



The Federal Supreme Court (F S C) has been convened on 4/5/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Adobo Abbas Salah, Abdul-Rahman Suleiman Ali and Dyer Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ahmed Ogla Ghali/ Head of the Municipal Council in Al-Karrada/ being in this capacity – his agent the Barrister Naseem Tulba Sadiq.

The defendant: the Speaker of the ICR/ being in this capacity-his Agent the legal advisor Haytham Majid Salim.

The Claim

The plaintiff/ being in this capacity claimed in his petition that the defendant/ being in this capacity, issued Law No. (27) Of 2019 (Second Amendment Law no. 12) of 2018, which included amending item (3rd) of Article (44) From the Governorates and District Councils Elections Law, article 1 stipulates that item (3rd) of the article (44) of the law should be amended and replaced by the following (third - the termination of the work of Governorates councils not incorporated into a region and district councils and sub-districts associated with it). The above-mentioned law did not mention the municipal councils (sectors and neighborhoods) in the brief of it, but only mentioned them in the rationales and since the law of Governorates not incorporated into a region No. (21) Of the year (2008) amended as well as the laws of elections of the councils of Governorates not incorporated into a region and the districts Councils associated with it does not apply to (municipal council) because it situated within the municipal borders of

Baghdad City (the Capital). The laws above-mentioned have limits and jurisdictions that do not include the capital Baghdad and that their application to municipal councils is contrary to constitutional articles (13, 116, 122, and 124), so the plaintiff requested from the court to call upon the defendant/ being in this capacity and judge by annulling Law No. 27 of 2019, the Second Amendment Law of the Governorates Councils elections and the Districts associated with it, and to burden him all the fees, expenses, and the advocacy fees. According to the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of the Year (2005), this case was registered at this court in the number 6/federal/2020 and according to the provisions of article (2/1st) of the Bylaw, the defendant/ being in this capacity has been notified by petition and answered by his draft dated 15 January 2020 that the case is filed by the plaintiff as his post entity and there is no text in the Governorates not incorporated into a region Law indicates to the existence of a legal entity of the municipal council head. Therefore, the case is initiated by someone who has no entity and not capable to be a litigant in this case. Moreover, he presented his draft dated 5 May 2020 which included that the head of the municipal council of Al-Karrada sector/ being in this capacity had initiated this case with this entity, the sectors, and neighborhoods are not listed within the provisions of articles (4th and 5th) of the Law No. (19) For 2013 which clarified that the municipal council is the district council and the sub-district council, these sectors and neighborhoods were not within these councils. The agent of the plaintiff/ being in this capacity by his draft dated 27 January 2020 that the Law No. (21) For 2008 (amended) is not applicable on the Capital and the municipal councils (sectors and neighborhoods), and in case of its applying on the Capital councils will be regarded a clear violation of the Constitution because it violated the articles (13,116,122, and 124) of the Constitution. Law No. (27) For 2019 the second amendment of the Governorates and districts councils elections did not mention the municipal councils except in the rationales and the Capital Baghdad had been excluded from the Law of Governorates not incorporated into a region No. (21) For 2008 (amended). Therefore, the municipal council (sectors and neighborhoods) should be excluded from Law No. (27) For 2019. After the agents of both parties presented their drafts to this court and according to the provisions of the article (2/2nd)

of the Bylaw, a date for argument has been scheduled, and both parties in the case were notified by this date. The agent of the plaintiff/ being in this capacity the Barrister Naseem Tulba Sadiq has attended on behalf of him, and the legal advisor of the defendant/ being in this capacity Haytham Majid Salim has attended as an agent on behalf of him. The public in presence of both parties argument proceeded and the agent of the plaintiff had clarified that his client is possessing the legal entity according to the letter issued by Baghdad Governorate Council/ the legal committee by the number 405/23874 on 31 December 2013, and according to what listed in the article (2/2nd) of the second amendment of the Governorates not incorporated into a region Law No. (19) For 2013. He repeated what was listed in the drafts presented by him, and the agent of the defendant/ being in this capacity repeated what was listed in the drafts presented by him to this court and he requested to reject the case and to burden the plaintiff the fees and the expenses. On 21 April, the agent of the plaintiff/ being in this capacity presented to this court a request to consider the petition of the case void, and the agent of the defendant had rejected the request of the plaintiff's agent/ being in this capacity. While this case is prepared to make a decision about it, the court decided to reject the request of the plaintiff's agent/ being in this capacity according to the provisions of article (88/ 1 and 2) of the civil procedure Law No. (83) For 1969 (amended). The court listened to the last sayings of the defendant's agent/ being in this capacity. The end of the argument has been made clear, and the court issued its following decision:

The Decision

During scrutiny and deliberation by the Federal Supreme Court, it was found that the claim of the plaintiff/ being in this capacity had concentrated on the request to judge by annulling Law No. (27) For (2019) the second amendment of the Governorates and districts councils election Law No. (12) For (2018) which included (the termination of the work of Governorates councils not incorporated into a region and district councils and sub-districts associated with it) because it violated the articles (13, 116, 122, 124) from the Republic of Iraq Constitution for (2005), whereas article (1) of the Governorates not incorporated into a region law No. (21) For (2008) which amended by Law No. (10) For (2018) which stipulated that the following terms

are meaning what shown next to it: first: the Governorate: an administrative unit within its borders, and consist of districts, sub-districts, and villages. Second: the Councils: the Governorate Councils, and the District Council. Third: the Council: the Governorate Council. Fourth: the local Council: the District Council. Article (2/2nd) of the Governorates not incorporated into a region Law No. (21) For (2008) had stipulated that the (the local Council enjoy the legal entity, financial independence and represented by its Head or whom he authorizes. Article (1/2nd) had determined the Councils by the Governorate Council and the District Council, as well the paragraph (4th) of the aforementioned article had determined what meant by the local Council is the District Council. The local Councils of sectors and neighborhoods of Baghdad were not included, whereas the plaintiff initiated the case by his post entity and the aforementioned Law did not grant him the legal entity which qualifies him to litigate by his post entity. The reasons which the plaintiff relied on about his enjoying of the legal entity according to the letter of Baghdad Governorate Council by the number /405/23874 on 31/12/2013 is lacking to the legal substantiation because the legal entity shall be granted with a law according to what listed in the article (47) of the Civil Law No. (40) For (1951). Accordingly, the case of the plaintiff is initiated without any entity, therefore, his litigation in the case against the defendant/ being in this capacity is incorrect, and if the litigation is incorrect, the Court shall decide by itself without going into its basis according to what article (80) of the civil procedure law No. (83) For (1969) stipulated. Accordingly, the Court decided to judge by rejecting the case of the plaintiff/ being in this capacity and to burden him the judicial expenditures and the advocacy fees for the agent of the defendant/ being in this capacity the legal advisor Haytham Majid Salim amount of one-hundred thousand Iraqi Dinars to be divided according to the law. The decision has been issued unanimously and final according to the provisions of article (94) of the Constitution and article (5) of the Federal Supreme Court Law No. (30) For (2005) (amended). The decision has been made clear on 4/May/2021 coinciding with 22/Ramadan/1442 Hegira.