

Republic of Iraq
Federal Supreme Court
Ref. 234 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Basim Khaza'al Khashan (Member of the ICR) – his agents the barristers Ahmed Saeed Mousa and Hayder Saeed Mousa.

The Defendant: Speaker of the ICR/ being in this capacity – his agents, each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his attorney that he challenges the constitutionality of Article (2) of Law No. (27) of 2019) (Second Amendment to the Governorate and District Councils Elections Law No. 12 of 2018, which became effective from the date of its enactment on 9/12/2019) due to its conflict with Article (122/3rd) of the Constitution and with the decision of the Federal Supreme Court No. (117/Federal/2019) issued on 2/5/2021 as follows: The aforementioned court decision included a ruling to terminate the work of the provincial councils from the date of the end of the electoral cycle in mid-2017, and this means that Article (1) of the law has become non-existent because it provides for the termination of the work of councils that were already terminated before their enactment, as paragraph (5) of the

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aforementioned court decision included a ruling to terminate the work of governors after the expiration of the provincial councils' electoral cycle, It stated the following: ((The continuation of the governor in his position by continuing the work of the outgoing provincial council contradicts the principle of peaceful rotation of power, so Article (30) of the above law stipulates (the governor, his deputies and heads of administrative units shall continue to conduct daily affairs after the end of the electoral cycle of the councils and until the election of their successors by the new councils), and this means that the governor's work ends with the end of the provincial council session and continues to conduct daily affairs, and this is consistent with what is stipulated in article (122/ 3rd) of the Constitution, which stipulates that "the governor elected by the provincial council is the supreme chief executive in the province to exercise his powers vested in him by the council.", The ruling that the governors continue their work is an implicit ruling that article 2 is the subject of the challenge, which was legislated before the issuance of the aforementioned court decision, is unconstitutional because it contradicts it and the provisions of the constitution revealed by this decision, and the supremacy of the decisions of the Federal Supreme Court, which comes second only to the constitution, so the applicable judgment is the court's ruling and not the provision of article 2 in question, in addition to the fact that the contested article 2 was one of the most important reasons for the inaction of the Council of Representatives. The Council of Ministers refused to set a date for holding provincial council elections, which represents a serious constitutional violation, so the plaintiff asked the Federal Supreme Court to rule to cancel Article 2 of Law No. 27 of 2019. The lawsuit was registered with this court with number (234/federal/2022), and the legal fee for it was collected in accordance with Article (21/1st) of the Rules of Procedure of the Federal

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Supreme Court No. (1) of 2022, and it informs the defendant of its petition and documents in accordance with item (second) of the same article, and his agent replied with the reply list dated 30/10/2022, concluding that considering the plaintiff's request is outside the jurisdiction of the court specified under Article (93/1st) of the Constitution, and that the law under challenge was issued before the issuance of the court's decision mentioned in the lawsuit petition. If the court had intended to rule it unconstitutional, it would have explicitly indicated it. The text in question was also in accordance with the principle of the permanence of the regular functioning of public utilities and the need to prevent the vacancy of an important position in the governorates of the state, such as the position of the governor, which is the basis that prompted the legislator to legislate for the continuation of the governor, his deputies and heads of administrative units to exercise their duties in accordance with the laws concerned, and this is subject to the control of the Council of Representatives and the Council of Ministers. In order to prevent the vacancy of the post, in addition, the text of Article (2) of the law came as an exception from the original and was legislated by the Council of Representatives, due to the expiration of the legal period prescribed for provincial councils in order to regulate the work of local administrations of the governorates, as well as the emergency circumstances that the country went through, which prevented the holding of provincial council elections, so they requested the dismissal of the plaintiff's lawsuit and charging him judicial fees, expenses, and attorney's fees. After completing the procedures stipulated in the court's rules of procedure, a date was set for the pleadings in accordance with the provisions of Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff in particular, his agent and the defendant's

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attorney, attended and began to conduct the public adversarial pleading, the plaintiff repeated what was stated in the lawsuit petition and requested a judgment according to it, the defendant's agents responded and requested the dismissal of the lawsuit for the reasons stated in their answering draft linked to the lawsuit papers, and the parties repeated their previous statements and requests , and where nothing remains to be said. The end of the argument has been made clear, and the court issued the following judgment decision:

The decision:

Upon scrutiny and deliberation, the court noted that the summary of the plaintiff's lawsuit is the judgment to cancel Article (2) of Law No. (27) of 2019 ((Second Amendment to the Provincial and District Councils Elections Law No. (12) of 2018)) due to its conflict with the provisions of Article (122/3rd) of the Constitution and with the decision of this court No. (117/Federal/2019) for the reasons detailed in the lawsuit petition referred to above, and after the public adversarial pleading and reviewing the regulations submitted by the agents of the parties and their recorded statements, the court finds that the constitutional lawsuit is consistent with civil lawsuits in that the condition of interest in its establishment must be met and may not be filed by a person who has no interest in its establishment as stipulated in Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, as well as Article (20) of the Rules of Procedure of this Court No. (1) of 2022, so that the plaintiff has a case, direct and influential interest in his legal, financial or social status, provided that it is available starting from the establishment of The lawsuit until the issuance of a judgment in it, and where the court did not seek an interest for the plaintiff as stipulated in the above articles, so the plaintiff's lawsuit is worthy to be rejected from this

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aspect. Accordingly, and for all of the above, the court decided to dismiss the plaintiff's lawsuit for lack of interest in its initiating. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 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 made clear on dated 4/Jamada Al-Awla/1444 Hijri coinciding 29/November/2022 AD.

Signature of
The president
Jasem Mohammad Abboud

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