

Republic of Iraq
Federal Supreme Court
Ref 335/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 4/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

Plaintiff: Basim Khazaal Khishan - his agent the barrister -
Ahmed Saied Musa.

Defendant: 1. Head of the Iraqi Council of Representatives / being in this capacity - his agents the official jurists/ Saman Mohsen Ibrahim and Aseel Samir Rahman.
2. President Of The Republic/ being in this capacity- his general agent / Ghazi Ibrahim Al-Janabi.

Claim:

The plaintiff claimed through his agent that on 22/11/2023, the Council of Representatives voted in its extraordinary session on the first Amendment Law to the Independent High Electoral Commission Law No. (31) of 2019, Article (3) thereof – The correct (2) – provided that (this law shall be implemented from the date of its approval in the Council of Representatives and published in the Official Gazette) the plaintiff took the initiative to challenge its constitutionality before this court for the following reasons: First: Considering the law in force from the date of its adoption robs the President of the Republic of his powers stipulated in the Constitution in Article (73/3rd) thereof, which granted him the authority to ratify laws enacted by the Council of Representatives, and they are considered ratified after the lapse of

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(fifteen) days from the date of their receipt, and considering them effective from the date of their adoption affects considering him a symbol of the unity of the nation and a representative of the sovereignty of the country in accordance with Article (67) of the Constitution. Second: Its conflict with Article (129) of the Constitution, which stipulates that (laws shall be published in the Official Gazette and shall come into force from the date of their publication, unless otherwise stipulated), and according to this text, laws are considered in force, and they shall come into force after its publication in the Official Gazette so that the members of the people may be aware of it and comply with its provisions, and their ignorance of the content of what is published therein in accordance with Article (6) of the Law of Publication in the Official Gazette, which is confirmed by Article (129) above, that Laws shall apply from the date of their publication, unless the law stipulates that they shall enter into force from a date subsequent to their publication, and claiming that laws may be applied before their publication in the Official Gazette may waste people's rights and expose them to penalties for acts that were permissible before the decision of the council of Representatives and exposing them to sanctions without the people having the slightest knowledge of them, so the plaintiff asked this court ruling on the unconstitutionality of Article – the subject of the challenge – of the First Amendment Law of the Independent High Electoral Commission Law No. (31) of 2019, and amending it to stipulate that the law shall enter into force from the date of its publication in the Official Gazette and in accordance with the provisions of the Constitution, He requested the issuance of a state order obliging the second defendant to the President of the Republic, in addition to his position, to publish the law – the subject of the challenge – in the Official Gazette. After registering the case with this

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court No. (335/Federal/2023) and collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with the provisions of Article (21/1st and 2nd) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the first defendant's agents replied with the regulation dated 14/1/2024, its conclusion: that the plaintiff did not indicate the current, direct and influential interest in his legal, financial or social status, and that the contested text has already been applied to him, which is confirmed by Article (20/1st and 2nd) of the Court's rules of Procedure, and it is not valid for the plaintiff to replace himself with the right of appeal, which is (the President of the Republic / being in this capacity), so he has no dispute in that, the court has more than one decision in this resource, such as its decision (38/Federal/2021) on 11/7/2021, the article – the subject of the challenge – was issued in accordance with the competencies of the Council of Representatives under Articles (61/1st) and (129) of the Constitution of the Republic of Iraq, and the reasons for the implementation of this law from the date of its approval in the Council of Representatives is for the purpose of organizing the holding of elections for provincial councils that are not organized in a region, which took place on 18/12/2023, so they requested to dismiss the lawsuit and charge the plaintiff fees, expenses and fees, The second defendant's agent replied in his statement dated 14/1/2024, to its conclusion:

One of the most important powers assumed by the (President of the Republic is stated in Article (67) of the Constitution, which stipulates that "the President of the Republic is the head of state and the symbol of national unity, representing the sovereignty of the country, and ensuring compliance with the Constitution..."), and Article (73/3rd) stipulates that laws enacted by the Council of Representatives shall be

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ratified and issued after the lapse of fifteen days from the date of their receipt, and since the Constitution has obligated the Presidency of the Republic in Article (129) thereof to publish laws in the Official Gazette and to come into force from the date of their publication, it is therefore obligatory to send laws to the President of the Republic for ratification without adding any text on the method and date of publication, as for relying on the end of Article (129), which stipulates (... Unless otherwise stipulated), it is an exception to the basic rule stipulated in its introduction that the law shall apply from the date of its publication for the purpose of everyone's knowledge of it, in order to apply it to the general public, and even the exception brought by the article is specific to cases of extreme necessity, and it is not permissible to expand the interpretation of the exception as long as the original the law shall come into force from the date of its publication, thus , the tax and fee laws shall not be effective on any date before their publication in the Official Gazette in accordance with Article (19 / ninth and tenth) of the Constitution, and the text of Article (2) of Law No. (34) of 2023 (Law of the First Amendment to the Independent High Electoral Commission Law), which stipulates that (this law shall be implemented 22/11/2023 and from the date of its approval in the Council of Representatives on published in the Official Gazette), the text came contrary to the rule of enforcement stipulated in Article (129) of the Constitution, thus , citizens and the Commission missed knowledge of it, which may hinder its implementation, and the legislative context applied in most countries of the world is that the law is not considered a law unless all the procedures for its legislation are completed, including the ratification of the competent authority for ratification in accordance with the law of the country from which the legislation is issued, and then granting it a number added to the year of

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its issuance, and then it is published in the Official Gazette in accordance with Articles (1 and 4) of the Law of Publication in the Official Gazette No. (78). For the year 1977, and before that, even if it is voted on (parliament or Council of Representatives or the National Assembly) is not considered a law before the aforementioned due process has been taken, so the adoption of a specific date of before the Council of Representatives enters into force of the law, it is an invalid decision and does not contradict the contexts adopted in the enforcement of legislation, therefore, Article (2) - the subject of the challenge - is invalid and this results in its disregard for violating Article (129) of the Constitution, the Council of Representatives for its current session has adopted this approach for many laws and in different terms and sentences, once stipulating the entry into force of the law from (the date of its issuance), once (from the date of its vote) and once (from the date of its approval by the Council of Representatives) without the support of the law or the urgent and exceptional necessity and need for the purpose of enforcing the law before publication, and the existence of such texts is the withdrawal of the authority of the President of the Republic stipulated in Article (73/2nd and 3rd) of the Constitution, and represents a violation of the principle of separation between the powers established under Article 47 of the Constitution because the president of the Republic has the authority to issue and publish laws without interference from any other authority, and whereas, ratification is one of the stages of the legislative process because the legal existence of legislation it is not completed until the completion of the three stages required by its enactment, namely the proposal, approval and ratification of legislation, ratification is one of the basic prerogatives of the head of state in most constitutions around the world. Therefore, the Presidency

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of the Republic supports what was stated in the plaintiff's lawsuit for the aforementioned reasons, and finally requested a ruling on the unconstitutionality of Article (2) - the subject of the challenge - and the amendment of the text as follows: (The law shall be implemented from the date of its publication in the Official Gazette), for the purpose of making entry into force after ratification. The President of the Republic shall order its publication in the Official Gazette. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case based on Article (21/3rd) thereof, and the parties shall be informed of it, in which the Court was formed. The plaintiff and the defendants' agents attended and began to conduct the public presence pleading, and after the court heard their statements and requests and completed its scrutinies, the end of the argument has been made clear and the court issued the following judgment:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was noted that the summary of the plaintiff's lawsuit by Basim Khazal Khashan is a request to rule the unconstitutionality of Article (2) of the First Amendment Law of the Independent High Electoral Commission Law No. (31) of 2019 and its amendment, to stipulate that the law will enter into force from the date of its publication in the Official Gazette in accordance with what is stipulated in the Constitution, and also requested the issuance of a state order obliging the second defendant to the President of the Republic, in addition to his job, to publish the law - the subject of the challenge - in the Official Gazette in order not to leave behind him. reported publishing a legal vacuum that confuses provincial council elections, for reasons which the plaintiff has written in his claim,

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and which he presented hereinafter, After the presence and public pleading, and the court's review of the answer of the agents of the first defendant's the Head of the Council of Representatives, being in this capacity, which was dated 14/1/2024, and in which the request reject the lawsuit because the plaintiff did not indicate the personal interest that accrues to him in filing this lawsuit, nor is it correct for the plaintiff himself to replace the person who has the right to appeal, which is the President of the Republic, and that the contested article was issued in accordance with the competencies of the Council of Representatives based on Articles (61/1st and 129) of the Constitution of the Republic of Iraq (2005), the second defendant's agent the President of the Republic, being in this capacity, requested the dismissal of the lawsuit regarding the ruling on the unconstitutionality of Article (2) of the contested law, and to inform the court of its decision No. (335/Federal/State Order/2023) on 25/12/2023, which ruled to refuse to issue a state order according to the plaintiff's request, and upon reflection on the requests and defenses of the parties to the lawsuit, this court finds that one of the conditions for the admissibility of the constitutional lawsuit, like other lawsuits, is the availability of the plaintiff's personal interest in establishing it based on Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (20/1st) of the internal regulations of this court No. (1) of 2022, and the interest is the material or moral benefit that the plaintiff seeks to obtain through the judicial claim, and this interest must be a case, known and possible, as the field of the constitutional lawsuit is not an area for proving abstract ideas without an interest that the plaintiff aims to achieve that is close to his person. Accordingly, and for all of the above, and due to the lack of the plaintiff's claim to the condition of interest necessary to accept it with the other conditions, this lawsuit shall be worthy of a response to this

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authority thereof, the Federal Supreme Court has decided to rule as follows:

First: Reject the plaintiff's lawsuit Basim Khazal Khashan for not meeting the condition of interest necessary for its establishment.

Second: The plaintiff shall be charged with the fees, expenses and attorneyship fees of the defendants' agents / being in their capacity, the official jurists Saman Mohsen Ibrahim, Aseel Samir Rahman and Ghazi Ibrahim Al-Janabi amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously, final and binding according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and Articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been made clear on 22/Shaaban/1445 A.H. corresponding to 4/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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