

Republic of Iraq
Federal Supreme Court
Ref 159/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 2/7/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Wissam Shaker Muhaisen (Mayor of Al-Qasim District) – His agents the barristers Ali Addai Mohsen and Nihad Nadim Mahdi.
The Defendant: Speaker of the Iraqi Council of Representatives / being in this capacity - His two agents the human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Claim:

The plaintiff claimed through his agent that the Iraqi Council of Representatives enacted Law No. (4) of 2023 the third amendment to the election law Council of Representatives, Governorate Councils and Districts No. (12) of 2018, article (24) of which stipulates: (Alif- In the absence of district councils for any reason, their powers shall be transferred to their governorate councils. Beh- In the absence of provincial councils for any reason, the governor shall assign the mayor), and since this law applies to the elections of the Council of Representatives, provincial councils and districts in accordance with Article (1) thereof, and the reasons for its issuance aim to regulate the conditions and mechanism of the election only, and article (24) relates to the powers of the Governorates and their competencies under the (federal) system and the decentralized system of governance in the governorates, the first of which was included in the amended law of governorates not incorporated into a Region No. (21) for 2008

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amendment it is possible to go to the daily affairs of the district councils until their elections are held, as it is a special law, while the electoral law is a general law and the private restricts the general, especially since the formation of local councils for districts, districts and local administrations resulting from them is an integral part of the federal decentralized system of government, and the distribution of administrative and financial powers among them to enable them to govern themselves under the decentralized system of government stipulated in the Constitution in Articles (116 and 122) thereof, and that the deprivation of some of these powers and assigning them to other councils is contrary to the principles of democracy and the system of Decentralized governance represents a form of central governance that results in administrations that do not represent the will of administrative units, as article (24) has robbed the administrative and financial authority of the Judicial Council and assigned it to the provincial council, which may not contain a single member representing some districts and districts, which violates the principle of representation of regions and the theory of people's rule, especially since the competent law No. (21) did not abolish the existence of district councils, the termination of its work temporarily does not give the Provincial Council the right to take away its powers, for example, when terminating the work of the provincial councils, the Council of Representatives did not deprive them of their competencies, and the termination of the work of the provincial councils, districts and districts stipulated in Law No. (27) of 2019 did not cancel the work of governors, mayors and district managers, but Article (2) of the same law stipulated that they continue to exercise their duties as an exception to the text of article (30) of the Governorates Law, and the opinion of the State Council No. (12) of 2020 gave the power of dismissal when the work of the provincial

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councils, districts and districts is terminated to the Council of Representatives for the governor and his deputies, the Council of Ministers for the mayor and the governor for the district director, and for not electing district councils, it is a fortiori, to maintain the opinion of the State Council upon assignment and dismissal in respect of the mayor and the district manager, Pursuant to the same principle adopted by the Council of Representatives when electing a new Council of Representatives in not dismissing governors and electing new ones, not granting authority to provincial councils that violates the decentralization system, and because there is a tendency for the current provincial councils to change the heads of administrative units (the mayor and the district director) based on the interpretation of the aforementioned article 24, and new elections as a result of political consensuses and electoral entitlements for provincial councils contrary to the law, without reference to Article (8/3rd/1) of the Law of Governorates Not Organized in a Region, which made this matter exclusive to the Judicial Council, and this matter, if done, will lead to damage to legally stable legal centers, which is a wrong understanding of the concept of political consensus and electoral entitlements for provincial councils, which focuses on the subordination of the governor, his deputies, the President of the Council and his deputy to them without the subordination of the heads of administrative units (the mayor and the district director), whereas the heads of administrative units are elected under a law in force, which is the same law that created the current provincial councils, so they have the legitimacy to remain constitutionally and legally, and the process of change does not represent the opinion of the people in the administrative unit because most of the administrative units are devoid of members in the provincial councils, and since the Babylon Provincial Council held an

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extraordinary session on Sunday, 31/3/2024, in which it addressed the opening of the door for nomination to occupy the positions of mayors and directors of districts in Babil Governorate, including the position of Mayor of Al-Qasim District - who Currently occupied by the plaintiff - and set the review period for those wishing to apply from 2/4/2024 to 17/4/2024, according to the official announcement issued by the Council on 2/4/2024, contrary to his legal powers in the Governorates Law and based on what was stated in Article (24) mentioned above, thus, he violated the directives of the Prime Minister during his presidency of the second session of the Supreme Committee for Coordination between Governorates on 28/3/2024, in which he directed to (The change of all heads of administrative units and all directors of departments is incorrect and must be subject to a practical and professional evaluation program and during a certain period away from electoral benefits and quotas, similar to what the federal government has done the Council also ignored the directive contained in the letters of the High Commission for Coordination between Governorates No. (40/2400672) dated 5/3/2024 and addressed to the State Council to express its opinion on the interpretation of Article (24) 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 its appendix to the letter No. (40/2400970) on 4/4/2024 and the letter No. (40/2401257) on 8/5/2024, which asked them to (wait to make any changes at the level of heads of administrative units until the State Council responds), and based on Article (93) of the Constitution, which includes the court's jurisdiction to monitor the constitutionality of the laws and regulations in force, so the plaintiff asked this court to rule on the unconstitutionality of Article (24) of the lawdecree No. (4) of 2023. After registering the case with this court No. (159/Federal/2024) and

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collecting the legal fee thereon, and notifying the defendant 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, his agents replied with the reply list on 9/6/2024, which concluded: The article in question was issued in accordance with the competencies of the Council of Representatives based on article (61/1st) of the Constitution of the Republic of Iraq of 2005, the adoption of political consensus and electoral entitlements for provincial councils in changing some heads of administrative units (the mayor and the district director) is the basis of the new democratic system in the Iraq after 2003, and the plaintiff's claim that the article - the subject of the challenge - has nothing to do with the organization of elections and was the first to be mentioned in the Law of Governorates Not Organized in Region No. (21) of 2008, this defense is neither productive nor violated. Constitutional in that and outside the jurisdiction of this court provided for in Article (93) of the Constitution, the Babylon Provincial Council opens the door for nomination to occupy the positions of mayors and district directors in the province of Babylon, including the position of mayor of the district of al-Qasim held by the plaintiff, and claiming that this violates the directions of the Prime Minister regarding the change of heads of administrative units, this is also outside the jurisdiction of the court, so they asked to dismiss the case, and after completing the procedures required by the court's internal regulations, a date was set for the pleading based on Article (21/3rd) thereof, and the parties were informed of it, in which the court was formed, so the plaintiff's agent attended, and the defendant or his agent did not attend despite the notification in accordance with the law, and the public presence pleadings began, the court heard the statements of the plaintiff's agents and reviewed the defenses the defendant's agent under the attached reply

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statement in the case papers, and after the court completed its scrutinies, the end of the argument 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 (24) of Law No. (4) of 2023 Law on the third amendment to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018, as amended, which states: (Alif) in the absence of district councils for any reason, their powers shall be transferred to their governorate councils. In the absence of provincial councils for any reason, the governor shall assign the mayor, and for the reasons stated in his petition, hence, the defendant is charged/ being in this capacity with fees, expenses and advocacy fees, and through checking the case file and its documents, it was found that the contested text was issued by the Iraqi Council of Representatives in accordance with its competencies stipulated in Article (61/1st) of the Constitution of the Republic of Iraq of 2005 to organize and address an exceptional and emergency situation, which is the absence of the Judicial Council for any reason whatsoever, and it does not violate of the provisions of the Constitution and that it came as a legislative choice and does not conflict with the principles of democracy and administrative decentralization, and according to the foregoing, the plaintiff's lawsuit lacks its basis from the Constitution and the law and the freedom to respond, so the Federal Supreme Court decided to reject the plaintiff's lawsuit (Wissam Shaker Muhaisen) and charging him all judicial fees and expenses, including attorneyship fees of the defendant's agents, being in this capacity, an amount of one

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hundred thousand dinars distributed in accordance with the law, and 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 (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been made clear on 25/Dhu al-Hijjah/1445 A.H. corresponding to 2/7/2024 AD.

Judge
Jassim Mohammed Abood
President of the Federal Supreme Court

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