

Republic of Iraq
Federal Supreme Court
Ref 135/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9/6/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, Khaled Taha Ahmed, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Azad Abdul Hamid Ahmed.

The Defendants:

1. The Speaker of the Council of Representatives / being in this capacity - His two agents, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.
2. Prime Minister / being in this capacity – His agent the Legal adviser Haider Ali Jaber.
3. Minister of Planning / being in this capacity.

The Claim:

The plaintiff claimed that one of the exclusive competencies of the federal authorities is to conduct the census and the general census of the population, under Article (110/9th) of the Constitution of the Republic of Iraq for the year 2005, and successive Iraqi governments have completed up to (8 census operations) since the establishment of the Iraqi state until 2003, and after that, all attempts failed for multiple reasons, including security, logistic, most notably political, and at the end of 2021, the federal government announced its serious desire to conduct the population census until the end of 2022, and the importance is economic, political and health to conduct the census by setting the public financial budget according to population ratios, preparing for population increase and knowing the actual need for employment and

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employment of labor and the provision of housing, employment and other living requirements, and the distribution of parliamentary seats in a manner commensurate with the population representation of the governorates, resolving the dialectic of disputed areas and applying Article (140) of the Constitution to resolve most of the outstanding disputes between the two governments (federal and regional), and accordingly, and since Article (9 /1st- Alif) and (2nd - Alif) of Law No. (4) of 2023 the third amendment to the Council of Representatives, Governorate Councils and Districts Elections Law No. (12) of 2018 was unfair to the rights of the region, and to the violation of the Council of Representatives of Articles (16, 20, 49 / 1st and 110 / 9th) of the Constitution, and the law of the Statistics and Geographic Information Systems No. (32) of 2023, so the plaintiff requested a ruling on the unconstitutionality of Article (9/1st-Alif) and (2nd-Alif) of Law No. (4) of 2023, the third amendment to the Elections Law of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, and charging the defendants with fees, expenses and attorneyship fees. After registering the case with this court No. (135/Federal/2024) and collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1st and 2nd) 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 26/5/2024 and he requested to reject the lawsuit, due to the lack of interest in filing it and the issuance of the court's decision No. (73 and its unified/federal/2023) containing the response and ruling in Article (9) of Law No. (4) of 2023, which has become an argument for what was decided and that conducting the census is a technical process that needs great human effort that falls on the shoulders of the executive authority, and the government has set the month of November of 2024 as a tentative

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date for conducting this, and after completing the procedures required by the court's internal regulations, a date was set to consider the case without pleading in accordance with Article (21/3rd) thereof, in which the court was formed and the case began to be considered, the court examined the plaintiff's requests and supports and the defenses of the first defendant's agents, and reviewed the defenses of the second defendant's agent according to the regulations received on 9/6/2024 containing his request to reject the lawsuit, due to the lack of interest, and the lack of litigation directed towards his client, and after the court completed its scrutinies, the end of the minutes has been made clear 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 lawsuit included a request to rule on the unconstitutionality of Article (9/1st/Alif , 2nd/Alif) of Law No. (4) of 2023 third Amendment Law to the Elections Law of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, which states ((First: The Council of Representatives consists of (329) three hundred and twenty-nine seats distributed as follows: (a) (320) three hundred and twenty seats shall be distributed to the governorates as shown in table (1) attached to the law, Second: Alif. The provincial council consists of (12) twelve seats, in addition to one seat for every (200,000) two hundred thousand people for more than (1,000,000) million people, according to the statistics of the Ministry of Planning for the year 2019 and as shown in table No. (2) attached to the law)), and through scrutinized the lawsuit file and its documents, the court finds that the litigation of the second and third defendants/being in their capacity is not brought in the proceeding; the defendant is required to be

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a litigant whose acknowledgment entails a judgment assessing the issuance of a declaration from him, and to be sentenced or obligated to assess the proof of the lawsuit in accordance with the provisions of Article (4) of the Civil Procedure Law No. (83) of 1969, as amended, especially since the opponent in a constitutional lawsuit or the unconstitutionality of a particular text is the party which legislated the contested text, so the plaintiff's claim against the second and third defendants shall be free to respond from the litigation side, as for the first defendant, the Speaker of the Council of Representatives, in addition to his job, his litigation in the lawsuit is directed as the party that legislated the contested text, and upon careful consideration by this court of the plaintiff's request, he found that it is obligatory to respond in form, as this court had previously considered the lawsuit No. (73 and its unified / federal/2023) and its subject matter was to challenge the constitutionality of the provisions of Law No. (4) of 2023, including Article (9), the subject of this lawsuit, and that the court issued its judgment on 28/8/2023, and since constitutional lawsuits are lawsuits in kind, and the effect of the judgment issued in them is not limited to their parties, but applies to all, so the plaintiff's lawsuit against the first defendant/ being in this capacity is free to respond, because its subject matter has already been decided, and according to the foregoing, the Federal Supreme Court decided to rule as follows:

First: Reject the plaintiff's lawsuit Azad Abdul Hamid Ahmed towards the second and third defendants/ being in their capacity, because the litigation was not directed.

Second: Reject the plaintiff Azad Abdel Hamid Ahmed's lawsuit towards the defendant, the Speaker of the Council of Representatives, being in this capacity, because its merits had previously been decided

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according to the judgment decision issued by this court No. (73 and its unified/ federal / 2023) on 28/8/2023.

Third: Charging the plaintiff with all fees and expenses, including the attorneyship fees of the first and second defendants' agents, in addition to their jobs, 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 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by lawNo. (25) of 2021 and it has been made clear in the session dated 2/Dhu al-Hijjah/1445 A.H. corresponding to 9/6/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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