

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 2.6.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they issued the following decision:

The Plaintiff in the lawsuit (155/federal/2019):

Seydou Jetto Hasso Ibrahim – Chairman of the Nineveh Governorate Council/ in addition to his post/ his agents the legal officials Ziyad Abdel Qader Hussein Manhal Younes Youssef and the lawyer Mersal Nizamuddin Younes.

The Plaintiff in the lawsuit (157/federal/2019):

Hadi Daaboul Abed and his group are one-third of the members of the Najaf Provincial Council, and their representative is attorney Safed Nuri al-Qaisi.

The Plaintiff in the lawsuit (160/federal/2019):

The head of the Baghdad Governorate Council/ in addition to his post, Riyadh Nasser Abdul Razzaq with his group, their agent the lawyer Yasser Muhammad al-Hashemi, and as representatives of the first plaintiff, lawyers Mahmoud Salih al-Hassan and Zainab Iyad Abbas.

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

The Plaintiff in the lawsuit (161/federal/2019):

The head of the Karbala Governorate Council, in addition to his post, Ali Abd Sakhil and his group, their attorney, Yasser Muhammad al-Hashemi, and as agents of some plaintiffs, lawyers Mahmoud Salih al-Hassan and Zainab Iyad Abbas.

The Plaintiffs in the lawsuit (162/federal/2019):

1. Khaled Salman Raseef, head of the Haditha District Council, his attorney, Rahim Shalab Hamel.
2. Khalil Ibrahim Mamdoud, President of the Tarmiyah District Council, his attorney, Jaber Askar Farhan.

The Plaintiff in the lawsuit (164/federal/2019):

Murad Hamed Allawi with his group/members of the Wasit Provincial Council, their attorney, Zainab Ali Hussein Al-Saedi.

The Plaintiff in the lawsuit (165/federal/2019):

Athal Obaid Dahi with his group, members of the Anbar Provincial Council their attorney, Zainab Ali Hussein Al-Saedi.

The Plaintiff in the lawsuit (166/federal/2019):

Members of the Maysan Provincial Council, Ali Karam with his group, their attorney, Yasser Muhammad Hashem.

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

The Plaintiff in the lawsuit (167/federal/2019):

Members of the Dhi Qar Provincial Council, Hussein Sanad Hussein with his group, their attorney, Yasser Muhammad Al-Hashemi, and as the agent of some of the plaintiffs, lawyers Mahmoud Saleh Al-Hassan and Zainab Iyad Abbas.

The Plaintiff in the lawsuit (168/federal/2019):

The president and members of the Diyala Provincial Council, Ali Manhal Zaid and his group, their attorneys, Hussein Ali Saab and Mohsen Hadi Rumayd, and attorneys for the plaintiff, Ali Manhal Zaid, lawyers Mahmoud Saleh Al-Hassan and Zainab Iyad Abbas.

The Plaintiff in the lawsuit (171/federal/2019):

Sabah Hassan Muhammad al-Bazuni, head of the Basra Provincial Council, and his group of attorneys, lawyers Muhammad Majeed al-Saadi, Ahmad Mazen Makiya, and Hassan Saadoun Habib.

The Plaintiff in the lawsuit (5/federal/2021):

Manar Fadel Salman and her attorney, Fadel Salman Rumaydh.

The Defendant in origin and unified lawsuits:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official director Saman Muhsen Ebraheem.

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

the claim:

The plaintiff claimed that the Iraqi Council of Representatives (I.C.R.) issued law No. (27) of 2019 (second amendment law to the law of electing the councils of governorates and districts No. 12 for 2018) which amended paragraph (3rd) of the article (44) which stated the termination of the councils' work that is not organized into a region and the councils of its districts and sub-districts, as this amended paragraph considers as a violation to the administrative order that was stipulated by the valid Constitution, and violation to its provisions and valid laws that regulate the work of governorates councils, therefore he challenged it before this court for the following reasons:

1. Article (1) of the Constitution stated that the system of government in the Republic of Iraq (is republican, representative, parliamentary, and democratic), articles (116 and 122/2nd) of it included the reference to administrative decentralization and that it means locally elected bodies, as the provincial councils, which are fundamental part for expressing the decentralized administrative system, in addition to that it is considered one of the effects of the democratic system and as a result of the principle of popular sovereignty, there is no democracy without decentralized because it contradicts the concept of monopolizing power and all powers and tasks one hand, amending article (44/3rd) and

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

-
- ending the work of the elected councils will lead to the central dedication in violation to the Constitution.
2. Amending paragraph (3rd) of the article (44) of the law of electing governorates and districts councils the subject of the challenge, violates the Constitution because under its provisions the jurisdictions of the central management were limited exclusively, and some jurisdiction become joined between the federal and local authorities, the legislator left all the competences and administrative tasks that aren't mentioned within the jurisdictions of the federal or joint authority for the responsibility of the governorates councils, and ending the work of the governorates councils, and postponing the elections leads to the suspension of these constitutional articles.
 3. The Iraqi Constitution is the origin for the governorates councils and it distinguishes it by not submitting to any control or supervision from any Ministry or body not associated with a Ministry, and it has financial independence.
 4. The opinion of the I.C.R. in 2018 of extending the work of governorates councils was authentic to maintain the legal position of the elected councils, and maintaining decentralized management and the democratic principle and the will of the electors, therefore he requested to call upon the defendant in addition to his post for argument, and to rule the

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

unconstitutionality of law No. (27) of 2019 the second amendment law to the law of electing the councils of governorates and districts No. (12) for 2018, and to burden his expenses and fees.

Under the provisions of article (1/2nd) of the F.S.C. bylaw No. (1) of 2005, this lawsuit has been registered before this court by the number (155/federal/2019) after collecting its fee. Under the provisions of article (2/1st) of the mentioned bylaw, the defendant was informed with the case petition and its documents, he responded by his agent the legal consuler Haithem Majid Salim with the answering draft No. (155/federal/2019) on 5.1.2020 which included the following :

1. The law of governorates that are not organized into a region No. (21) of 2008 stated in article (4) of it the electoral cycle of the councils as four calendar years started from its first session.
2. The legitimacy of continuing the work of the governorates, district, and sub-district councils after the end of its specified term in the law which is four years, is under the provision of the article (44/3rd) of the law of electing the councils of governorates and districts No. (12) of 2018 which stated that (the work of the current councils of governorates that are not organized into a region, districts, and sub-districts shall be ended on 1.3.2020), it is the legislative choice of the I.C.R. that represent the people will, the law No. (14) of 2019 the first amendment law for the law of electing the councils of

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

governorates and districts No. (12) for 2018 has confirmed the end of the mentioned council's work on 1.3.2020 according to the article (13/3rd) of it in order to grant it the legal legitimacy to practice its functions.

3. The date that law No. (27) of 2019 (second amendment law to the law of electing the councils of governorates and districts No. 12 for 2018) become valid is on 16.11.2019 according to what stipulated in article (5) as it represents the date on which the law was voted, its validation leads to the end of the position tasks and legal posts of the members of the councils covered by its provisions.
4. Law No. (27) of 2019 didn't cancel the scheduled date for the election of the governorates councils that are not organized into a region, districts, and its sub-districts according to the provision of the article (44/1st) of the law of electing the councils of governorates and districts.
5. The direction of law No. (27) of 2019 under what stated in article (2) of it is that the governor, his deputies, and the presidents of the administrative unites shall continue practicing tasks and jurisdictions stipulated in the amended law of governorates that are not organized into a region No. (21) for 2008, also what stated in the provision of the article (3) by which the I.C.R. members have the right -as long as it related to the governorate he represents- to supervise and monitor the

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

work of the governor and his deputies in each governorate and to present administrative recommendation about it, it came in accordance with the jurisdictions of the governor and the managers of the administrative units mentioned in the article (31) of the law No. (21) of 2008, this jurisdiction is an unseparated part of the Council of Ministers' authority stipulated in article (80/1st).

After completing the required procedures according to the provisions of article (2/1st) of the bylaw, and according to paragraph (2nd) of the mentioned article of the same bylaw, a date for argument was scheduled, the parties were informed, as the lawsuits No. (146, 160, 161, 162, 164, 165, 166, 167, 168, 171 /federal/2019) are unified with this lawsuit for the litigation of the defendant in addition to his post, and for the subject which is requesting to rule the unconstitutionality of law No. (27) of 2019 (second amendment law to the law of electing the councils of governorates and districts No. 12 for 2018) to save time and effort and in accordance with the provision of the article (76/2) of the civil procedures law No. (83) of 1969 amended, this court decided in the session dated 20.1.2020 to unified the mentioned lawsuits and to consider this one is the origin. As the court decided in the same session to repeal the lawsuit regarding the second defendant the president of the republic in addition to his post, and also the court decided on the session of 23.5.2021 to the unified lawsuit (5/federal/2021) with the lawsuit

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

(155/federal/2019) for the same reason. The plaintiffs' agents in the mentioned lawsuits have submitted their answering draft as the following:

1. The answering draft presented by the plaintiffs' agents of a lawsuit No. (165/ federal/ 2019) and lawsuit No. (164/federal/ 2019 and (157/federal/ 2019) dated 20.1.2020 which included that the Constitution in (section five /chapter two) was titled as the governorates that are not organized into a region, it obligate the enactment of a law that regulates the work of governorates, this law is local for the specification of each governorate than others regard the public components, census, and administrative area, the amended law No. (21) of 2008 is out of the I.C.R. jurisdictions of enacting federal laws, as it takes the right of the governorates of enacting it, it included several violations for the Constitution. the Constitution didn't mentioned the electoral cycle of the councils of governorates and districts and sub-districts as the Constitution has stipulated in article (56) regard the I.C.R. . the constitution required the exciting of these councils under all conditions ether by new elections or throw the continues of the work of the old Council in case losing the capability to conduct the elections, it is responsibility of the Council of Ministers, the I.C.R., and the independent High Electoral Committee, by the issuance of the law that ended the Council work which is the authority of oversee and legislative,

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

the tasks of the executive authority (the governor with his deputies) in the governorate is caretaker authority only, and that the I.C.R. doesn't have the power of oversee except on the federal executive authority according to what stated in article (61) of the Constitution, and the mentioned power represented by the president of the republic and the council of ministers under the provision of article (66) of the Constitution, article (116) of the Constitution stated (the federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations), this means that each local management is consisted of legislative and oversee Council with executive authority.

2. The answering draft presented by the plaintiff's agent in the lawsuit no. (155/federal/2019) dated on 19.1.2020 which included that the defendant agent in addition to his post in the draft dated 5.1.2020 to the article (4) of the law of governorates that are not organized in a region No. (21) for 2008 amended, which included specifying the electoral cycle term of the councils that were repealed under article (15) of the law No. (10) of 2018 (third amendment law for the law of governorates that are organized in a region) and the term of the councils' electoral cycle wasn't specified as it is for the I.C.R. according to the article (56/1st) of the Constitution. the defendant ignored the provisions of article (14/1st) of the law No.(10) of 2018

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

which stated that (the current councils of governorates and districts shall continue its work until the issuance of the new councils' elections), as the I.C.R. issues a law that includes ending its work because the end of its electoral cycle, that makes the laws which extend the work of these Councils to be void including article (14/1st). the legislative choice which the defendant is based on, obligate maintaining the prestige of the Constitution and valid law and the decentralized management. The law being challenged for unconstitutionality violates articles (114, 115, 119/1st, 122/2nd, and 5th) of the Constitution. the challenged law for being unconstitutional stated that the I.C.R. members oversee the work of the governor each according to his governorate that he represents, and oversee the governor work which violates the provision of the article (49) of the Constitution.

3. The answering draft presented by the plaintiffs' agent in a lawsuit No. (171/federal/2019) dated 20.1.2020 and 21.4. 2020 which included that the text listed in the article (1) of the amended law No. (27) for 2019 clearly shows that the legislator intention was the radical and final abolition of local governments represented by councils of governorates, districts, and sub-district as the end of its work was under law legislated from the defendant in addition to his post, and not by the legislative decision as it has previously issued, in which the

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

work of the mentioned councils was extended. Therefore, the law under challenge for being unconstitutional violates the provisions of articles (119/1st) of the Constitution and (122/2nd, 3rd, 4th, 5th) of the Constitution, also granting the right to oversee for the I.C.R. over the work of governors and their deputies violates the law considering that this is a jurisdiction of the governorates councils, according to what stated in article (61) of the Constitution, as the overseeing of the I.C.R. is over the executive authority (the president of the republic and the Council of Ministers) according to what stated in article (66) of the Constitution, as article (48) of the law of electing the governorates councils has specified the term of the electoral cycle of four calendar years. The work of the councils of governorates and districts after the end of its electoral cycle was under an extending from the I.C.R., then postponed by the executive authority, therefore, the period from the end of the electoral cycle of these councils and with the issuance of the challenged law, its legitimacy has based these decisions, the last one was the decision issued by the Council of Ministers on 12.11.2019 in the session No. (44). The absence of the governorate Council causes legislative and regulatory void, also the text of article (2) of the challenged law came in violation of the provisions of article (3) of the law of governorates that are not organized in a region, as the authority of the governor with

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

-
- his deputies is caretaking of daily matters in case the governorates' councils' work has stopped.
4. The answering draft presented by the plaintiff agent in the lawsuit (162/federal/2019) dated 20.1.2020 included that the work of the councils shall continue if there were no elections and that its ending must be according to what article (20) stated of the law of governorates that are not organized in a region, the authorities responsible for conducting the elections are the executive and legislative authority, its inability to do so does not justify stopping the supervisory work of the councils, first amendment of the law of electing the governorates and districts councils No. (14) for 2019, and the second amendment of the same law No. (27) of 2019 didn't specify a date for the elections of the governorates and districts Councils, the heads of the administrative units were elected by those councils and shall end with it.
 5. The answering draft presented by the agent of the plaintiffs in a lawsuit No. (161 and 160/federal/2019) included that law No. (27) of 2019 violated the provision of the article (14, 16) of the Constitution, as that law didn't mention the councils of governorates that are organized in a region, by that the inequality between citizens of governorates that are not organized in a region with the citizens of governorates that are organized in a region includes constitutional violation, by that

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

the law under challenge has deprived citizens of the right to monitor governor with all the governorates departments in governorates that are not organized in a region only without the others. As long as the I.C.R. consider a federal legislative authority so the legislation issued by it becomes valid on all governorates that are not organized into a region and all other governorates. Article (3) of law No. (27) of 2019 violates the provisions of article (61/2nd, 47) of the Constitution because authorizing the members of the I.C.R. to oversee the governor and his deputies violates the principles of separation of powers stipulated in article (47) of the Constitution, as the governor has been elected by the governorate Council, then any other mechanism to appoint the governor is a violation to Constitution and law. Also ending the work of the councils violates the provisions of articles (122, 123) of the Constitution, the governorates managements must be according to the principle of decentralized administration, the governorate Council doesn't submit to any authority in the state therefore, the I.C.R. doesn't have the mandate to end the councils' work. Under the provision of article (78) of the Constitution, the divan order was issued from the prime minister to appoint someone to the post of governor that is out of the prime minister's authority. On the other hand, the plaintiff agent stated in the mentioned draft that the constitutional lawsuit is a lawsuit

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

in rem that does not raise a dispute between two persons, one of whom is a creditor and the other is a debtor, as it litigates the law that violates the Constitution to retune it to the constitutional provision to protect the constitutional legitimacy, that grants the judge who considers the constitutional lawsuit not to stop at reasons presented by the challenger, therefore, the constitutional provisions have an absolute plea. The law subject of a challenge has ended the legal entity of the governorates councils.

The court found that the lawsuit acquired its ruling reasons so decided to close the argument, the date 2.6.2021 was scheduled for issuing the decision, the decision issued publicly.

the decision:

During scrutiny and deliberation by the F.S.C. and what listed in the plaintiffs' petitions and the answering drafts presented by them and by the defendant agents after notifying them with the case petition, and the in presence public argument, what the agents of the parties have presented in the drafts, it found that the following:

1. The existence of the state is a social and political necessity necessitated by the social peace of the citizens, and this means that the state has goals and duties that must be accomplished, but these goals and duties cannot be static, as it is necessary to keep pace with the movement of society

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

and its development and the conditions that the country is going through, whether they are local or regional or international, and that this support does not belong to one authority of the state, but extends to all of them.

2. 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. It is not imagined that it will exist without its existence, and it is not expected that it will continue when it is absent. The political system is its face to individuals at home and in other countries abroad. The authority or government is no longer the monopoly of an individual or individuals who manage people according to their will. Citizens are no longer subjects of the ruler but have become subjects of the state. The ruler is no longer unaccountable because he is above the law or because he is the state. where the personality of the state was mixed with the personality of the ruler, and after the separation between the two personalities and the state's enjoyment of the legal personality, the rulers became employees working for the state just like other individuals and are often chosen by the people and as a result of this development, especially in Iraq, where the political system has been built On the principle of peaceful trading of power, this was not the result of chance, but was the result of hard jihad and struggle for the Iraqi

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

people, and there are three legislative, executive and judicial authorities that perform their work based on the separation of powers according to what is specified for them by the constitution.

3. The state is described whether it is simple or complex based on the type of constitutionally defined political authority, and that the Republic of Iraq has transformed from a simple state to a federal unionism state since the issuance of the Law of Administration for the State of Iraq for the Transitional Period in 2004, where Article (4) of it stipulates that (the system of government in Iraq is republican federal, democratic, pluralistic, in which powers are shared between the federal government, regional governments, governorates, municipalities, and local administrations. The federal system is based on geographical and historical facts and the separation of powers and not based on origin, race, ethnicity, nationalism, or sect).
4. The form of the state was described in article (1) of the Iraqi constitution for the year 2005 as (a single, independent, federation with full sovereignty), and the system of government was defined according to it as (a republican, representative, parliamentary, and democratic one). And the constitution, according to the form of the state and its system of government, is a guarantor of the country's unity, as it

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

came in the same article. where it came in the same article, (this constitution is a guarantor of the unity of Iraq), and that preserving that unity is the responsibility of the federal authorities. Thus, Article (109) of it stipulates (the federal authorities shall preserve the unity, integrity, independence, and sovereignty of Iraq and its federal democratic system.), this responsibility is constitutional and all authorities must observe it and not violate the Constitution in this regard.

5. The federal system in the Republic of Iraq is formed according to Article 116 of the Constitution (a decentralized capital, regions, and governorates, as well as local administrations). Thus, the federal system in Iraq is based on the central political administration. The federal system depends on that, which means the distribution of powers between the center and local governments, as for the governorates that are not organized into a region, their administration is based on the principle of administrative decentralization and not on the basis of political decentralization, as Article (122/2nd) of the Constitution stipulates (governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law) the

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

administrative decentralization means distributing the administrative function between the central government in the capital and between local bodies or independent interests so that these bodies, in the exercise of their administrative function, are under the supervision and control of the central government and enjoy financial and administrative independence in a way that enables them to perform their work in accordance with the law. The independence of the local authorities except by granting the legal personality to the local units and recognizing them as independent financial assets. This condition is one of the important conditions for implementing the administrative decentralization system in response to the ideas of democracy.

6. The origin of the existence of the provincial councils is the constitution, as stipulated in Article (122/4th) of it that (a law shall regulate the election of the Governorate Council, the governor, and their powers). Therefore, the Iraqi parliament legislated the laws regulating this, the latest of which is the Provincial and District Council Elections Law No. 12 of 2018 amended, where the paragraphs (3rd, 4th, 5th) of the aforementioned article dealt with the provincial council, and thus the existence of these councils is a constitutional fact that cannot be bypassed, therefore the legislative authority may not legislate a law that includes the abolition of these

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

councils, and that this contradicts the constitution, democratic principles and the peaceful transfer of power. However, the provincial council, according to the general framework of Article (122), is considered a local administrative body entrusted with the implementation of administrative and financial powers only within The principle of administrative decentralization and the constitution did not entrust it with the exercise of legislative powers.

7. the main pillar of administrative decentralization is the presence of elected local bodies, given that administrative decentralization cannot be imagined without elections, and that administrative decentralization represents an application of democracy to the administration, given that election is a right for every Iraqi who fulfills the conditions stipulated in the election law to exercise this right without discrimination on the grounds of gender, race, nationality, origin, religion, sect, belief, opinion, or economic or social status. Therefore, the source of these local bodies is the people as a source of authorities and their legitimacy, and they are exercised by direct secret public suffrage and through their constitutional institutions, according to what was stated in Article (5) of the Constitution, considering that the exercise of elections is a right that no one can take away from the citizen, and no

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

individual may be deprived of exercising this right except by way of exception and for certain reasons, including lack of eligibility. An individual may not use this right, but he is not entitled to this right because of his nature to waive it. For others, and since elections are based on a fundamental principle, which is periodicity, they are held after the end of the specified period for them. Therefore, the continuation of the elected councils, whether they are national councils or local bodies, after the end of their electoral cycle, represents a violation of the people's right to vote, elect, and nominate, and exceeds the will of the voter. since the elections do not mean the participation of everyone in it, nor does it mean that the opinion of those who participated in them will not change. In line with all of that, article (56) of the constitution specified the duration of the electoral cycle for the Council of Representatives to be four calendar years, and article (4) of the law of governorates not organized in a region No. (21) of 2008 and article (48) of the Provincial and District Council Elections Law defines the duration of the electoral cycle for provincial councils as four calendar years. Therefore, the F.S.C finds that the provincial councils are elected local administrative constitutional bodies with a legal personality and enjoy financial and administrative independence entrusted with the implementation of

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

administrative and financial powers within the principle of administrative decentralization.

8. The argument that the termination of the work of the provincial councils is a consecration of centralization, this court finds that what is stated in paragraph (3rd) of Article (1) of the law No. (27) of 2019 the second amendment to the law of provincial and district elections No. (12) for 2018, does not mean the abolition of its existence as a constitutional local body, but rather the cessation of the continuation of the work of those councils for exceeding the period specified for it. This represents a return to the will of the people to elect those councils, with the issuance of the decision of this court in the number (117/federal/2019 on 2.5.2021) that ruled the unconstitutionality of the article (14) of the law No. (10) of 2018, the law of the third amendment to the law of governorates not organized in a region No. (21) of 2008 which included in paragraph (1st) of it (the current provincial and district councils will continue their work until the results of the new council elections are issued). The abolition of this paragraph represents an end to the continuity of the work of those councils. The same decision ruled that the article (15) of the third amendment to the law of governorates not organized in a region was unconstitutional regarding its abolition of the two articles (4,

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

-
- 5) of the same law and the re-work of what was mentioned in the two texts. Therefore, this court finds that the period specified for the provincial councils is obligatory to adhere to and cannot be exceeded, considering that this is the right of the people and is practiced by those before them in direct periodic elections.
9. What the plaintiffs relied on their claim is that the constitution did not specify the duration of the electoral cycle for provincial councils, as is the case for the Council of Representatives. The failure to specify that period under the constitution for those councils does not mean that it cannot be specified by law, since the constitutional legislator required that all of this be regulated by law in accordance with what was stated in the clause (4th) of the article (122) of it, and the law determines its competencies according to the principle of administrative decentralization. Therefore, the House of Representatives legislated the amended law of governorates that are not organized in the region No. (21) of 2008, as it stated in the reasons for it that the aim of legislating the law is to organize the competencies and powers of the provincial councils in line with The new shape of the country).
10. regarding what was stated by the plaintiffs' attorneys that the contested law is unconstitutional No. (27) of 2019 in

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

contravention of the provisions of the articles (114, 115, 119) of the constitution, this court finds that Article (114) defines the common competencies between the federal authorities and the regional authorities, while Article (115) guarantees (all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region), as for article (119) it subject is related to the formation of the regions, accordingly there is no violation for the mentioned articles.

11. as for the argument that Article (3) of Law No. (27) of 2019, and claiming that it violates the provisions of Article (61) of the Constitution by giving the Council of Representatives the right to supervise and control the work of the governor and his two deputies, this court finds that oversight is the cornerstone of the establishment of the administrative decentralization system and its importance in maintaining On the political and legal unity of the state, because the absolute independence of the local authorities threatens the entity of the state and leads to the lack of homogeneity and harmony between the federal authorities and the local authorities, and there are two types of control which are :

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

first type: parliamentary oversight, which means that all acts issued by the executive authority are subject to the oversight of Parliament and ascertain the extent to which they comply with the legal rules in force and their suitability to reality and contemporary conditions. Second type: the administrative oversight, which means following up the administrative performance in terms of the accuracy of its implementation according to what is planned and the extent to which it achieves the objectives of the administrative system. Deviations resulting from deviation from the rules established for the performance of work, and that it is done in the right framework and appropriate measures are taken to correct errors, and that parliamentary oversight according to Article (61) of it is carried out by the Council of Representatives in addition to the task of legislation and exercises such control over the performance of the executive authority according to the means specified in paragraphs (6th/a, 7th/a, b, c, 8th/a, b, 2, 3, and h) from the aforementioned article, in keeping up with this, the legislator, according to Article (2/3rd) of the Law on the governorates that are not organized in a region, has been subjected to the oversight of the Council of Representatives. On the other hand, Article

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

(122/3rd) of the Constitution considers the governor who is elected by the Provincial Council to be the chief executive officer in the governorate, and Article (45/3rd) of the Law of Provinces that are not organized in a region no.(21) of 2008, the governorate is obligated to follow the general policy drawn up by the Council of Ministers and the relevant ministries, and since the Prime Minister is the direct executive responsible for the general policy of the state according to what is stated in the article (78) of the Constitution, and the Council of Ministers is the one who plans and implements the general policy of the state and supervision over the work of ministries and agencies not associated with a ministry in accordance with Article (80/1st) of the Constitution, thus, the local executive authority exercised by the governor is an extension of the federal executive authority, so this court finds that the governor and his deputies are subject to two types of constitutional control in accordance with the powers of the Council of Representatives, and administrative control by the executive authority, especially since the executive work that he exercises within the governorate is linked to all federal ministries. As for the term supervision,

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

contained in Article (3) of Law No. 27 of 2019, it means the verification process exercised by the House of Representatives through the parliamentary oversight means drawn up for it under the Constitution and in a manner that does not lead to encroachment on the powers of the executive authority to exercise administrative control and adhere to the principle of separation of powers Thus, there is no constitutional violation in this regard, and it is worth noting in this regard that the governor must abide by the general policy drawn up by the Council of Ministers, the concept of conducting business contained in Article (30) of the law of governorates not organized in a region must be understood within the framework of ensuring the proper functioning Public utilities and not to be disrupted to ensure the provision of services to the public and improve the performance of these facilities in light of public policy and parliamentary and administrative oversight within the limits of administrative decentralization.

12. As for the payment that includes the non-applicability of Law No. 27 of 2019 to the governorate councils organized in a region, meaning the governorates affiliated to the Kurdistan Region of Iraq, this court finds that the purpose of

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 155 / federal / 2019
Unified with (157, 160, 161, 162,
164, 165, 166, 167, 168, 171/2019
and 5/federal/2021)



Kurdish text

legislating the amended Provincial and District Councils Elections Law No. (12) of 2018, as stated in the reasons for it, is to conduct free and fair elections in the governorates that are not organized into a region and its affiliated districts. on the other hand, the provincial, district, and sub-district councils in the Kurdistan region are subject to the Provincial, District, and Sub-district Council Elections Law No. 4 of 2009 in the Kurdistan Region of Iraq. Accordingly, there is no constitutional violation in this regard.

For all the aforementioned, the court decided the following:

1. To dismiss the plaintiffs' lawsuits.
2. to burden the plaintiffs the fees, expenses, and the advocacy fees for the defendant agent amount of (one hundred thousand) IQ.D.

This decision has been issued unanimously, final and binding on all authorities according to the provisions of articles (1, 5, 94, 61, 78, 80/1st, 122/1st, 2nd, 3rd, 4th) of the Constitution and article (5) of the F.S.C. amended law No. (30) for 2005, and issued publicly on 20. Shawwal. 1442 Hijri, which is 2.6.2021.

Athraa