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Federal Supreme Court
Ref. 124 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 24/9/2023 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Sarwa Abdul Wahid Qadir/ member of the ICR.
2. Shaswar Abdul Wahid Qadir – President of New Generation Movement Party/ being in this capacity.

Their agent
the barrister
Ahmed Saeed
Mousa

The Defendants: 1. Speaker of Kurdistan Region Parliament – Iraq/ being in this capacity – his agent the official jurist Sahrmeen Khudhir Bahjat.
2. President of Kurdistan Region/ being in this capacity – his agent the barrister Ayad Ismaeel Mohammed.

The Claim

The plaintiffs, through the mediation of their agent, claimed that the Kurdistan Parliament enacted Article (2) of Law No. (2) of 2019, the first amendment to the Kurdistan Region Governorates Law No. (3) of 2009, issued by the decision of the President of the Kurdistan Region No. (1) of 2019, which ruled that the current electoral cycle for the region's provincial councils will continue until the election of new councils, and since the aforementioned article violates the provisions of the constitution, as the Federal Supreme Court had previously issued its decision No. (117/Federal/2019) on 2/5/2021, according to which it ruled not to the constitutionality of Article (14/I) of Law No. (10) of 2018, and considered the provincial councils that are not organized in a region dissolved from the date of the end of their electoral cycle, due to the contradiction of their continuation with the principles of democracy and the peaceful transfer of power, whereas Article (2) of Law No. (2) of 2019, the First Amendment Law to the Kurdistan Region Governorates Law No. (3) of 2009, repeated the same constitutional violations contained in the article ruled unconstitutional, and thus

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it is also a violation, so the plaintiffs asked this court to rule on its unconstitutionality, cancel the effects of it, and consider the provincial councils dissolved from the date of the end of their electoral cycle after four calendar years from the date of their first convening. The case was registered with this court at number (124/Federal/2023), and the legal fee was collected for it, and the defendants were informed of its petition and documents in accordance with Article (21 / first and second) of the internal regulations of the Federal Supreme Court No. (1) of 2022, and for the expiry of the period specified for the answer, the court set a date for pleading, in accordance with item (third) of the aforementioned article and notified the parties, on the specified day, the court was formed, so the plaintiff attended, lawyer Ahmed Saeed Moussa attended as an agent for the plaintiffs, and the first defendant's agent, the human rights employee, the Director of Legal Affairs, Sharmin Khader Bahgat, attended according to the special power of attorney issued by the President of the Kurdistan Regional Parliament Office, which is linked to the lawsuit papers, which the court decided to accept based on Articles (112 and 113) of the Rules of Procedure of the Kurdistan Regional Parliament issued on 17/7/2018, and the second defendant's attorney, lawyer Iyad Ismail Muhammad, attended and Bawshar conducted the public presence pleading, the plaintiff and the plaintiffs' agent repeated what was stated in the lawsuit petition and requested a ruling accordingly, the first defendant's agent responded requesting the dismissal of the lawsuit for the reasons stated in the response list dated 3/9/2023 ((which concluded that the lawsuit petition does not refer to a clear statement of the constitutional text alleged to be violated and the reasons for the violation). Constitutionality as required by Article (20/IV) of the Court's Rules of Procedure No. (1) of 2022), The second defendant's attorney replied requesting the dismissal of the lawsuit for the reasons stated in the reply statement dated 3/9/2023 - ((which concluded: The plaintiff filed his lawsuit in his personal capacity and does not represent any official body. It does not meet the conditions for its residence stipulated in the rules of procedure of the court, it has no status or direct and influential interest in its legal, financial or social status, and it has not suffered any direct or independent damage to its elements, nor to the conditions of Article (6) of the

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Civil Procedure Law, which qualifies it to be an opponent of the defendants, and it is believed that the provisions for the provinces in the Iraqi constitution apply and apply to all governorates of Iraq, and therefore any provision on those texts also applies to all governorates Iraq, which is an incorrect belief, this is based on the following legal arguments and proofs: First: Not all Iraqi provinces are subject to one constitutional system, but there is more than one constitutional system in this regard. The Iraqi constitutional legislator has distinguished between two types of provinces (governorates that are not incorporated into a region and governorates incorporated into a region) and this distinction resulted in an important result, which is that he singled out the first type of provinces with explicit constitutional rules, by allocating articles and provisions to them in the body of the constitution, but even allocated to them a full chapter, while not concerned The second type of governorate by any constitutional text, and not only that the Iraqi constitution did not deal with any form of constitutional organization of the provinces incorporated into a region, he even did not put an official name for it, as the constitutional legislator did not mention even once (the governorates organized in a region), but we use this name derivable through the concept of violation from the name set by the constitution for the first group of governorates (i.e. governorates that are not incorporated into a region) and mentioned by the constitutional legislator (14) times in separate texts, this fact clearly shows the Iraqi constitutional legislator's lack of intention to interfere in any way and to any degree in On how to manage the regular governorates in a region, leaving all this to the constitution of each region separately, a fact that leads us to question the constitutional article that was violated by the article whose unconstitutionality is challenged, the question that the plaintiffs should have been answered even before it arose. Second: The demand for the application of the same ruling ruled by the Federal Supreme Court regarding the Third Amendment Law to the Law of Governorates Not Organized in a Region on the article challenged as unconstitutional in the Kurdistan Regional Law collides with the constitutional facts regarding the situation of the Iraqi governorates in the Constitution as follows: 1- The constitutional basis for the existence of provincial councils and the constitutional basis for the intervention of the

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Federal Supreme Court in the aforementioned case, and thus reaching the judgment it ruled, is Article (122/4th) of the Constitution, the Court has expressed this fact explicitly in another decision by saying (The origin of the existence of provincial councils is the constitution, as Article (122/IV) of it stipulates that: (regulated by the law of election of the provincial council and the governor and their powers) and therefore the existence of these councils is a constitutional fact cannot be bypassed...) (Decision No. 155/Federal/2019 and its units on 2/6/2021). 2- Article (122/4th) mentioned is a constitutional article for governorates that are not organized in a region and has nothing to do with the governorates organized in the Kurdistan Region, as it came in Chapter II of Chapter V of the Constitution entitled (Governorates that are not organized in a region), this means that the Iraqi constitutional legislator did not develop any constitutional text to be the basis for the existence of provincial councils in the Kurdistan Region, nor did he put any text talking about the election of provincial councils in the region, and the following follows from the above. Several significant results: (Alif) the absence of any constitutional provision that can be referred to as being violated by the article contested as unconstitutional) and (Beh) the absence of any constitutional provision that brings this issue within the jurisdiction of the court). 3- It cannot be said that there are other articles in the constitution, besides Article (122/IV), on which the court's judgment was based when it ruled the unconstitutionality of the legal article in Iraqi law, these articles are the ones that subject the case to the jurisdiction of the Federal Supreme Court, in the light of which the article challenged for unconstitutionality in the law of the Kurdistan Region can be ruled unconstitutional, and the Federal Supreme Court referred to those articles (5, 6 and 56 / first) on the occasion of the existence of Article (122/IV), not in isolation from it, because the latter stipulates: First: the existence of councils for governorates that are not organized in a region, and stipulates: Second: the need to form these councils through elections. It is at this point that the other articles referred to show that elections must be periodic in order to achieve the peaceful transfer of power, whereas, as stated in the above-mentioned decision of the Federal Supreme Court ((The right to vote gives rise to a constitutional principle, which is the principle of periodicity in the exercise of voters' right to

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vote, which implies the obligation to invite voters to exercise their right to vote periodically)), and to say otherwise means: ((Alif- The abolition of any role for article (122/fourth) and the equality of its existence with its non-existence even for governorates that are not organized in a region, as the existence of articles 5 and 6 is sufficient to rule the unconstitutionality of the article that Challenge its unconstitutionality in Iraqi law. Beh- Refuting the statement of the Federal Supreme Court that the origin of the existence of provincial councils is the constitution in Article (122/4th) thereof. Jim- The application of a constitutional provision to the governorates organized in a region, while that text was designed to govern the governorates that are not organized in a region, which is the text of Article (122/4th)). If there was a provision in the Iraqi constitution that the provinces organized in the regions should have councils and that these councils should be elected, then the matter would have fallen within the jurisdiction of the court, and then it would be possible to say that a constitutional provision had been violated. Third: During the appeal filed before the Federal Supreme Court against Law No. 27 of 2019, both the Chairman of the Baghdad Provincial Council and the Chairman of the Karbala Provincial Council argued in lawsuits numbered 160 and 161 not to apply this law to the governorates of the Kurdistan Region, like other Iraqi governorates. The court responded to this in item (12) of the decision by saying that ((the provincial councils, districts and sub-districts of the Kurdistan Region are subject to the Law on the Election of Provincial Councils, Districts and Sub-districts in the Kurdistan Region of Iraq No. (4) of 2009, so there is no constitutional violation in this regard)). Through this paragraph, which is quoted from the decision of the Federal Supreme Court, it is clear that the court ruled on the one hand the specificity of the constitutional and legal status of the governorates belonging to the Kurdistan Region. On the other hand, in light of this specificity, it refrained from making any negative remark on the law on the governorates of the Kurdistan Region, knowing that the aforementioned court ruling was issued in 2021 at a time when the contested law on the governorates of the Kurdistan Region had been issued two years ago. In conclusion, it must be noted that all the above-mentioned legal evidence, it does not mean that the presidency of the Kurdistan Region of Iraq or the president of the region looks

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favorably at the continuation of the elected councils even after the expiry of the legal period specified for them, but rather came in the context of proving that a constitutional violation did not occur, as the plaintiffs argued. The people of the Kurdistan Region of Iraq, as pointed out by the Federal Supreme Court in a recent decision (233 and its units / federal / 2022), have chosen the democratic option since 1992 in an experience (unparalleled) in the history of Iraq and despite the difficulties faced by the people of the Kurdistan Region and their leadership (the Kurdistan Front), represented by external pressures, limited capabilities and modest experience in the field of elections and civil administration...), which is ongoing and continues to adopt this option)). After the court completed its scrutinies and nothing remained to be said, the end of the argument has been made clear and the court issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs (Sarwa Abdul Wahid Qadir / member of the House of Representatives, and Shaswar Abdul Wahid Qadir - head of the New Generation Movement Party / being in this capacity) filed the lawsuit before this court against the defendants (Speaker of the Kurdistan Parliament - Iraq and the President of the Kurdistan Region in addition to their positions) and requested a ruling on the unconstitutionality of Article (2) of Law No. (2) of 2019 (the First Amendment Law of the Kurdistan Region Governorates Law No. 3 of 2009), which stipulated: ((Notwithstanding the provisions of paragraph (second) of Article (fourteen) of the Law, this session of the provincial councils shall continue to exercise their powers at the end of their legal term until the election of a new term for them.)) this is because it repeated the same constitutional violations contained in Article (14/I) of Law No. (10) of 2018 (Law of the Third Amendment to the Law of Governorates Not Organized in a Region No. 21 of 2008), which the Court ruled unconstitutional by its decision No. (117/Federal/2019 on 2/5/2021) and considering the governorate councils that are not organized in a region dissolved from the date of the end of their electoral cycle, due to the contradiction of their continuation with the principles of democracy and the peaceful transfer of power. For the

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purpose of public adversarial proceedings and the court's review of the lists of the defendants' attorneys under which they requested the dismissal of the case for the reasons stated therein, the Federal Supreme Court finds the following:
First: The federal system in Iraq consists of a capital, regions, decentralized governorates and local administrations based on the provisions of Article (116) of the Constitution of the Republic of Iraq for the year 2005, where administrative decentralization is based on the distribution of the functions of the administrative function between the central authority and local bodies or facilities, so some local authorities are given powers to make decisions related to administrative activity, and often those local authorities are elected by citizens in administrative units, so they become public legal persons, but they remain administrative persons who do not have any legislative competence, or judicial, thus, administrative decentralization is distinguished from political decentralization, in addition to that decentralized bodies in the exercise of their competencies are subject to the supervision and control of the central federal authorities, because the federal authorities are the ones who take care of the supreme interests of the country and the people, which are superior to all other local interests, and to say otherwise means the fragmentation of the political, administrative and economic unity of the state, and that the existence of a local interest in addition to the national public interest requires that submission, whether it is to the governorates that are not organized in a region, or for the regions, the legislator's recognition of the existence of local interests characterized by their special nature is not sufficient for the establishment of a decentralized system, but must entrust the satisfaction of local needs and the achievement of local interests to a body representing the people of the region, the election of bodies supervising local interests is directly elected by the people of the provinces, or the governorate that is not incorporated into a region of the best way to form local bodies, as the purpose of the existence of local elected bodies (provincial councils) is to achieve the principle of administrative decentralization, as the system of government in Iraq as a representative republic, parliamentary and democratic, its main goal is to preserve the unity of Iraq in accordance with Article (1) of the Constitution, which stipulates (... This constitution guarantees the unity of Iraq) as the

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existence of provincial councils for governorates that are not organized in a region and the enjoyment of the regions the right to exercise legislative, executive and judicial powers not contained in the exclusive competences of the federal authorities in accordance with the provisions of the articles (110 and 111 113) of the Constitution, and the joint competencies between the federal authorities and the authorities of the regions in accordance with Article (114) of the Constitution, and that all of this must not conflict with the type of constitutional system of government in Iraq, considering that Iraq is one independent federal state with full sovereignty, and that the system of government in which is republican, representative, parliamentary and democratic, all federal authorities are obligated under the provisions of Article (109) of the Constitution to preserve the unity, safety, independence, sovereignty and federal democratic system of Iraq. Second: The development of the concept of the state necessarily means the development of the concept of its political system, and that system is one of its pillars does not imagine its existence without its existence and is not expected to continue when it is absent, the political system is its interface in front of individuals at home and in front of other countries abroad and the authority or government is no longer the monopoly of an individual or individuals who walk people according to their will, and citizens are no longer subjects of the ruler, but have become subjects of the state and the ruler is no longer incapable of accountability because he is above the law or because State, where the personality of the state was mixed with the personality of the ruler. After the separation of the two personalities and the enjoyment of the legal personality of the state, the rulers became employees working for the state, like other individuals, and they are often chosen by the people, and as a result of this development, especially in Iraq, where the political system has become based on the principle of peaceful deliberation, although this was not a coincidence, rather, it was the result of the hard jihad and struggle of the Iraqi people, and there are three authorities (legislative, executive and judicial) that perform their work on the basis of the principle of separation of powers in accordance with Article (47) of the Constitution, so one of the most basic rights contained in the Constitution has become the right of citizens, men and women, to participate in public affairs,

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and to enjoy political rights, including the right to vote, elect and be nominated in accordance with Article (20) of the Constitution. Third: Democracies are based on the principle of peaceful rotation of power through democratic means. In this direction, the Iraqi Constitution, in accordance with Article 6 thereof, considers that the people are the source of powers and their legitimacy is exercised by direct universal secret suffrage and through its constitutional institutions, and this leads to guaranteeing the right of citizens, men and women, to participate in public affairs and enjoy political rights, including the right to vote, elect and be elected in accordance with the provisions of Article 5 of the Constitution. The will of the people is the source of the Government's authority and that will is expressed through periodic and genuine elections held on the basis of universal and equal suffrage and by secret ballot. On the one hand, and on the other hand, the recognition that there is no single political system or electoral method that suits all States and their peoples to the same extent does not contradict the keenness to promote the holding of periodic and fair elections, as periodic and fair elections are a necessary and essential element for the protection of the constitutional rights and freedoms of all members of society without exception for any reason whatsoever. Race, color, sex, nationality, origin, religion, or is based on a disruption of the principle of periodic elections, this represents a major violation of citizens' political rights and a deviation of democracy from its proper course; international conventions have confirmed the periodicity of elections of various kinds, parliamentary and local councils, as Article (21/3) of the Universal Declaration of Human Rights of 1948 stipulates that: (The will of the people is the responsibility of the governing authority, and this will must be manifested through fair elections held periodically by universal suffrage and on an equal footing among voters and by secret ballot or an equivalent procedure). in terms of guaranteeing freedom of voting) and the same principle took the International Covenant on Civil and Political Rights of 1966 Article 25 (Beh) stipulates that (Every citizen, without any of the discrimination mentioned in Article 2, shall have the following rights, which he must have the opportunity to enjoy without unreasonable restrictions: (Beh) To vote and be elected in genuine elections held periodically by universal suffrage on an equal footing among voters. On

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the other hand, the democratic state is based on the principle of the rule of law and resort to democratically elected institutions. Failure to achieve his interest in choosing it, whereas the legislative authority in Iraq consists of the Council of Representatives and the Federation Council in accordance with the provisions of Article 48 of the Constitution, and the members of the Council of Representatives are elected by direct secret ballot and take into account the representation of the Iraqi people in full in accordance with the provisions of Article 49 (I) of the Constitution with the achievement of a representation of women not less than one quarter of the members of the Council of Representatives in accordance with the provisions of item (fourth) of the same article and in application of the principle of periodic elections under Article (56/I) of the Constitution, which stipulates that: (The duration of the electoral cycle of the House of Representatives shall be four calendar years, commencing with its first session, and ending at the end of the fourth year) Accordingly, the continuation of the electoral cycle for more than four calendar years, whether related to the Council of Representatives or elected local councils makes this continuation contrary to the Constitution; as the interest of the people is achieved by holding periodic and fair elections, and since the Constitution of the Republic of Iraq of 2005 is the supreme and supreme law in Iraq and is binding throughout it without exception, and it is not permissible to enact a law that contradicts its provisions and any text contained in the constitutions of the regions or any other legal text that contradicts it, so what is stated in item (second) of Article (14) of Law No. (3) of 2009 is the Governorates Law of the Kurdistan Region - Iraq published in the newspaper The Chronicle of Kurdistan No. (100 on 1/6/2009), which stated that: (The duration of the electoral cycle is four calendar years starting from its first session and ending at the end of the fourth year) came in accordance with the principle of periodic elections, while what was stated in the contested law Article (2) of Law No. (2) of 2019 of the First Amendment Law to the Governorates of the Kurdistan Region of Iraq Law No. (3) of 2009 contradicts the principle of periodic elections, as it ruled that the provincial councils will continue until the election of the new session despite the expiry of its legal term, it also contradicts the provisions of Articles (2/I/Beh, Jim) and (6) of the

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The Constitution of the Republic of Iraq of 2005, which requires a ruling on its unconstitutionality. As for the second defendant, the President of the Kurdistan Region - Iraq, being in this capacity, his litigation is not appropriate because he cannot be a litigant in such a lawsuit, so it is necessary to dismiss the lawsuit in this regard because the litigation is not directed. For all of the above, the Federal Supreme Court decided as follows:

First: The unconstitutionality of Article (2) of Law No. (2) of 2019 - First Amendment Law of the Governorates of the Kurdistan Region of Iraq Law No. (3) of 2009 - for violating the provisions of Articles (2/I/Beh, Jim) and (6) of the Constitution of the Republic of Iraq for the year 2005.

Second: Dismissing the plaintiffs' lawsuit for the second defendant (President of the Kurdistan Region / being in this capacity) because litigation is not directed.

Third: The parties shall be charged the relative expenses and fees, and the plaintiffs shall be charged the advocacy fees of the second defendant's agent in an amount of one hundred thousand dinars. And charging the first defendant (Speaker of the Kurdistan Parliament - Iraq / being in this capacity) the advocacy fees of the plaintiffs' agent, lawyer Ahmed Saeed Musa, an amount of one hundred thousand dinars.

The decision has been issued with majority, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear 8/Rabea Al-Awal/1445 Hijri coinciding with 24/September/2023 AD.

Judge

Jassim Mohammed Abboud

President of the Federal Supreme Court

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