

Republic of Iraq
Federal Supreme Court
Ref. 254 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 21/11/2022 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 Appellant of Unconstitutionality: Mohammed Jameel Al-Mayahi/
Governor of Wasit.

The Challenged Text for Unconstitutionality: the articles (31-32) of the Prime Minister's Office formations instructions and duties which were published in the Iraqi Gazette by the number (4631) on 24/May/2021.

First: The Abstract of the Challenge:

By scrutiny, it became clear that (Muhammad Jamil Al-Mayahi/ Governor of Wasit) challenges the unconstitutionality of Articles (31 - 32) of the instructions for the formation and functions of the Prime Minister's Office No. (1) of 2021 published in the Iraqi Gazette No. (4631) on May 24, 2021, according to the letter of Wasit Governorate/ Governor's Office No. (1/1/535) on 9/11/2022, as these articles related to the tasks of the Secretariat of the High Authority for Coordination between Governorates and its attachment to the Prime Minister's Office, although this body was formed under the provisions of Article (45/1st) of the Law of Governorates Not Incorporated into a Region No. (21) of 2008, as amended, and it shall be headed by the Prime Minister and the

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membership of a number of ministers, as well as the membership of the Minister of State for Governorate Affairs, governors and heads of provincial councils, and shall assume the tasks stipulated therein following the details contained in the petition, and based on the violation of the aforementioned articles of the provisions of the Constitution and the law for the reasons referred to in detail therein, which are as follows: (1) The Ministers to attach the secretariat of the High Authority for Coordination between Governorates within the formations of the Prime Minister's Office under the two articles in question, was done without taking the opinion of the governorates and ministries, while the tasks of that body and everything related to it directly concern the governorates and ministries, and it was supposed to take its opinion before proceeding with the issuance of those instructions 2- The absence of a constitutional or legal basis for these instructions because this formation (Secretariat of the High Authority for Coordination between Governorates) is not referred to in the Constitution or in the amended Law of Governorates Not Organized in Region No. (21) of 2008 or any of the other laws in force. 3- In addition to the unconstitutionality of this formation (the Secretariat of the High Commission for Coordination between Governorates), its attachment to one of the formations of the Prime Minister's Office will create an overlap that would cause administrative chaos, as the Commission is independent of its duties and tasks from the Prime Minister's Office, which is an administrative formation with organizational tasks that do not rise to the tasks of the Supreme Authority for Coordination between Governorates. 4- Article (31) of the instructions in question specifies the tasks of the secretariat that are completely contrary to its tasks stipulated in Article (45/I) of the Law of Governorates Not Organized in the Region of the aforementioned amendment, and that this difference

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would empty the Commission of its content intended by the legislator and create inconsistent administrative formations. 5- The meetings of the Commission stipulated in Article (45) of the Law of Governorates Not Organized in the aforementioned amended Region, require the existence of a high-level formation that organizes its meetings and issues its recommendations in line with the senior executive titles of the presidency and members of that body), and that these violations contained in the instructions under challenge led to great damage to the governorates and raised many legal disputes as a result of their application and caused the weakening of their basic role, in addition to emptying the principle of (administrative decentralization) of its content, which the legislator wanted it, it also led to the creation of legal disputes between the governorate and the ministries referred to in Article (45/1st) of the Law of Governorates Not Organized in the Province of the aforementioned amendment, and the instability of the legal situation or the resolution of disputes related to the transfer of functions and powers because there is no competent authority to decide on that dispute) Based on the foregoing, the appeal was filed against the aforementioned articles and requests (a decision of their unconstitutionality) based on the provisions of Article (93) of the Constitution of the Republic of Iraq of 2005 and Article (4) of the Federal Court Law Supreme Court No. (30) of 2005, as amended by Law No. (25) of 2021 and in accordance with Article (19) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022.

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the challenge of unconstitutionality focuses on the provisions of Articles (31 - 32) of the Prime Minister's Office Formation and Functions Instructions No. (1) of 2021 published in the Iraqi Gazette No. (4631) on May 24, 2021, which included the formations and tasks of the Secretariat of the Supreme Authority for Coordination between Governorates and its attachment to the Prime Minister's Office, based on their violation of the provisions of the Constitution of the Republic of Iraq of 2005 and the Law of Governorates Not Organized in Region No. (21) of 2008, as amended, because they or any other law do not stipulate the formation of the Secretariat of the High Authority for Coordination between Governorates, attaching it to the Prime Minister's Office, and not taking the opinion of the governorates and ministries in this regard is a constitutional and legal violation, because its functions differ from the tasks of the office and that this is not commensurate with the supreme executive titles of its presidency and members, and this will lead to damage to the governorates and legal disputes at the level of application that cannot be resolved and instability in the legal situation, for the reasons detailed in the list of appeal, and the Federal Supreme Court finds that its jurisdiction and competence to consider the challenge of unconstitutionality, in order to exercise its role in oversight in this regard, is held based on the provisions of Article (93/1st) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/1st) of the Law Federal Supreme Court No. (30) of 2005 as amended by Law No. (25) of 2021, which stipulated in one wording that (The Federal Supreme Court shall have the following competencies: First: Monitoring the constitutionality of laws and regulations in force) in accordance with

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Article (19) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, which stipulates (for any of the three federal authorities, ministries, independent bodies, the Prime Minister of the Region, entities not associated with a ministry, and governors, to request the court to rule on the constitutionality of a legal text or regulation, provided that the request is sent to the court by a letter signed by the head of the concerned authority, the competent minister, the head of the independent commission, the prime minister of the region, or the president of the entity not associated with the Ministry or the Governor, provided that the challenged text relates to the tasks of those bodies and raises a dispute in the application), on the basis of the foregoing and based on the provisions of the provisions of the aforementioned articles, the challenge of unconstitutionality that falls within the jurisdiction and powers of this court goes to the laws and regulations in force only and does not go beyond that to instructions, which means that the subject of the challenge of unconstitutionality goes absolutely to the laws and regulations in force and cannot in any way be subject to challenging the unconstitutionality of instructions or decisions issued by the executive authority or rulings and decisions issued by the judicial authority, and since the challenge of unconstitutionality before this court based on the list of appeal focused on the provisions of Articles (31 - 32) of the Instructions on the Formation and Functions of the Prime Minister's Office No. (1) of 2021, and the texts that allowed the challenge to the unconstitutionality of the laws and regulations in force referred to above do not extend the instructions to challenge them as unconstitutional, which means that the appeal focused on a place that cannot be challenged as unconstitutional, which requires the dismissal of the appeal, and for the foregoing, the Federal Supreme Court decided to

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dismiss the challenge of the unconstitutionality of Articles (31-32) of the instructions of the formations and functions of the Prime Minister's Office No. (1) of 2021 published in the Iraqi Gazette No. (4631) on May 24, 2021, submitted by Mohammed Jamil Al-Mayahi/ Governor of Wasit. The decision has been issued unanimously, 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 article (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 26/Rabee Al-Akhir/1444 Hijri coinciding 21/November/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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