

Republic of Iraq
Federal Supreme Court
Ref. 237 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/12/2022 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Bassim Khaza'al Khashan/ member of the ICR- his agent the barrister Ahmed Saeed Mousa.

The Defendants: 1- President of the Republic/ being in this capacity – his agent the Head of the Legal Experts Ghazi Ibrahim Al-Janabi.

2- Speaker of the ICR / being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

The Claim

The plaintiff claimed through his agent that the Council of Representatives, in its session numbered (35) held on 15/5/2017, voted on the law regulating the work of advisers and referred it to the President of the Republic for the purpose of ratifying and issuing it in accordance with the provisions of Article (73/3rd) of the Constitution to be published in the Official Gazette, but he refrained from doing so, and this important law enacted by the Council of Representatives to develop the performance of advisers and to save the huge expenses

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incurred by the state as a result of appointing consultants who do not have competence or job experience and in numbers that exceed the needs of the Government institutions, the defendants' refusal to publish the laws enacted by the Council of Representatives contradicts Articles (73/3rd and 61/1st) of the Constitution, and that this refusal represents a negative decision issued by a federal authority and is subject to the control of the Federal Supreme Court in accordance with the provisions of Article (93/3rd) of the Constitution, so the plaintiff requested this court to order its cancellation and oblige the defendants to publish this law to become effective from the date of publication in the Official Gazette. The lawsuit was registered with this court with the number (237/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendants are informed of its petition and documents in accordance with item (second) of the same article, and the agent of the first defendant replied with the reply list dated 31/10/2022, which included that there is no interest for the plaintiff in filing the lawsuit based on Article (20/1st) of the Court's Rules of Procedure, the draft law regulating the work of advisers, despite the vote on it in the Council of Representatives, is not a law that the court is competent to consider its constitutionality because its competence is limited to considering the constitutionality of any law that comes after the ratification of the President of the Republic and taking it in sequence added to the year of its issuance and publication in the Official Gazette in accordance with the provisions of the Law of Publication in the Official Gazette No. (78) of 1977, and the Presidency of the Republic has already expressed its observations on the wording of the draft, which contained many

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constitutional violations. Returning it to the Council of Representatives according to letter No. (Thal.Waw/1/41/2490) dated 7/9/2017 in order to lift these violations, the draft law has not been received from the Council until now, and these violations include the following: First: Article (1) thereof stipulates in item (Third: The adviser shall be appointed in the Council of Representatives by a presidential decree based on the approval of the Council of Representatives on the recommendation of the Presidency of the Council of Representatives to appoint him) and in item (Fourth: The adviser shall be appointed in the Presidency of the Republic, the Council of Ministers, ministries and entities not associated with a ministry by a presidential decree based on the approval of the Council of Representatives on the recommendation of the Council of Ministers to appoint the adviser proposed by the body in which he is appointed) and since the draft has differentiated between the adviser appointed in the Council of Representatives and the adviser appointed in the presidency Republic without there being any justification for this separation despite their union in the cause, the independence enjoyed by the Council of Representatives, which led it to choose the Chancellor directly without presenting him to the Council of Ministers, is the same as that available in the Presidency of the Republic, because the Constitution in Article (66) thereof has made the Presidency of the Republic a parallel authority to the Council of Ministers to support the principle of dual authority on which parliamentary systems have settled, in addition to that Article (61 / 5th / Beh) of the Constitution affirmed that the powers of the Council of Representatives in appointing holders of special degrees are only after Proposal of the Council of Ministers on their appointment, Second: Article (1 / 5th) of the draft stipulates (this law

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recognizes the appointment of an advisor appointed before its entry into force and his appointment was issued by a presidential decree or a parliamentary order or a diwani, taking into account item (first) of this article in accordance with the constitutional and legal contexts) as this item included several constitutional violations, including its conflict with the text of Article (61 / 5th / Beh) mentioned above, and it is not permissible to adopt diwanayah orders or parliamentary orders to appoint advisers without issuing a presidential decree because the chancellor (special degree) requires Fulfilling the constitutional and legal formality of his appointment, and that what is based on a nullity is considered null and void and therefore it is not possible to legitimize an act that violates the constitution and law and make it a legal fact that has a legal effect, every parliamentary or diwani order is considered null and void if it does not meet the required formality, which is what jurisprudence and the judiciary in Iraq have settled on in accordance with Article 13/2nd of the Constitution, which stipulates (It is not permissible to enact a law that contradicts this Constitution...). Therefore, he requested that the plaintiff's lawsuit be dismissed and charged the fees, expenses, and attorney's fees. The two agents of the second defendant replied with a reply list and an additional one, which concluded that the litigation is not directed toward the second defendant and that the court does not have jurisdiction to hear the case based on the provisions of Article (93/I) of the Constitution, and since the publication of laws after voting on them is an administrative and organizational decision that requires the referral of the voted law to the Ministry of Justice / Iraqi Facts Department by the Presidency of the Republic and not the Council of Representatives, whether the President of the Republic ratifies and promulgates the law or not, based on the provisions of

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Article (73/ 3rd) of the Constitution, where the law is considered ratified by virtue after the lapse of fifteen days from the date of receipt from the Council of Representatives, The Council of Representatives sent the law voted in the affirmative on 15/5/2017 to the Office of the Presidency of the Republic under letter No. (1/9/9061) dated 24/8/2017, but the Presidency did not send it to publication in the Official Gazette, and once it was published in the Official Gazette and became enforceable, the plaintiff can appeal it at that time, so they requested the dismissal of the lawsuit and charging the plaintiff fees, expenses and advocacy fees. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, so the plaintiff and the parties' attorneys attended and the public pleading was initiated, the plaintiff and his agent repeated what was stated in the lawsuit petition and requested a ruling according to it, the defendants' agents answered and each of them requested to dismiss the lawsuit from his client for the reasons contained in the regulations linked to the lawsuit papers, the Court noted the receipt of the letter of the General Secretariat of the Council of Representatives No. (263) on 24/11/2022 entitled to the Office of the Presidency of the Republic, which includes (the law regulating the work of advisers voted on 15/5/2017 was previously sent in session No. (35) of the legislative term of the third legislative year sent to the Presidency of the Republic based on the provisions of Article (73/3rd) of the Constitution for ratification, issuance, and publication in the Official Gazette and due to the passage of a very long period since the receipt of the law without initiating its publication, which establishes responsibility Constitutional and legal,

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we emphasize the need to send the law to the Iraqi Facts Department in the Ministry of Justice to take over its publication) and link the aforementioned book within the case papers. Whereas nothing was left 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 by the Federal Supreme Court, it was found that the plaintiff filed the lawsuit before this court, litigating with the President of the Republic and the Speaker of the Council of Representatives, in addition to their functions, and requesting a ruling to cancel the defendants' negative decision to refrain from publishing the law regulating the work of counselors, which was voted on by the Council of Representatives in its session numbered (35) held on 15/5/2017, and oblige them to publish the law in the Official Gazette, on the pretext that this abstention contradicts Articles (73 / 3rd and 61 / 1st) of the Constitution of the Republic of Iraq for the year 2005)) The plaintiff based his claim on the provisions of Article (93 / 3rd) of the Constitution, which stipulated (The Federal Supreme Court shall have the following competences: Adjudicating cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority, and the law guarantees the right of both the Council of Ministers and the concerned parties to Individuals and others have the right to appeal directly to the court.) After reviewing the case papers, including what was stated in the reply lists submitted by the

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defendants' attorneys and their statements during the pleadings, the court finds the following:

First: The Constitution of the Republic of Iraq of 2005 adopted the parliamentary system as a method of political governance in accordance with what was stated in its first article, which stipulated (the Republic of Iraq is a single independent federal state with full sovereignty, the system of government in which is a representative republican (parliamentary) democratic, and this constitution guarantees the unity of Iraq) and the basis of this system is the separation of federal powers and according to their components, as Article (47) of it stipulates that (the federal authorities consist of the legislative, executive and judicial authorities, Article (65) of the Constitution stipulates that (a legislative council called (the Federation Council) shall be established that includes representatives of regions and governorates that are not organized in a region, and its composition, conditions for membership, competences, and everything related to it shall be regulated by a law enacted by a two-thirds majority of Council of Representatives members.), however, the separation of federal powers and according to their competencies is characterized as a flexible separation based on integration and cooperation and not based on divergence, disharmony, and isolation of each authority from the other, and based on that, the Constitution obliges the federal authorities collectively to preserve the unity, integrity, independence, sovereignty and federal democratic system of Iraq following Article (109) thereof, and this integration is clearly shown by the constitutional authority of the Council of Representatives to elect the President of the Republic and grant confidence to the government, as stipulated in Article (70/1st) of the Constitution Provided that (the Council of Representatives shall elect

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from among the candidates the President of the Republic, by a two-thirds majority of its members), as well as his intervention in granting confidence to the government, whether among its members or others, in accordance with Article (76/4th) thereof, which stipulated (the Prime Minister-designate presents the names of the members of his ministry, and the ministerial curriculum, to the Council of Representatives and is considered to have its confidence, when approving the ministers individually and the ministerial curriculum, by an absolute majority) On the other hand, there is functional cooperation between the executive and legislative authorities through granting the Constitution to the President of the Republic and the Council of Ministers the authority to submit draft laws in accordance with the following of Article (60/1st) of the Constitution, the political system in Iraq is also characterized by the duality of legislative and executive powers, where the federal legislative authority consists of the Council of Representatives and the Federation Council based on the provisions of Article (48) of the Constitution. As for the federal executive authority, it consists of the President of the Republic and the Council of Ministers in accordance with Article (66) of the Constitution, and the purpose of this is to achieve a balance between them in a way that leads to achieving integration and cooperation in the exercise of its constitutional and legal powers.

Second: The Constitution of the Republic of Iraq of 2005 granted the President of the Republic broad powers, as Article (67) of the Constitution obliges the President of the Republic as the head of state and a symbol of the unity of the country and represents the sovereignty of the country and works to ensure compliance with the Constitution and preserve the independence, sovereignty, unity and

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territorial integrity of Iraq in accordance with the provisions of the Constitution, in addition to his competencies in the field of executive function, which is clearly shown through his competencies to assign the candidate of the most numerous parliamentary bloc to form the Council of Ministers within fifteen days from the date of Electing the President of the Republic in accordance with the provisions of Article (76/1st) of the Constitution, as well as the President of the Republic to convene the Council of Representatives in an extraordinary session, and the meeting shall be limited to the topics to which the invitation is required under the provisions of Article (58/1st) of the Constitution, and granting other constitutional powers under the provisions of Article (73) of the Constitution, including issuing a special pardon on the recommendation of the Prime Minister, except with regard to private rights, those convicted of committing international crimes, terrorism, and financial and administrative corruption, ratifying international treaties and agreements after the approval of the Council of Representatives and being considered ratified after the lapse of fifteen days from the date of receipt, ratifying and issuing laws enacted by the Council of Representatives and considered ratified after the lapse of fifteen days from the date of receipt, and calling the elected Council of Representatives to convene Within a period not exceeding fifteen days from the date of ratification of the election results and in other cases provided for in the Constitution, he shall grant medals and decorations on the recommendation of the Prime Minister in accordance with the law, accept ambassadors, issue republican decrees, ratify death sentences issued by the competent courts, perform the task of supreme command of the armed forces for ceremonial and ceremonial purposes and exercise any other

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presidential powers provided for in this Constitution. The President of the Republic and the Council of Ministers may collectively propose the amendment of the Constitution in accordance with the provisions of Article (126/1st) of the Constitution, provided that the basic principles contained in Part One may not be amended except after two consecutive electoral cycles and upon the approval of two-thirds of the members of the Council of Representatives, the approval of the people by referendum and the ratification of the President of the Republic within seven days, and the amendment shall be considered ratified by the President of the Republic after the expiry of the periods specified in paragraphs (second and third) of Article (126) of the Constitution in the event of its non-ratification. The President of the Republic acts as the Prime Minister when the office becomes vacant for any reason based on the provisions of Article (81/1st) of the Constitution, and the term of the President of the Republic is limited to four years and he may be re-elected for a second term only based on the provisions of Article (72/1st) of the Constitution.

Third: The reconsideration of the laws contained in Article (138 /5th / Beh) of the Constitution, which stipulates (In the event that the Presidency Council does not approve, the laws and decisions shall be returned to the Council of Representatives to reconsider the objected areas, vote on them by the majority, and send them again to the Presidency Council for approval.) It is not subject to objection and is considered ratified based on the provisions of paragraph (c) of the aforementioned article, and this competence belongs to the Presidency Council and not to the President of the Republic in accordance with Article (138/1st) of the Constitution, which stipulates that the expression (Presidency Council) shall replace the expression

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(President of the Republic) wherever it appears in this Constitution, the provisions relating to the President of the Republic shall be reinstated after one subsequent session of the entry into force of this Constitution, whereas the Iraqi Constitution of 2005 adopted the individual presidency following Article (66) thereof, which stipulates that (the federal executive authority consists of the President of the Republic and the Council of Ministers exercising its powers following the Constitution and the law). The Constitution defines the powers of the President of the Republic, including what is stated in paragraph (3rd) of Article (73), which stipulates that (The President of the Republic shall assume the following powers: Ratifies and issues laws enacted by the Council of Representatives, it shall be considered certified after the lapse of (fifteen) days from the date of receipt.) Therefore, the Constitution requires the President of the Republic to ratify and issue laws that the Council of Representatives votes on, and he has no other choice because those laws are considered ratified fifteen days after the date of their receiving, on the other hand, this court has already issued its decision No. (18/Federal/2009) on 8/4/2009 based on an inquiry request that had been submitted to it by the Office of the Vice President of the Republic about the provision of Article (73/3rd) of the Constitution on the possession of the President of the Republic for the next electoral cycle the power not to approve the laws enacted by the Council of Representatives and return them to the Council to consider the objectionable aspects, similar to the authority vested in the Presidency Council contained in Article (138/5th) of the Constitution or not, where the decision included ((Article (73) of the Constitution has mentioned the powers assumed by the President of the Republic, including what is stated in paragraph (3rd) of the aforementioned article, which states (ratifies

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and issues laws enacted by the Council of Representatives and is considered ratified after the lapse of fifteen days from the date of receiving it). As for the power stipulated in Article (138 / 5th) of the Constitution, it was entrusted exclusively to the Presidency Council formed under Article (138) and did not fall within the powers of the President of the Republic stipulated in Article (73) of the Constitution and that Article (138 / 6th) of the Constitution stipulated (the Presidency Council exercises the powers of the President of the Republic stipulated in the Constitution), meaning that the Presidency Council exercises in addition to the powers stipulated in Article (138) of the Constitution the powers of the President of the Republic stipulated in Article (73) and for one term Accordingly, the President of the Republic in future sessions does not have the powers stipulated in paragraph (5th) of Article (138) because it is not mentioned in Article (73) of the Constitution)) and with reference to the provisions of Article (73/3rd) of the Constitution, the Court concludes from all of this that laws are considered ratified by the lapse of a period of fifteen days, regardless of the acceptance of the President of the Republic or not, and there is no provision in the Constitution on which the President of the Republic can be relied upon, which means that any failure to ratify and issue laws that may be received by the President of the Republic is invalid on any A law enacted by the Council of Representatives, as this constitutes a constitutional violation. In addition to the above, the application of the provisions of Article (138) of the Constitution relates to the first parliamentary session that began from 2006 to 2010, therefore, this article ended with the expiry of the period specified for it, and then the provisions of Article (73) of the Constitution are reinstated, and the statement that the ratification competence possessed by the President of the

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Republic also includes the meaning of disapproval, rejection or refusal to ratify draft laws when the draft law contains formal or substantive defects that require non-ratification, this contradicts the provisions of Article (73/3rd) of the Constitution to challenge the law before the Federal Supreme Court in accordance with Article (93/1st) of the Constitution, as the President of the Republic, by virtue of the powers granted to him, has the right to challenge the constitutionality of any law that he deems to contain formal or substantive defects that violate the constitutionality of any law.

Fourth: One of the most important elements of building the state on the foundations and institutions of legal and democratic sound is the principle of equality between citizens before the law and this equality requires the treatment of all citizens the same fair treatment, whether in rights or duties, and there is no state of law without actually consecrating this principle and that the right of society to punishment requires accountability of every person who commits an act has been criminalized and punished in accordance with the provisions of the Constitution and the rules of the Penal Code, and the matter is equal if the perpetrator of the act is a person Ordinary or if he is a person representing one of the public authorities in the state and without a doubt, the first citizen in the state is its president no matter what its description is. Legal equality requires that this high person in the state be the first to be subject to the law and held accountable for his mistakes, especially since the President of the Republic is supposed to be a servant of the interests of the people and a protector of the Constitution and the law, not a master of the people, and a violation of the Constitution and the law is permissible. Although constitutions stipulate, as a general principle, immunization of the President of the Republic in the face of responsibility, but they allow lifting this

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immunization in the event that he commits criminal acts and is punishable for them. Here the immunity of the President of the Republic ends, and in this direction, the Iraqi Constitution proceeded Article (61/6th/Beh) stipulates that the Council of Representatives shall have the following competencies: (Exemption of the President of the Republic by an absolute majority of the number of members of the Council of Representatives after his conviction by the Federal Supreme Court in one of the following cases: 1. Perjury of the constitutional oath. 2. Violation of the Constitution. 3. High treason) Article (93/6th) of the Constitution stipulates that (the Federal Supreme Court shall have the following competencies: 1. Adjudicate on accusations against the President of the Republic, the Prime Minister, and ministers, and this shall be regulated by law). The importance of determining the justifications that justify the criminal responsibility of the President of the Republic appears in that it aims to ensure the supremacy of the Constitution and adherence to its provisions in a legal and constitutional manner guaranteed by all procedural and substantive guarantees. The principle of the association of authority with responsibility has become stable in contemporary systems. Therefore, the exercise of the President of the Republic of his constitutional competencies is intended to achieve the interests of the people and to ensure the preservation of the unity and sovereignty of Iraq, so the Constitution considered the President of the Republic a symbol of national unity and a symbol of construction and a democratic future, and that this is only consistent with the proper application of the Constitution and the law and as long as the Constitution exists to achieve the interests of the people, and since laws are legislated by members of the Council of Representatives, representatives of the people, so the non-application of the provisions

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of Article (73/3rd) of the Constitution is incompatible with all this, which requires when enacting laws to take into account the provisions of the aforementioned article in all its aspects, especially considering the laws ratified after the lapse of fifteen days from the date of their receipt, and not relying on the fact that considering the lack of ratification of the President of the Republic as a reason for suspending the work of laws enacted by the Council of Representatives. Since the law regulating the work of advisers was voted on by the Council of Representatives on 15/5/2017, the duty is constitutionally to consider it effective in accordance with the mechanism drawn up under the provisions of Article (73/3rd) of the Constitution, and it cannot be argued that the aforementioned law includes a text that must be implemented from the date of its publication in the Official Gazette as a reason for suspending the provisions of that law because the constitutional text is applicable when there is a conflict between the Constitution and the law. Failure to apply the provisions of the Constitution in accordance with any of its provisions entails personal responsibility for the person who caused it, because the position must not be protective of those who violate the Constitution or the law, and to say otherwise means that the supremacy of the functional position over the supremacy of the Constitution and its superiority is achieved, thus transforming the political system in the State from a democratic system based on the principle of peaceful rotation of power and considering that the sovereignty of the law and the people is the source and legitimacy of the authorities and the obligation to guarantee and protect public and private rights and freedoms into a system Authoritarian based on authoritarianism, a waste of all rights and freedoms, a waste of the dignity and freedom of the citizen, and a violation of all the

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foundations of the constitutional oath specified in Article (50) of the Constitution, which obliges those who take it to preserve the independence and sovereignty of Iraq, take into account the interests of its people, preserve the integrity of its land and sky, its federal democratic system, preserve public and private freedoms, the independence of the judiciary, and commit to applying legislation honestly and impartially, the difficult circumstances that the country is going through at some stages must not be a reason for violating the constitution, but must be a positive influential factor to complete the stages of building the state and its democratic system and remove all negative influences that would delay state-building, sacrifice the interest and rights of the people, and rob them of their wealth. Accordingly, and for all of the above, and since the law regulating the work of counselors was voted on by the Council of Representatives in its session numbered (35) on (15/5/2017) and for the failure of the President of the Republic to exercise his constitutional competence in accordance with the provisions of Article (73/3rd) of the Constitution, the Federal Supreme Court decided the following:

1. The first defendant obliges the President of the Republic, in addition to his job, to issue and publish the law regulating the work of advisers voted on by the Council of Representatives in the session numbered 35 on 15/5/2017 based on the provisions of Article (73/3rd) of the Constitution of the Republic of Iraq for the year 2005.
2. Dismissal of the lawsuit against the second defendant, the Speaker of the Council of Representatives, in addition to his job for not directing the litigation.

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3. To burden the parties the relative fees and expenses, charging the plaintiff's advocacy fees to the second defendant's attorney an amount of fifty thousand dinars distributed in accordance with the law, and charging the first defendant the attorney's fees to the plaintiff's attorney an amount of fifty thousand dinars.

The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93/3rd and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/3rd 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 25/Jamada Al-Oula/1444 Hijri coinciding 20/December/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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