of the Constitution stipulated (the governor, who is elected by the Governorate Council, is deemed the highest executive official in the governorate to practice his powers authorized by the Council). The same applies to the governor deputies, district's administrator, and sub-district administrator, where the district administrator and the sub-district administrator are elected by the Judicial Council following article (8/3rd/1) of the Law on the Governorates not incorporated into a region and the situation is valid for those in the higher positions in the Governorate, as article (7/9th/1) of the said law stipulates that (approve the nomination the senior positions in the governorate by the absolute majority of the council members by electing one Nominee out of (3) Nominated by the Governor and the competent minister shall reject the Nominee in the case of that the Nominee was not corresponding to the criteria within (15) fifteen days from the date of receiving the nomination to his office. If there was no decision token in this concern, this will be considered approval for him, the Nominee of the director-general position, or whom in his position shall be presented to the Cabinet for approval).

6. Corresponding to the Constitution, article (4) which was annulled by the third amendment No. (10) For 2018 of the Governorates not incorporated into a region Law (the electoral term of the Governorates is four calendar years starting with its first session). Whereas it had been annulled by the article (15) of the aforementioned amendment, as well as, the article (48) of the Governorates not incorporated into a region Law No. (12) For 2018 stipulated (the electoral term of the Governorate Council and the district is four calendar years starting with its first session). Therefore, the annulled article No. (4) Of the Governorate not incorporated into a region Law No. (21) For 2008, and the article (48) in the effect of the Governorates Councils elections Law No. (12) For 2018 which according to it the people had practiced his periodical rights in voting, electing, and run for office. These articles were corresponding to articles (5) and (6) and (56/1st) and (122/3rd) of the Constitution. As for what is listed in the article (14) of Law No. (21) For 2008 (amended) which stipulated (first: the current Governorates and District Councils continues its works until the results of the new Governorates elections are issued. Second: the current Districts continue in their works until the Governorates Councils elections are issued). What is listed in the aforementioned article is not corresponding with the provisions of articles of the Constitution that contradict the principles of Democracy and the peaceful circulation of power.
7. Article (15) of amendment No. (10) For 2018, according to this article the article (5) of the Governorates not incorporated into a region Law No. (21) For 2008 had been annulled and the annulled article aforementioned had determined the conditions of the Nominee for the membership of the Councils. This text is necessary to know the availability of the required conditions in the Nominee or not, and through these conditions, it could accept his Nomination or rejecting it. Annuling the aforementioned article without the existence of a text takes its place means the lack of a pillar of holding the elections of the Governorates Councils. Whereas article (93) of the Constitution stipulated (the Federal Supreme Court shall have jurisdiction over the following: First: Overseeing the constitutionality of

laws and regulations in effect). As well, article (4) of the Federal Supreme Court Law No. (30) For 2005 according to the last amendment of the Federal Supreme Court Law stipulated: (the Federal Supreme Court shall have jurisdiction over the following: First: Overseeing the constitutionality of laws and regulations in effect). This means that the Court can handle the disputes about a constitutional matter associated with what is shown to this Court in this lawsuit, and the unconstitutionality of annulling the article (5) requires to stand on this issue and deciding in this concern because the subject of this lawsuit is comprehensively associated with the same subject. This matter is leading to the concept that the Court practicing its jurisdictions.

When saying that article (7) of the Governorates Council's election law No. (12) For 2018 had included the stipulations of the Nominee for these Councils, therefore, took place the article (5) of the Governorates not incorporated into a region Law about the availability of the conditions in the Nominee or not. This matter is not corresponding with what listed in the article (25) of the Governorates not incorporated into a region Law which obliged that the Governor and his two deputies shall have the conditions which should be available in the Councils' member. Moreover, the conditions determined in the article (25) above-mentioned, which means that the legislator means the conditions of the Nominee for the Councils' member the same conditions listed in the article (5) of the same Law, whereas article (25) above-mentioned not refer what obliged on another Law.

Accordingly, whereas the structure of Democracy is based on the participation of the people in proceeding the public life and management of public affairs, as well as respecting the rights and public freedoms. This matter is also affecting locally as nationally, while the principle of the election is the perfect expression of Democracy with it the people will achieve their sovereignty through his representatives as they regarded the source of all powers and the State taking its constitutional legitimacy. As long as Democracy doesn't take a political side only which based on the participation of the people in the

Government through its representatives and managing the national affairs, but it also takes an administrative side based on the participation of the Governorates residents in managing their self-affairs through the elected Governorates and districts Councils in according to the right of voting, therefore, the citizen's right is either be a voter or elected is one of the constitutional rights which incarnated the principle of Democracy which the constitutional system in Iraq is based on. The right of voting will generate another constitutional principle, which is the principle of circulation of practicing the voters for their right in voting and this principle is included the necessity of calling the voters to practice their right of voting periodically, whereas the legislator in the article (14) of the amendment No. (10) For 2018 of the Governorates not incorporated into a region Law had extended the work of the Governorates and districts until the issuance of the new Councils elections results without determining a date for holding the elections of these Councils. By this step, it had violated the provisions of articles (5) and (6) and (56/1st) and (122/3rd) of the Constitution, as well as the text of the article (15) of the above-mentioned amendment which according to it, the articles (4) and (5) had been annulled, in addition to the other articles mentioned in the text of the Governorates not incorporated into a region Law. Besides, despite all the exceptional circumstances which require taking adequate procedures that maintain the public order, and guarantee the continuity of public utilities proceeding and protecting the supreme interest of the State. All these points shall be achieved under the current Constitution articles, whatever the reasons were and the nature of its nature which made the legislator approve Law No. (10) For 2018 whether these which listed in the rationale or were controversial between the Representatives during the session of approving this Law. It doesn't justify the extension of custody of the Governorates and districts Councils until holding new elections without determining a date for these elections. This matter will lead us to say that there is No. clear proportionality between this extension and its necessities, and it will also deprive the citizen of practicing his constitutional right

in voting periodically which will make the article (14/1st) and article (5) about its annulling the articles (4) and (5) of the law No. (10) For 2018 (amended) of the Governorates not incorporated into a region Law regarded a violation of the Constitution and the constitutional principles, therefore, the Federal Supreme Court decided:

First- to judge by unconstitutionality of the article (14/1st) of Law No. (10) For 2018, the third amendment Law of Governorates not incorporated into a region No. (21) For 2008.

Second- to judge by unconstitutionality of the article (15) of Law No. (10) For 2018 about annulling the articles (4) and (5) of the Governorates not incorporated into a region Law No. (21) For 2008.

Third- to burden the defendant/ being in this capacity all the expenses and fees. The decision is final and binding for all powers and has been issued according to the provisions of the article (1) and (2/1st – Bah, Jim) and (5) and (20) and (56/1st) and (93) and (94) and (122/3rd) of the Republic of Iraq Constitution for 2005 which amended by the majority on 2/May/ 2021 coinciding with 20/Ramadan/1442 Hegira.