



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/5/2023 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, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. In the case (233/federal/2022): Sarwa Abdul Wahid Qadir Ibrahim/ member of the Iraqi Council of Representatives – her agent the barrister Ahmed Saeed Mousa.
2. In the case (239/federal/2022): Shaswar Abdul Wahid – President of the New Generation Movement/ being in this capacity – his agent the barrister Ahmed Saeed Mousa.
3. In the case (248/federal/2022): Yousef Sadiq Abdul Qadir.
4. In the case (253/federal/2022): Kawa Abdul Qadir Hasan/ member of Kurdistan region Parliament – his agent the barrister Ahmed Saeed Mousa.

The Defendants: 1. Speaker of Kurdistan region Parliament/ being in this capacity – his agent the legal counselors Dr. Waadi Suleiman Al-Mazoori and Warya Saady Ahmed, and the official jurist Sharmeen Khudir Bahjat.
2. President of Kurdistan region/ being in this capacity – his agent the counselor barrister Ayad Ismaeel Mohammed.

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

The Claim

The plaintiff, through the mediation of her agent in lawsuit numbered (233/Federal/2022), claimed that the first defendant legislated the law on the continuation of the fifth session of the Kurdistan Parliament - Iraq No. (12) of 2022 on 9/10/2022, according to which the work of the parliament was extended for an additional year, while it was necessary and scheduled that the parliamentary session would end on 6/11/2022 according to the constitutional timings, and she took the initiative to challenge it before this court; this is because it contradicts with articles (5- The rule of law, and the people are the source and legitimacy of the authorities, exercised by direct universal secret suffrage and through its constitutional institutions, and 20- Citizens, men, and women, have the right to participate in public affairs and enjoy political rights, including the right to vote, elect and be nominated) of the Constitution of the Republic of Iraq for the year 2005, and whereas Article (51) of the Kurdistan Parliament Law - Iraq No. (1) of 1992, as amended, stipulates that: (The term of Parliament is four years starting from its first session and ending at the end of the last session in the fourth year), this means that this article set a date for the upcoming elections through which the people of the region exercise their constitutional right to run and vote and that the legislation of the law in question takes away or postpones the plaintiff's right to run and elect that arose under article 51 above and is an infringement on the right of the people of the region to run and vote, and this is the principle established by the Federal Supreme Court in its decision No. (117 / Federal / 2019), so the plaintiff asked this court to rule to cancel the law in place of Appeal The case was registered with this court in the number (233/federal/2022) and the legal fee was collected based on Article (21/1st) of the Internal Regulations of the

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

Federal Supreme Court No. (1) of 2022 and the defendant shall be informed of its petition and documents following item (2nd) of the same article, for the lapse of the period stipulated in the aforementioned item without receiving an answer, a date was set for the pleading based on the item (third) of the aforementioned article, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff and her agent attended, and the defendant's agents (the speaker of the Kurdistan Regional Parliament being in this capacity) attended, the legal advisers Dr. Uday Suleiman Ali and Waria Saadi and began to conduct the public presence pleading, the court noted that the lawsuit numbered (239/Federal/2022) filed before it and directed against the defendants (the Speaker of the Kurdistan Regional Parliament and the President of the Kurdistan Region Addendum for their positions) as well as the lawsuits numbered (248/federal/2022) and (253/federal/2022) filed before it, which is heard by the court on the same day, and the subject matter of each of them is the same as the subject matter of this case, accordingly, based on the provisions of Article (76/2) of the Civil Procedure Law No. (83) of 1969, as amended, the court decided to unify the aforementioned lawsuits and consider the lawsuit (233/ federal/ 2022) as the original, so lawyer Ahmed Saeed Moussa attended as an agent for the plaintiff in the lawsuit (239/federal/2022) and an agent for the plaintiff in the lawsuit (253/ federal/2022) and the plaintiff attended the lawsuit (248/ federal/2022), the second defendant's attorney (President of the Kurdistan Region / being in this capacity) attended and began to conduct the public presence pleading, the plaintiffs present and the plaintiffs' agent repeated what was stated in the lawsuit petition and requested a ruling accordingly, and the first defendant's agent answered and requested to dismiss the lawsuit for the reasons contained in the two response lists linked to the lawsuit papers ((which were summarized as

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

follows – First: Formal defenses: The lawsuits must be dismissed because they have already been adjudicated, as the court had previously decided on a subject similar to the subject matter of this lawsuit in its decision No. (39/Federal/2009) in 12/10/2009, the plaintiff's appeal in the lawsuit (233/federal/2022) was irrelevant, as she took the initiative to challenge a law that was not promulgated in form, and was not in force at the time, as it was voted on 9/10/2022 and the appeal took place on 12/10/2022 at a time when the Presidency Law No. (1) of 2005, amended in Article (Ten/First) thereof, requires the President of the Region to issue the law within fifteen days from the date of its enactment by Parliament, and in the event that The objection to it should be returned to the parliament again, and the decision of the parliament on this matter shall be final, in addition, this law has not yet been published in the Official Gazette (Kurdistan Gazette) as required by Article (3rd) of the Law of Publication in the Official Gazette (Kurdistan Gazette) No. (4) of 1999, and it is known that the law is not in force, and it can only be invoked by following two procedures after its enactment by Parliament, namely: issuance and publication, in addition to the fact that this law was not in force and was not applied either to the plaintiff or to others, for not completing its enforcement procedures at the time of filing the lawsuit, In accordance with the requirements of article 20/second of the Court's Rules of Procedure, on the other hand, it is noted that the plaintiffs' appeal against lawsuits numbered (233/federal/2022), (239/federal/2022) and (253/federal/2022) has focused on (proposed law) as is clear from the copies of (law proposals) attached to the petition instead of relying on the same law that was voted on, and published in the Official Gazette - (The defendant's agent attached the official version of the proposed law duly submitted by the legal number of members of parliament, as well as the final version of

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

the law that was voted on and published in the Kurdistan Gazette) noting that the copies of these proposals were manipulated by the plaintiffs, Second: Substantive defenses: The absence of the Kurdistan Parliament Election Law No. 1 of 1992, as amended, of a text that gives the right to extend the term of the parliament does not preclude the establishment of the competent authority (the regional parliament) of enacting a law that addresses this situation, and this is considered an amendment to the aforementioned Kurdistan Parliament Election Law, therefore, the Kurdistan Parliament had a correct and legitimate perception that extending a short period of its mandate does not constitute a constitutional violation, in terms of relying on the aforementioned court decision, and the absence of the aforementioned law from a text that gives the right to extend the term of the parliament with no text that prevents the extension also necessarily means a return to the original, which is the possibility and permissibility, so what the Kurdistan Parliament has done in legislating the law under challenge is only a normal practice his right to legislate laws, and to the discretionary power granted to the legislator towards the law to issue, amend and repeal, in addition, even in using this discretionary power, he did not act arbitrarily in legislating this law, but it is no secret to the court that the consequences of the disruption of the most important constitutional institution, which is Parliament, and its impact on citizens, as well as the government's remaining without legal control and other serious effects, as Parliament relied on legal and factual foundations in that, from a legal point of view, it is noted that the origin of the law and its amendment is legitimately by law, and from the same side in accordance with the procedures set in the law and the internal rules of parliament and an exception to Article 51 of the law, which limited the duration of the legislative session to four years, so there is no legal defect in this regard,

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

and here there are no two texts, one legal, and the other constitutional until there is a constitutional violation, while the factual basis was embodied in the case of necessity that prompted him to legislate this law, this is because the parliament found itself facing the problem of the failure of the political blocs to reach an agreement on the electoral law and the activation of the Independent High Electoral Commission, which will naturally lead to a legal and constitutional vacuum represented by the end of the parliament's term, and the inability to hold elections for the sixth session, due to the disruption of the work of the Independent High Electoral Commission due to the end of its legal session, therefore, the principle of continuity of the constitutional institution and the interest of citizens, which the court has long emphasized, is more important than other principles, and this is the main goal of the Kurdistan Parliament from issuing the law under challenge, and the Federal Supreme Court has been keen in many of its decisions to embody the principle of continuity of constitutional institutions; in order to ensure that there is no vacuum in power, and to avoid what may happen from the state of instability of political life, including its decision No. (6/Federal/2010) dated 3/3/2010, and its decision (15/federal/2006) dated 26/4/2007, and that the law in question came to extend the work of Parliament temporarily and specifically to avoid the negative effects left by this vacuum, and there is no constitutional or legal value for the plaintiffs to base their lawsuit on the decision of the esteemed court No. (177 / Federal / 2019) issued on 2/5/2019, which has a different subject matter. The plaintiffs' analogy of the law extending the mandate of the Kurdistan Parliament to the Law on Extending the Work of Provincial Councils that is not incorporated into Region No. (10) of 2018 is an incorrect analogy, and not in its position, this law stipulated in its article (14/1st) the extension of the work of provincial

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

councils and districts indefinitely, as the text stated: (The current provincial councils and districts shall continue until the results of the provincial council elections are issued), while the law on the continuation of the fifth session of the Kurdistan Parliament specified the duration of the extension of the Kurdistan Parliament and the continuation of its work until the end of the legislative term of 2023, and this means that the danger of extending the elected councils without specifying a date for the elections is the main reason for the decision of the Federal Supreme Court No. (117 of 2019) of the unconstitutionality of amending the law on the extension of provincial councils that are not organized in a region, and not postponing the elections of these councils in itself, (The equivalent of holding elections as the sound basis for the rotation of power in its importance is the integrity and validity of these elections because the integrity of the procedures, their freedom and the sincerity of their results are not one of the pillars or conditions of democracy, but rather the basis of democracy) This important principle, which was embodied by the court in its decision No. (156 and its unity 160/federal/2022) on 26/9/2022, inspired by the spirit of the Iraqi constitution, international standards, and the principles of democracy, has been translated by the Kurdistan Parliament in the challenged law, as it is among the reasons for this law are to complete the legal, administrative and technical controls for holding fair and credible elections, ensuring a fair biometric registration, and creating a better political environment to achieve unity and national consensus in order to guarantee the rights of all citizens of the Kurdistan Region to exercise the rights of candidacy and voting, and to ensure conditions and opportunities for equal competition among all, which means that this law came as a clear reflection of the constitutional principles and the preservation of the political rights of citizens as approved by the

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Mailbox- 55566



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

Constitution, and from this point of view, there is no legal value to what was stated in the plaintiffs' claim that the law in question contradicts the principles contained in the Constitution regarding the right to vote and be nominated. and the peaceful transfer of power, as these rights are meaningless in the absence of consensus or political agreement on their exercise, without the requirements for its legal and practical practice, the plaintiffs in the lawsuits numbered (233/Federal/2022) and (239/Federal/2022) as well as (253/Federal/2022) have manipulated the Arabic translated version of the proposed law (subject to the challenge) as they did not include paragraph (2nd) of Article (1) of the law, this paragraph is very important, as it stressed that all legal and administrative arrangements must be prepared during the term of extension of Parliament to hold fair and transparent elections for the sixth session of Parliament, and through this paragraph also the real intention of Parliament is clear behind its legislation of this law, as this matter constitutes a change in the reality of things with the intention of misleading the judiciary in accordance with the provisions of the Iraqi Penal Code No. 111 of 1969, as amended, as well as being a forgery of official papers, and the use of them in accordance with the provisions of articles (286, 287, 289 and 298) of the same law, so they requested the Federal Supreme Court to refer the matter to the investigating judge to take legal action against them, otherwise they reserve the right to review the competent criminal courts for this purpose, with their request to dismiss the plaintiffs' lawsuit and charge them all fees and expenses)), the agent of the second defendant answered and requested the dismissal of the lawsuit on behalf of his client for the reasons stated in the two response lists linked to the lawsuit papers, ((and their conclusion is that the plaintiffs did not show the link between the subject matter of the lawsuit and his client (the president of the Kurdistan Region / being in

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

this capacity) and considered him a legal opponent and sued him for it, because his relationship with the enactment of legislation in the region revolves around two points and not a third, namely: 1. The law, which is enacted by the Kurdistan Parliament, requires it to be accompanied by the ratification of the President of the Region in accordance with the provisions of Article (10/1st) of the Kurdistan Region Presidency Law - Iraq No. (1) of 2005, as amended, but it is clear from the priorities of legislating the constitutionally contested law published in issue (293) of the Official Gazette (Kurdistan Gazette) issued on 2/11/2022, confirming that his client did not ratify the aforementioned law. 2. The second link of the President of the Kurdistan Region - Iraq with the laws enacted in the region and as required by the same article mentioned above is embodied in the proposal of draft laws related to the presidency of the region and the issuance of laws enacted by the Kurdistan Parliament - Iraq, but the facts related to the law challenged as unconstitutional indicate that there is no case of the two cases mentioned, neither the said law has been proposed by him, nor has he signed it, thus negating any link between that law and his client, thus, the judicial litigation is not directed based on the provisions of Article 4 of the Civil Procedure Law, and that the plaintiff has attached to his petition a translated copy of the (draft law) and not the law itself challenged as unconstitutional, published in the Official Gazette (Kurdistan Gazette), and did not notice that his client, the President of the Kurdistan Region, did not sign or ratify the aforementioned law)), for the purpose of completing its audits, the court decided to include the Independent High Electoral Commission (IHEC) as a third person in the lawsuit for the purpose of clarifying its role in conducting the elections of the Kurdistan Regional Parliament, so the Legal Counsel Rahim Nasser Ali attended as an agent for the President of the Independent

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

High Electoral Commission / being in this capacity and highlighted the explanatory list numbered (K/23/486 on 22/5/2023), which summarized that Article (1) of the Independent High Electoral Commission Law No. (31) of 2019 stipulated the specific tasks of the Commission, as stated in them: (The Commission shall: First: Develop the regulations and instructions adopted in federal, regional, and local elections and referendums throughout Iraq to ensure their fair and impartial implementation), as stipulated in Article (18/2nd) of the aforementioned Commission Law: (The Council has the exclusive authority to resolve disputes arising from the preparation and implementation of national elections at the regional or governorate level and may delegate the authority to the electoral administration to resolve disputes at the moment of their occurrence), thus, the Independent High Electoral Commission is responsible for issuing regulations and instructions and implementing elections at the federal, regional and local levels throughout Iraq and deciding on disputes resulting from their implementation, and this is confirmed by the Federal Supreme Court by its decision No. (165 and its units 160 / federal / 2022) as it was stated in the reasoning of the decision: ((Whereas Article (1) of the Commission's Law No. (31) of 2019) has defined the tasks of the Independent High Electoral Commission, including what was stated in item (first), which stipulated: (Setting regulations and instructions adopted in federal, regional and local elections and referendums throughout Iraq to ensure their fair and fair implementation), so that the one who sets regulations and instructions for all elections and referendums, whether federal, regional or local, throughout Iraq is the Independent High Electoral Commission. The Regional Electoral Commission, in coordination and cooperation with the National Office, shall manage and organize the region's elections under the supervision of the Independent High

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

Electoral Commission (IHEC) in accordance with the provisions of item (3rd) of the aforementioned article)). As well as what was stated in paragraph (1) of the court's decision above, which stipulated: ((ruling the unconstitutionality of the phrase to be (the exclusive authority) contained in Article (2nd/1st) of the Independent High Electoral and Referendum Commission Law No. (4) of 2014)). Accordingly, the role of the Independent High Electoral Commission concerning the conduct of elections for the Kurdistan Regional Parliament is to issue, organize and supervise the regulations and instructions adopted in the elections following the Commission's Law No. (31) of 2019 and the two aforementioned court decisions, as the federal electoral authority in accordance with Article 102 of the Constitution of the Republic of Iraq for the year 2005, the Court noted that what was stated in the list submitted by the Independent High Electoral Commission is sufficient for the purposes for which it was entered in the lawsuit, Therefore, since the Court completed its clarification from the third person, it decided to remove him from the lawsuit. The court noted the receipt of the letter from the Kurdistan Parliament of Iraq No. (1369) on 23/5/2023, which included the dismissal of the clients of Dr. Uday Suleiman Al-Mazouri and the human rights employee Sharmin Khader Bahgat and the cancellation of their attendance to plead before the court in the lawsuit, linking the book to the lawsuit papers. Since the court has completed its investigations into the case, nothing remains to be said. The end of the argument has been made clear, and the court issued the following ruling:

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs in the consolidated lawsuits requested this court to rule on the unconstitutionality of Law No. (12) of 2022 (Law on the continuation of the fifth session of the Kurdistan Parliament of Iraq) due to its conflict with the Constitution of the Republic of Iraq for the year 2005 in Articles (1) The Republic of Iraq is one independent federal state with full sovereignty, its system of government is republican, representative (parliamentary) democratic, This constitution guarantees the unity of Iraq (2) First: Islam is the official religion of the State, and it is a basic source of legislation: a) It is not permissible to enact a law that contradicts the constants of the provisions of Islam. (b) No law may be enacted that contradicts the principles of democracy. (c) No law may be enacted that conflicts with the fundamental rights and freedoms set forth in this Constitution. Second: This constitution guarantees the preservation of the Islamic identity of the majority of the Iraqi people, as well as guarantees the full religious rights of all individuals to freedom of belief and religious practice, such as Christians, Yazidis, and Sabean Mandaean), and (5) The sovereignty of the law, and the people are the source and legitimacy of the authorities, exercising them by direct universal secret ballot and through their constitutional institutions), (6) The rotation of power shall take place peacefully, through the democratic means provided for in this Constitution) and (13/ Second: No law may be enacted that contradicts this Constitution, and any provision contained in the constitutions of the regions, or any other legal text that contradicts it, shall be null and void), (14) Iraqis are equal before the law without distinction as to sex, race, nationality, origin, colour, religion, sect, belief, opinion, or economic or social status), (16)

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

equal opportunities are a right guaranteed to all Iraqis, and the State shall ensure that the necessary measures are taken to achieve this) and (20) citizens, men and women, have the right to participate in public affairs and enjoy political rights, including the right to vote, vote and be elected)) and that the enactment of the said law takes away or postpones the right to vote. And the candidacy for the people of the Kurdistan Region arising from Article (51) of the Kurdistan Parliament Law No. (1) of 1992, as amended, which stipulates that: (The term of the Council is four years, starting from its first session and ending at the end of the last session in the fourth year), and is a violation of the principle confirmed by the Federal Supreme Court, which includes the contradiction of the extension of elected councils with the principles of democracy and political rights, by its decision (117/Federal/2019). After the court reviewed the defenses of the defendants (the Speaker of the Kurdistan Regional Parliament and the President of the Kurdistan Region/ being in their capacity) submitted to it through the mediation of their agents through the reply lists linked to the case papers, during the pleading, where the request of the agent of the second defendant, the President of the Kurdistan Region/ being in this capacity , was focused on dismissing the lawsuit in form against his client because the litigation was not directed because he was not the one who signed the law, while the agents of the first defendant, the Speaker of the Kurdistan Regional Parliament/ being in this capacity requested to dismiss the lawsuit in form and substance, the factual basis for the extension was the state of necessity that prompted the parliament to legislate the law, and the inability to hold elections for the sixth session due to the disruption of the work of the Independent High Electoral Commission due to the end of its legal session with the failure of the political blocs to reach an agreement on the electoral law, and the activation of the Independent

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

High Electoral Commission, which will naturally lead to a legal and constitutional vacuum represented by the end of the term of the parliament, and that the main goal of the Kurdistan Parliament from issuing the law in question is the continuity of the constitutional institution for the benefit of citizens, as the court reviewed the answers of the person clarified from him (Independent High Electoral Commission) under the list linked within the case papers and its content that under the law of the Independent High Electoral Commission No. (31) For the year 2019, the one who sets regulations and instructions for all elections and referendums, whether federal, regional, or local, and throughout Iraq is the Independent High Electoral Commission. The Regional Electoral Commission, in coordination and cooperation with the National Office, administers and organizes the region's elections under the supervision of the Independent High Electoral Commission. From all that, the Federal Supreme Court finds the following:

First: The Constitution of the Republic of Iraq of 2005 defined the constitutional description of it as a single, independent federal state with full sovereignty, and described its system of government as a republican, representative (parliamentary) democracy, and this constitution guarantees the unity of Iraq. Whereas imposing the supremacy of the constitution and obliging the authorities to it in accordance with their constitutional competencies varies according to the means that require this and stipulated therein, as federalism is one of the means of birth of constitutional justice within this system, as the origin of the existence of constitutional oversight is the preservation of the federal system through that control, and one of the most important means that preserve that system, and achieve it, is the principle of restricting the federal authorities to the limits of their constitutional competencies and giving priority to the sovereignty of the federal state in accordance with the

saady



Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

exclusive competencies of the federal authorities, and the aim of this must be to preserve the constitutional document and the political system formed under it from cracking, this requires finding the necessary ways to ensure respect for constitutional rules within regions or governorates that are not organized in a region, given that 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, and one of the most important ways through which the supremacy of the Constitution and respect for its rules can be ensured is commitment to the principle of separation of powers, and preservation of the principle of guaranteeing rights and freedoms for all, considering that the constitution is a specific and fixed rule of government, or in other words, it is the one that determines the rights and duties of the various authorities it constitutes, because if the method of governance does not emanate from the publicly expressed will of the people, the constitution does not exist, since the constitution represents the set of rules that determine and regulate the work of the state, and that the constitution as a common expression of the will of society, its goal is to preserve rights and freedoms from tampering with the authorities by laying the foundations of communication among them to achieve the purpose of the constitution. Through the realization of the principle that each authority limits the other, the Constitution has become a bridge for rights and freedoms, and a habitat for their protection, and it is seen as meaningless except by placing it within a framework saturated with the principles of human rights philosophy, the constitution has symbolic value, philosophical value and legal value, and the achievement of these values entails a changing view of the rulers that may not be palatable to those in charge of the authorities, their role has become limited to implementation, because the constitution is the owner of abstract and

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

permanent power, and that the rulers are in fact only agents in charge of implementation, and the constitution has become a living work open to the continuous deduction of human rights and freedoms, so the constitution is no longer a closed and isolated text that expired at the moment of its adoption, but rather a work that keeps pace with permanent development in proportion to the progress of society on the one hand, and on the other hand, democracy, which means political freedom, and imposing that there is no policy without controls of responsibility and no policy without control, and if politicians fail to do so, the constitutional judiciary must set constitutional controls, hence the constitutional judiciary came to carry out a lofty task that is not limited to the technical subordination of state agencies in terms of respecting the principle of hierarchy of laws, but to embody the mechanism through which the state is subject to respect for human freedoms and rights, so that the state of law is not just a slogan, but the law is the true expression of those values and rights, which gives the citizen rights in the face of power. This reality could not be achieved by the citizen without a radical change in the perception of modern democracy, which came to overturn the theory of old democracy, which was based on the equation of democracy through the law, while modern democracy is expressed by the equation of democracy through the constitution, and linking rights and freedoms to the constitution gave it ample room to keep pace with the movement of society. The constitution of human freedoms and rights makes all branches of law, and the rules that emanate from them regulating those rights and freedoms, closely linked to the Constitution, in addition to the fact that the Constitution is no longer just a political text resulting from the consensus of the forces of society to play a secondary role, but has become a legal document that imposes its rules on all authorities. Second: The Constitution of the

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Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

Republic of Iraq of 2005, upon its entry into force, approved the Kurdistan Region and its existing authorities as a federal region, based on the provisions of Article (117/1st) of the Constitution, and the Constitution approves the new regions that are established, following its provisions under the provisions of item (Second) of the same article, and the Constitution obliges the Council of Representatives to enact a law within a period not exceeding six months from the date of its first session, specifying the executive procedures for the formation of regions by a simple majority of its members present by the provisions of Article (118) thereof, each governorate or more has the right to form a region upon a request for a referendum on it in accordance with the provisions of Article (119) of the Constitution, so the formation of the region is considered a constitutional right for each governorate or more, that is, the region may consist of one governorate, and the region can include more than one governorate, and the constitution did not require the geographical proximity of the governorates that aim to form the region, nor did it require the national or sectarian dimension of its inhabitants, rather, it is a constitutional organization based on the interest of its population within the framework of the federal State, provided that the political organization of the region does not contradict the provisions of the Constitution of the Republic of Iraq in 2005 in the structure and competence of its authorities. The application for the formation of the region shall be submitted either at the request of one-third of the members of each of the provincial councils that aim to form the region following item (first) of the same article, or at the request of one-tenth of the voters in each of the governorates that aim to form the region in accordance with item (second) of the same article, the Region, whether it represents one governorate or several governorates, shall draft a constitution for it, which determines the structure of the region's

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Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

authorities and powers, and the mechanisms for exercising those powers, provided that such constitution does not conflict with the federal constitution in accordance with the provisions of Article (120) of the Constitution, and the authorities of the regions have the right to exercise legislative, executive and judicial powers in accordance with the provisions of the federal constitution, except for the exclusive competencies of the federal authorities in accordance with the provisions of Article (121/1st) of the Constitution. The regional authority has the right to modify the application of federal law in the region in the event of a contradiction or conflict between federal law and the law of the region on a matter that does not fall within the exclusive competence of the federal authorities under clause (2nd) of the same article. Third: The Constitution regulates in its first chapter the basic principles on which the political process is based, including the sovereignty of the law, and that the people, with all their nationalities, religions, and sects, are the source of the authorities and their legitimacy exercised by secret ballot and through their constitutional institutions, following the provisions of Article 5 thereof, and the transfer of power shall take place peacefully through the democratic means provided for in this Constitution, under the provisions of Article 6 thereof, and that Iraqis are equal before the law without discrimination on grounds of sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status by the provisions of Article 14 of the Constitution. Equal opportunities are a right guaranteed to all Iraqis, and the State guarantees that the necessary measures are taken to that end, following the provisions of Article 16 of the Constitution and based on Chapter II of the Constitution, which contains civil and political rights and freedoms, article 20 thereof guarantees citizens, men and women, the right to participate in public affairs and to enjoy political rights,

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

including the right to vote, vote and to be elected, and article 39 (I) guarantees freedom to establish and join associations and political parties, no one may be forced to join any party, association or political party or forced to continue to be a member of it on the basis of item (2nd) of the same article, and that all these constitutional rights depend on the exercise and enjoyment of the democratic means used to assign power, and elections are the only democratic means of attributing power, and elections represent a complex and complex legal, political and moral process that goes through multiple stages, starting from the day of the call for its official holding, , and ends with the announcement of the final results and their ratification by the concerned authorities, its modern concept is based on generality, secrecy and equality of voting, in addition to multi-partyism, and therefore there is no place for democracy and a democratic system unless the means used are elections. Fourth: Maintaining the continuity of the electoral process periodically is very important, as the periodicity and continuity of elections constitute one of the pillars of the democratic representative system based on the existence of an elected parliament for a specific period, so the importance of this criterion should not be underestimated because periodicity, restriction, and timetables largely create the principle of government accountability from the people and a continuous renewal of the principle of people's sovereignty, international charters, instruments, and constitutions have confirmed the periodicity of elections of various kinds of parliaments and local councils, article 21/3 of the Universal Declaration of Human Rights of 1948 stipulates that: "The will of the people is the vest of the power of government 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 by an equivalent procedure in terms of guaranteeing freedom of voting." The

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Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

International Covenant on Civil and Political Rights of 1966 was adopted in the same principle, as Article 25 (b) stipulates that: "Every citizen, without any of the distinctions mentioned in article 2, shall have the following rights, which he shall have the opportunity to enjoy without unreasonable restrictions. (Beh) to vote and be elected in genuine elections held periodically by universal suffrage and on an equal footing of voters), and in the same direction the European Convention on Human Rights of 1950 stipulates that: "The High Contracting Parties shall organize free elections by secret ballot at reasonable intervals and in conditions that ensure the free expression of the opinion of the people in the selection of the legislative body.", therefore, elections are an effective means of achieving democracy and guaranteeing the rights of peoples, individuals, and groups through it, which requires that elections in each country be characterized by universality as the right of every fully qualified adult citizen without discrimination on the basis of color, origin, race, social status, gender, language, religion or sect in its different stages, it allows all parties to the electoral process, including voters, candidates and supervisors, to determine how the elections are administered, announce and certify their results, and voters must also be registered fairly and impartially because registration provides a mechanism for considering disputes that may arise regarding the individual's right to vote, and the registration of voters' names in electoral registers enables the election supervisory body to organize its work related to the identification of electoral districts and the distribution of the supervising bodies to those constituencies and the requirements that lead to Achieving free and fair elections is to ensure the political neutrality of those in charge of the elections, and the elections must be secret, and remove all means that would exert improper and unfair pressure on the voter, and convince him to vote for

saady



Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

a particular candidate so that the elections are a sincere expression of the citizen's freedom to choose his representatives. Fifth: The periodicity of elections is one of the most important indicators of the openness of the political system and the democracy of state institutions in dealing with their citizens, as the periodicity of holding elections on their constitutionally specified date indicates that the political authority proceeds from the principle of a referendum of the people on its political choices, democratic countries are based on the principle of the rule of law, and resort to democratically elected institutions, and the periodicity of elections contributes to enhancing the citizen's confidence in the ruling group, and the possibility of the people to change that category when their interest in choosing them is not achieved, and since 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, the members of the Council of Representatives are elected by direct secret ballot, taking into account the representation of all components of the Iraqi people at a ratio of one seat for every hundred thousand people of Iraq representing the entire Iraqi people in accordance with the provisions of Article (49/1st) of the Constitution, with the achievement of a percentage of representation of women not less than a quarter of the number of 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, Article (56/1st) of the Constitution stipulates that: (The duration of the electoral term of the Council of Representatives shall be four calendar years, commencing with its first session, and ending at the end of the fourth year). Accordingly, the extension of the electoral cycle for more than four calendar years makes that extension contrary to the provisions of the aforementioned article, as the interest of the people is achieved by

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Republic of Iraq

Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

holding elections at the end of their constitutional term, otherwise, it means depriving them of exercising their constitutional rights, and the provisions of Article (56/1st) of the Constitution must not be violated concerning the election of the regional parliament or the election of provincial councils, as any provision contained in the constitutions of the regions or any other legal text that contradicts the provisions of the constitution as The supreme and supreme law in Iraq, and it shall be binding throughout it, without exception following the provisions of Article (13 /1st and 2nd) of the Constitution. Sixth: Based on the provisions of Article (1st) amended by the Law of the National Council of Iraqi Kurdistan No. (1) of 1992, the aforementioned Council consists of one hundred and eleven members who are elected by direct secret ballot in accordance with the provisions of Article (2nd) of the same law, and Article (12th) of the same law stipulates that: (The date of the elections shall be determined by a decision of the President of the Region within fifteen days from the date of the end of the term of the Council or the issuance of a decision by it to dissolve itself, and it shall be announced by the media to citizens before the date. specified for at least a month), article (fifty-first) of the same law stipulates that: (The term of the Council is three years starting from its first session and ending at the end of the last session in the third year), amended by Article (3) of Law No. (5) on 29/4/1998 the first amendment to Law No. (1) of 1992, which stipulates: ((Article fifty-first shall be amended and read as follows (The term of the Council is four years starting from its first session and ending at the end of the last session in the fourth year)), and Article (6) of the Rules of Procedure of Parliament Iraqi Kurdistan, which stipulated: ((Parliament session (4) four years starting from the first session and ending at the end of the last session in the fourth year)), for all of the above, and since 19/5/1992 is an immortal day in the

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Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

history of the people of the Kurdistan Region and the democratic movement in Iraq, as the Kurdish people on this day chose their legitimate representatives for the first time in a democratic atmosphere unparalleled in the history of Iraq, and despite the difficulties faced by the people of the Kurdistan Region and its leadership (the Kurdistan Front), represented by external pressures, limited capabilities and modest experience in the field of elections and civil administration, but it succeeded very significantly, in addition to this there are factors that supported this success, Represented by the popular uprising in the region, the issuance of Security Council Resolution No. 688 of 1991 and the withdrawal of the Iraqi government from its administration in the Kurdistan Region, and the desire of the Kurdish people and their leadership, represented by the Kurdistan Front, to appear civilized in front of the world, especially with the presence of university and human rights competencies in the region, and the availability of party pluralism in the region, all of this has helped to clarify the manifestations of democracy in the Kurdistan Region of Iraq since 1992. Seventh: The argument of the need to extend the work of the Kurdistan Regional Parliament to amend the law of the Independent High Electoral and Referendum Commission in the region is constitutionally rejected, as the outgoing parliament cannot issue or amend legislation, especially since the Independent High Electoral Commission, under its Law No. (31) of 2019, is responsible for supervising elections and referendums throughout Iraq when their requirements are available and following the laws in force. For all of the above, and since democracy not only takes a political aspect based on the participation of the people in governance through their representatives in the management of national affairs, but also takes another aspect based on the participation of local communities in the management of their affairs through their elected councils,

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Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

whether in the region or in the governorates that are not organized in a region, and since the right to vote, i.e. the right of a citizen to be a voter or elected, is one of the constitutional rights that embodies the democratic principle. Whereas the Constitution of the Republic of Iraq of 2005 and under Article (13) thereof possesses Alawite and is compulsory throughout Iraq without exception, any provision contained in the constitutions of the regions or any other legal provision that contradicts it may not be enacted and null and void, whereas the Law on the Continuation of the Fifth Session of the Kurdistan Parliament of Iraq No. (12) of 2022 issued by the Kurdistan Parliament, which includes in Article (1/I) thereof: (The fifth session of the Kurdistan Parliament – Iraq continues until the end of the autumn legislative term of 2023, in all its work and tasks.) contradicts the provisions of Articles (1 and 2 / 1st - Beh, Jim, 5, 6, 13, 14, 16, 20 and 56 / 1st) of the Constitution of the Republic of Iraq for the year 2005, so the Federal Supreme Court decided the following:

1. Ruling on the unconstitutionality of the law on the continuation of the fifth session of the Kurdistan Parliament - Iraq No. (12) of 2022 issued by the Kurdistan Parliament - Iraq in its regular session No. (11) on 9/10/2022 and considering the duration of the fifth session of the Kurdistan Regional Parliament - Iraq as expired with the expiry of the legal period specified for it under Article (51) of Law No. (1) of 1992 amended by Article 3rd of Law No. (5) of 1998 First Amendment Law No. (1) of 1992, and considering all that was issued by the Kurdistan Regional Parliament Iraq after that legal period is constitutionally invalid following the provisions of Article (13/2nd) of the Constitution of the Republic of Iraq for the year 2005.

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Republic of Iraq
Federal Supreme Court

Ref. 233 unified with 239 and 248 and 253 / federal /2022

Kurdish text

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2. Dismissing the lawsuit on behalf of the second defendant (the President of the Kurdistan Region / being in this capacity) for not directing the litigation.
 3. Charging the plaintiffs with fees, expenses, and attorney's fees, the second defendant's agent (the President of the Kurdistan Region being in this capacity), and charging the first defendant (the Speaker of the Kurdistan Regional Parliament / being in this capacity) the attorney fees of the plaintiffs' agents, an amount of (one hundred) thousand dinars distributed in accordance with the law.

The decision has been issued with the majority, final, and binding for all authorities according to the provisions of articles (93/1st) and (94) of the Constitution of the Republic of Iraq for 2005 and articles (4/1st and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 10/Dhul Qeda/1444 Hijri coinciding with 30/May/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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