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Federal Supreme Court  
Ref. 126 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/12/2022 headed by Judge Sameer Abbas Mohammed and membership of Judges, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Hayder Jaber Abid, Hayder Ali Noori, 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 Plaintiff: Governor of Wasit/ being in this capacity – his agents the legal counselor Sahib Mutar Khabat and the jurist Shihab Ahmed Abbas.

The Defendant: Minister of Labour and Social Affairs/ being in this capacity – his agent the jurist Dhafir Raheen Tarad.

### **The Claim**

The plaintiff claimed through his agent that the Iraqi Council of Representatives issued Law No. (19) of 2013 (the second amendment to the Law of Governorates Not Organized in Region No. 21 of 2008), which under Article (12) of it amended the provisions of Article (45) to be as amended by establishing a higher body for coordination between governorates headed by the Prime Minister and the membership of several ministers, including the Minister of Labor and Social Affairs, as well as governors and heads of provincial councils, whose task is to transfer sub-departments, devices, functions, services, and competencies exercised by the ministries. mentioned in the aforementioned article with its appropriations allocated to it in the general budget and the employees and workers therein to the governorates within the scope of their functions outlined in the Constitution within two years from the date of entry into force of this law, and if these tasks are not completed,

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these functions shall be considered transferred under the law, the role of the ministries remain in planning the general policy, which means setting principles, standards, controls and requirements for administrative work for its implementation by the relevant authorities and does not mean carrying out direct executive tasks, as stated in paragraph (3<sup>rd</sup>) of Article (45) of the law, which was added by Law No. (10) of 2018 The Third Amendment Law to the law above that (the governorate is committed to the general policy drawn up by the Council of Ministers and the competent ministries ...) and that the letter of the Ministry of Finance / Budget Department / Governorates and Regions Division No. (464) in 14/1/2020 which is included in paragraph (2) thereof ((The departments of the Ministry of Labor and Social Affairs were disconnected and attached to the governorates after the above-mentioned departments of the Ministry were merged as follows: Alif / Department of Care of People with Disabilities and Special Needs with the Authority for People with Disabilities and Special Needs to become the Authority for the Care of People with Disabilities and Special Needs... Beh/ Department of Vocational Training with the Department of Employment and Loans to become the Department of Labor and Vocational Training... Jim/ The Social Protection Authority with the Department of Social Protection for Women with the Department of Social Protection (for men) to become the Social Protection Authority based on Article (4) of the Social Protection Law No. (11) of 2014 and based on the internal system No. (1) of 2018 published in the Iraqi Gazette No. (4478) on 22/1/2018)), whereas the defendant did not commit to disengagement and transfer of these departments despite the lapse of the period specified in the aforementioned amendment and based on the text of Article (93/2<sup>nd</sup> and 4<sup>th</sup>) of the Constitution, which specified the competence of the Federal Supreme Court to adjudicate

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cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, as well as adjudicating disputes that occur between the federal government and the governments of regions and governorates, and whereas Article 13 of the Constitution affirmed that this Constitution is the highest and the supreme in Iraq. Therefore, the plaintiff requested the Federal Supreme Court to order the defendant to disengage and transfer the aforementioned offices and to charge him the fees, and expenses. The lawsuit was registered with this court with the number (126/federal/2022) and the legal fee was collected for it in accordance with Article (1/3<sup>rd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005 and the defendant was informed of its petition and documents following Article (2/1<sup>st</sup>) of the same rules of procedure above, his deputy replied in the answering draft dated 31/8/2022, summarizing that the Social Protection Authority and its departments and sections in Baghdad and the governorates are not covered by the disengagement contained in Article (45) of the Law on Governorates Not Incorporated in a Region, according to the minutes of the ninth meeting of the High Authority for Coordination between Governorates notified to them according to the letter of the Presidency of the Council of Ministers / High Authority for Coordination between Governorates No. (6/244) on 7/12/2015, which includes the transfer of the following departments from the Ministry to the governorates with their powers and employees, which are as come: (1- Department of Employment and Loans. 2- Department of Vocational Training. 3- Special Needs Department. 4- Department of the National Center for Occupational Health and Safety). The departments of the Social Protection Authority were not included among the departments whose powers are transferred to the governorates, and based on this letter, the ministerial order No.

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(2412) was issued on 20/12/2015 containing (disconnecting the sub-sections of the formations associated with the ministry to the governorates that are not organized in a region of employees, jobs, services, and competencies exercised by the ministry, and their technical link with this ministry remains for planning and public policy purposes), and the departments referred to in the ministerial order above are the same departments mentioned above. Moreover, the Social Protection Authority was also established under the provisions of Social Protection Law No. (11) of 2014, where Article (4/1<sup>st</sup>) of the law stipulates ((A body called (Social Protection Authority) shall be established with legal personality and financial and administrative independence and shall be represented by the head of the Authority or his authorized representative and linked to the Ministry of Labor and Social Affairs)) according to this article, the association of the authority and its divisions with the Ministry of Labour and Social Affairs, as well as article 33 of the same law, (no text that conflicts with the provisions of this law shall apply), and since this law was issued after the issuance of the Law on Governorates not incorporated in region No. 21 of 2008 and its amendments, and the legal rule stipulates that the subsequent law is abrogated or amended by the provisions of the previous law, and when the above request to dismiss the plaintiff's lawsuit and bear the expenses of the lawsuit and fees. After completing the procedures required by the Court's Rules of Procedure, mentioned above, a date for the pleadings was set in accordance with Article (2/2<sup>nd</sup>) thereof. Both parties were notified, and the plaintiff's attorneys repeated what was stated in the lawsuit petition and requested a judgment according to it, the defendant's attorney replied by repeating what was stated in the answering draft attached to the lawsuit papers. The court scrutinized and decided to introduce a third persons in the case to clarify from them

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what is necessary to resolve it, so he attended the Supreme Authority for Coordination between the governorates (Legal Adviser Haider Ali Jaber, the legal representative of the Prime Minister as the reference for the said body) and answered the court's clarification about the reason for not implementing what was stated in Article (12) of the Third Amendment Law No. (10) of 2018 under an answering draft dated 10/10/2022 attached to it is the letter of the Secretariat of the Supreme Authority for Coordination between Governorates No. (2213152) on 16/8/2022 (its content ((First: The Authority for People with Special Needs from the transferred departments according to Article (45) of Law No. (21) of 2008, as amended, but the Ministry kept the beneficiaries' salaries section within the Ministry's work, which is contrary to the law. Second: The loan department is from the transferred departments according to the transfer order issued by the ministry, but the latter did not carry out the transfer process. Third: Social protection networks for men and women / federal. Fourth: Private institutes and nurseries are among the transferred departments, but the Ministry is committed to the authority to open these institutes and nurseries. Fifth: Department of Labor and Social Security / federal and the rest within the formations of the Ministry, the official jurist Ahmed Khalif Hamid was present on behalf of the Social Protection Authority, and the court clarified from him the extent to which the Social Protection Authority, the Authority for the Care of People with Disabilities and Special Needs and its departments are related to the Ministry of Labor and Social Affairs, and how the letter of the Ministry of Finance, Budget Department, Governorates and Regions Division, No. (464) was applied on 14/1/2020, and what departments or sections were disengaged from the aforementioned Authority and transferred to the governorates affiliated to the Authority, were sections or departments transferred to the governorates while

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retaining similar sections at the headquarters of the Commission or Ministry, and the reasons for not transferring the departments affiliated to the Authority to the governorates despite the issuance of a law to that effect? he clarified that the Social Protection Authority is linked to the Ministry of Labor and Social Affairs based on the provisions of Article (4) of the Social Protection Law No. (11) of 2014, and although the Social Protection Authority enjoys financial and administrative independence, it is linked to the Ministry of Labor and Social Affairs, and all sections affiliated to the Social Protection Authority have not transferred their competencies to the governorates, and the reason for this is that the Authority formed in the Prime Ministry to study the implementation of the provisions of Article (45) of the Law of Governorates that are not organized in A region that concluded that the departments affiliated to the Social Protection Authority remain linked to the aforementioned Authority due to the difficulty of accomplishing its duties if it is linked to the governorates and showed the court a copy of the minutes of the meeting of the High Authority for Coordination between Governorates No. (6/244) on 7/5/2015, noting that the departments affiliated to the Authority are (Social Protection Department, Women's Social Protection Department, Social Protection Fund, and Information Technology Center) in each governorate, there is a section for social protection for men and a section for social protection for women, and the sections of the Authority continue their work without any problem, and the Authority for the Care of People with Disabilities and Special Needs attended the human rights employee Ali Khalis Khalaf and explained that the Authority for the Care of People with Disabilities and Special Needs is a financially and administratively independent body with a moral personality and is linked to the Ministry of Labor and Social Affairs and that the departments associated with the

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Authority are the Financial and Administrative Department, the Planning Department and the Medical Rehabilitation Department, based on Cabinet Resolution No. (282). For the year 2018, the Department of Care of People with Disabilities and Special Needs was added and linked to the Authority, and there are branches in all governorates, and he added that all branches of the Authority are currently linked to the Authority and their competencies have not been transferred to the governorates and for the same reasons mentioned by the representative of the Ministry of Labor and Social Affairs. Also, the Authority was formed after the amendment of the Governorates Law No. (21) of 2008 following Article (45) amended, and that the current workflow is moving in the right direction and there is an authority under the laws in force for the Minister of Labor and Social Affairs, adding that the Authority is the Authority for the Care of People with Disabilities and Special Needs, where there was a previously formed department, the Department of Care for People with Special Needs, affiliated to the Ministry of Labor and Social Affairs, and it was disconnected from the ministry to the governorate. Responsible for the management of (shelters, deaf and dumb institutes, homes for the elderly, and homes for the homeless and homeless) where the competence of work has been transferred to the governorates, he added that the Department of Care of People with Special Needs has been disengaged from its departments in all governorates and linked to the governorates, while the center of this directorate is currently linked to the Authority for the Care of People with Disabilities and Special Needs, a directorate headed by a general director to formulate public policies, and it was linked to the Authority for the Care of People with Disabilities and Special Needs under Cabinet Resolution No. (282) of 2018. He also added that there are some exclusive administrative powers for the minister and others for the

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authority, but that the authority enjoys financial and administrative independence and that the board of directors of the authority is the one who manages the authority under the law, and the representative of the High Commission for Coordination between the governorates added that the bodies formed within the Ministry of Labor and Social Affairs are covered by the provisions of Article (45) of the Governorates Law No. (21) of 2008 as amended, and after the court clarified what is necessary to resolve the case, it decided to remove them from it, and the agent of each party repeated his statements and previous requests, and where nothing remains to be said, the end of the argument has been made clear, and the court issued the following judgment decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff was the governor of Wasit in addition to his job, he filed this lawsuit against the defendant, the Minister of Labor and Social Affairs, in addition to his job, and that his request was to oblige the defendant to disengage (Department of Care for People with Disabilities and Special Needs, which was merged with the Authority for People with Special Needs; to become the Authority for the Care of People with Disabilities and Special Needs), (Vocational Training Department, which was merged with the Department of Employment and Loans; to become the Department of Labor and Vocational Training) and (Authority Social Protection with the Department of Social Protection for Women with the Department of Social Protection for Men, which after its merger became the Social Protection Authority) and transfer it with its appropriations allocated to it in the general budget, employees and workers to the governorates within the scope of

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its functions set forth in the Constitution, as the defendant refrained from implementing Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008 as amended by Article (12) of Law No. (19) of 2013 (Third Amendment Law to the Law of Governorates Not Organized in a Region) within the period specified in Article (12) mentioned above, which is two years from the date of entry into force of the law, and after reviewing the court on the defenses of the defendant's agent under the reply regulations linked to the case papers and his statements during the argument, and reviewing the answers of the agents of the persons questioned by each of them (the Higher Authority for Coordination between the Governorates, the Social Protection Authority and the Authority for the Care of People with Disabilities and Special Needs) following the regulations linked to the case papers and listening to their statements during the pleading, the Federal Supreme Court concluded the following:

First: The federal system in the Republic of Iraq consists of capital, regions, decentralized governorates, and local administrations, as stated in Article (116) of the Constitution, and the governorates that are not organized in the region have been granted broad administrative and financial powers to enable them to manage their affairs following the principle of administrative decentralization and this is regulated by law as stated in Article (122/2<sup>nd</sup>) of the Constitution of the Republic of Iraq for the year 2005, and it is the powers of the Council of Ministers to plan and implement the general policy of the State and plans General and supervise the work of ministries and entities not associated with a ministry following Article (80/1<sup>st</sup>) of the Constitution, whereas Article (12) of Law No. (19) of 2013 published in the Iraqi Gazette No. (4284 on 5/8/2013) requires the transfer of sub-departments, devices, functions, services and competencies exercised by the ministries

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mentioned therein with their appropriations allocated to them in the general budget and the employees working in them to the governorates within the scope of their functions outlined in the Constitution and the relevant laws gradually, and the role of the ministries in planning the public policy remains gradually, the Ministry of Labor and Social Affairs is among those ministries covered by the provisions of Article (12) of Law No. (19) of 2013, and that what is included in this article came to organize the competencies and powers of the governorates and their administrations in line with the form of the state based on the federal system (federal) and the decentralized system following what was mentioned above, and that what was stated in Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, is consistent with the provisions of the Constitution and is compatible with it, which is the text of Binding and enforceable, which requires the obligation of the Ministry of Labour and Social Affairs to implement the provisions of the aforementioned article.

Second: The Social Protection Authority is a body established under Law No. (11) of 2014 published in the Iraqi Gazette No. (4316 on 24/3/2014), Article (4/1<sup>st</sup>) of which stipulates ((A body called (Social Protection Authority) shall be established with legal personality and financial and administrative independence and shall be represented by the Chairman of the Authority or his authorized representative and linked to the Ministry of Labor and Social Affairs)), while the Authority for the Care of People with Disabilities and Special Needs was established under Law No. (38) of 2013 published in the Iraqi Gazette No. (4295 on 28/10/2013) under Article (4) thereof, which stipulates ((First: A body called (Authority for the Care of People with Disabilities and Special Needs) shall be established with legal personality and financial and administrative independence and is represented by the

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Chairman of the Authority for the Care of People with Disabilities and Special Needs, Second: The Authority is linked to the Ministry of Labor and Social Affairs)) accordingly, the two aforementioned bodies, although linked to the Ministry of Labor and Social Affairs, enjoy financial and administrative independence, and are not covered by the provisions of Article (45) of the Law of Governorates Not Organized in Region No. (21) of 2008, which requires the dismissal of the plaintiff's lawsuit regarding the two aforementioned bodies, especially since the plaintiff's agent indicated in his regulation dated 12/10/2022 that the General Secretariat of the Council of Ministers had previously been approached by the Holy Governorate of Karbala / Governor's Office with letter No. (76359 on 7/11/2021) containing the inquiry On the possibility of including the Authority for the Care of People with Disabilities and Special Needs in the provisions of Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008 and the General Secretariat of the Council of Ministers / Legal Department replied in letter No. (35078 on 27/11/2021) that there is no link between the directorates of labor and social affairs in the governorates and the Authority for the Care of People with Disabilities and Special Needs established under Law No. (38) of 2013)).

Accordingly, the Federal Supreme Court decided the following:

First: Obliging the defendant Minister of Labor and Social Affairs/ being in this capacity to transfer the departments of the Ministry of Labor and Social Affairs to Wasit Governorate following Article (45) of the Law of Governorates Not Organized in Region No. (21) of 2008, as amended.

Second: Dismissal of the plaintiff's lawsuit regarding the departments affiliated with the Social Protection Authority and the Authority for the Care of People with Disabilities and Special Needs.

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Third: to burden both parties with the fees and expenses, and the decision has been issued by the majority, as for what related to the paragraph (2<sup>nd</sup>) final and binding for all authorities according to the provisions of articles (93/3<sup>rd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and (4,5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 11/Jamada Al-Awla/1444 Hijri which coincided with 6/December/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abboud**

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