



Kurdish text

Republic of Iraq

Federal Supreme Court

Ref. 73 unified with 79,89,103,104,114,118,144,145/ federal /2023

The Federal Supreme Court (F S C) has been convened on 28/8/2023 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 Plaintiffs in the case (73/federal/2023):

1. The Representative Dr. Raid Hamdan Al-Malik/ member of the legal parliamentary committee.
2. The Representative Mustafa Jabbar Al-Mrayani/ member of the financial parliamentary committee.

Their agent the
barrister Raad
Abdul Jabbar
Ruhaima

The Plaintiff in the cases (79/federal/2023) and (89/federal/2023) and (144/federal/2023):

Bassim Khazaal Khashan/ member of the ICR – his agent the Barrister Ahmed Saeed Mousa.

The Plaintiff in the case (103/federal/2023): Emad Youkhna Yaqoo.

The Plaintiff in the case (104/federal/2023): the representative Mohammed Jassim Mohammed Ali.

Their agent the
barrister DR.
Ouda Yousef
Salman

The Plaintiffs in the case (114/federal/2023): Aso Sadeeq Bibani and Ali Mohameed Ameen – their agent the barristers Hussein Fahim Shamkhi and Hazim Mohammed Nasir.

The Plaintiffs in the case (118/federal/2023):

Aswan Salim Sadiq and Duraid Jameel Yashoua/ members of the ICR for the Christian component – their agent the barrister Ahmed Saeed Mousa.

The Plaintiff in the case (145/federal/2023): the barrister Siham Lutaf Ali Merza Al-Faili.

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

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The Claim

The plaintiffs claimed (in lawsuit No. 73/Federal/2023) through their attorney that the defendant legislated the Elections Law of the Governorates, Districts and Sub-districts Councils No. (12) of 2018, and made three amendments to it, the last of which, which was considered effective from the date of its approval in the Council of Representatives session on 26/3/2023, changed the name of the law to (Law on the Elections of the Council of Representatives, Provincial Councils and Districts No. 12 of 2018), and the amended law included constitutional violations represented in the following: First: Article (2) thereof, which states: (This law applies to the elections of the Council of Representatives, provincial councils and districts) and Article (51) of it, after its amendment, stipulates that (the Iraqi Council of Representatives Elections Law No. 9 of 2020 shall be repealed), the objection to these two articles was made by two things: First: their violation of the provisions of Articles (49/3rd) and (122/4th) of the Constitution: Where the Constitution stipulated in Article (49/3rd) for the Council of Representatives that: (regulated by law, the conditions of the candidate and the voter and everything related to the election), and stipulated in Article (122/4th) for the Provincial Council (regulated by law, the election of the provincial council, and its powers), and that the requirement to single out a text to organize the election process for the aforementioned councils is different in the nature of each of them and their competencies, this requires that there be Separate electoral laws, it is not legally valid to include the provisions for the election of the Council of Representatives in the aforementioned amendment, even if the aim is "political" in favor of partisan parties in order to favor the system adopted by the Provincial Councils Election Law (Election by List and Saint Lego) over the electoral system adopted by the Council of Representatives Election Law (individual election and multiple districts). Unified elections are divided into two chapters, the first for general provisions and the second: with two chapters: including special provisions for elections to the Council of Representatives, provincial councils, and districts. Also, when the constitutional legislator mentions a subject without being concerned with regulating it by law, he has the discretion and option to regulate it in any appropriate place of law, but when he explicitly specifies that this

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subject is regulated by law, he restricts the will of the ordinary legislator to establish a special law for that. The second thing: is the unconstitutionality of the existence of the defect of legislative deviation, as the authority of the Council of Representatives to legislate laws is based on the fact that it includes representatives of the people, which is the source of the authorities and their legitimacy, and on this basis, the work of the Legislative Council must aim to achieve the interest of the people and care following the text of the constitutional oath taken by each member of the Council under Article (50) of the Constitution, however, when there are other objectives behind the legislation or when the purpose of the ordinary legislator exceeds the limits of the purpose set by the constitutional legislator, the work of the ordinary legislator is defective by the defect of legislative deviation and is subject to repeal. The reasons for this legislative deviation are: 1 - The purpose of the amendment was not to address the problems in the original law (Law No. 12 of 2018), which was not originally applied and the application did not reveal the need to amend it, but was legislated for a hidden purpose and the will of partisan and factional interests of political parties that were losing in the 2021 parliamentary elections and believe that the reason for their loss is the adoption of the individual election system that was applied under Law No. (9) of 2020 and did not hold itself responsible for the error of distributing its candidates to circles, which is the main reason for its loss, therefore, it worked to abolish this law and the individual election system without caring about the popular will and the opinion of the authority that supported the individual election system. The main goal of this amendment was to repeal the Council of Representatives Elections Law No. (9) of 2020, and this is a precedent and an abnormal trend in legislative work. 2. There are testimonies of political leaders confirming that their choice of the Governorate Council Elections Law to amend is that this law legislated the presence of political forces in political work in 2018, and therefore to repeal the Council of Representatives Elections Law No. 9 of 2020, it was chosen to amend the Provincial Council Elections Law No. 12 of 2018 in favor of parties. 3- The frequent change of electoral systems practically causes political instability because any electoral system does not show its effects and results by applying it once, but by following

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it for years, and since Iraq adopted for years the electoral system by list (Saint Lego) and it was a clear result in the dedication of consensus and quotas, which everyone recognizes as the cause of rampant corruption in Iraq, so it was necessary to continue to adopt the system of individual majority election, it is known for finding stable governments and systems based on the majority and opposition, which is the essence of parliamentary democratic governments, in addition to working to unite parties and keep the strongest popular ones. It also contributed to reducing the number of candidates for the parliamentary elections throughout Iraq, and if it continues, it will push the parties to choose the best. 4. The normal constitutional date for holding parliamentary elections is far from the date of approving this amendment, as the current parliament has only one year of life, and therefore the cancellation of the Council of Representatives Elections Law No. 9 of 2020 was not justified in light of the assertion of political forces that they do not want to hold early elections, and if there is a need to amend the provincial elections law, considering that it has ended its work, there is no need to hold parliamentary elections. In conclusion, the will of the legislator (the Council of Representatives) deviated and tended to achieve private and partisan interests, not the interest of the people by merging the elections of the Council of Representatives and provincial councils with one law, in violation of the provisions of Articles (1, 5, 49, 50, 122, 128) of the Constitution. Second: Article (1/6th), which allowed the nomination to be on the list and not more than twice the number of seats allocated to the electoral district. The objection to this is the violation of this text of the provisions of Articles (2), (20), and (14) of the Constitution, because the experience of the elections that took place according to this formula proved that it is allowed to collect votes, and that when the legislator determined the seats of each constituency, the nomination must be within this number, as voting for the list if the number of its candidates is twice the number allocated to the constituency, entails that the voter has given his confidence and power of attorney to a number more than the number allocated to this constituency on the one hand, and from On the other hand, the votes of the number above the number allocated to the constituency will be adopted in determining the list share of seats, In the sense that it will be considered and it is

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not correct for the voter to give his confidence and power of attorney to more than the allocated number, and this is not considered credible for the freedom of candidacy, because this right and freedom is available to those who meet the conditions, but with the specified amount of seats without an increase, which violates the principle of "seriousness of candidacy" due to the stuffing of lists with names that are not qualified to represent the people, knowing that increasing the number will have the effect of transferring votes later, as the candidates with the most votes within the list will benefit from the votes of others, although the will The voter turned to hire others. Third: Article (9), stipulates the right of the voter to vote for the list or to the list and one of the candidates. The objection to this was that this article allowed two different things, and for the voter to have one vote and one option, he must vote for the list and one of the candidates in it, because his vote for the list only and the adoption of this means granting him the right to vote for everyone in the list of candidates, which means multiple votes, as this later causes the determination of the list's entitlement of seats, and this is only true if the winning list is determined based on the majority election system, where the list is accounted for Winner of all constituency seats. If the electoral system is adopted by proportional representation, the list and the candidate must be determined, otherwise it means multiple votes, as the voter's vote will be adopted for the list and his vote for the list, and he gives his confidence and representation to everyone in it, and this violates the principle of equality between voters, and therefore it is necessary to grant the right to vote in light of the adoption of the proportional representation system for the list and one of the candidates, meaning that the voter must appoint one of the candidates and the invalidity of each vote for the list only because it means granting the voter the right to vote for multiple. Fourth: Article (12), which states that: ((First: The valid votes for each list shall be divided on the serial numbers (1.7, 3, 5, 7, 9... etc.)) According to this article, the nomination is through the lists, and the winner is determined according to the (Saint Legu) system and a percentage starting with (1.7) and this means that the votes obtained by the competing lists are divided by this percentage upwards, and accordingly the seats are distributed, and this text violates the provisions of Articles (2/Beh), (5), (6), (14) and (16) and (20) of the

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Constitution, Article 5 of the Iraqi Constitution adopted the democratic system in article (2/1st/Beh) thereof, and affirmed in article 5 that the people are the source and legitimacy of powers, exercising them by direct universal secret ballot and through their constitutional institutions. Democracy means the rule of the people by the people and is based on equality and citizenship away from any restrictions that detract from the right to participate in public affairs, which derives from the right to political participation by nomination or election, and the imposition of a ratio of (1.7) and the division of votes on it and the distribution of seats according to the quotient of that division represents an arbitrary restriction on the people who have power and its source, this restriction was not sanctioned by the constitution under question, but by an established authority that derives its legitimacy from the people in power. If the Council of Representatives, as an established authority, has the right to legislate the electoral law, this must not exceed the power to organize and within the limits that do not affect the essence of rights and freedom following the provisions of Article (46) of the Constitution. This percentage represents a restriction that violates the principle of equality and justice, as it requires that the division begins with the correct number (1), and this restriction is intended to exclude lists that obtained a sufficient number of votes to win an electoral seat if the division is made by (1) the correct one. This is contrary to democracy because it confiscates the will of the electorate, which tends to grant certain lists several votes that qualify them to represent them in the Council of Representatives or the provincial council. The justification that is provided for the requirement of this ratio (1.7) is the lack of dispersion of seats and the large number of lists represented in the parliament or the provincial council, this political justification is not suitable as a basis for building legislative provisions on it as long as it causes prejudice to the essence of the right to nominate and vote because it wastes its results and makes them worthless when it falls below the specified unfair percentage that the countries that have implemented the Saint Lego system did not work with. The principle of equal opportunities requires that the division of votes starting with the whole number (1) one upwards, and this is the requirement of correct representation and in line with the democratic principle, as for political considerations, including the

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formation of coalitions after the elections, these matters are the scope of political action after the results are not subject to legislative consideration, and are not suitable as justification for violating the principles governing the constitution, invoking these political considerations is a justification for monopolizing power and limiting parliamentary representation to large blocs and parties that usually use the influence of power. For the above reasons, the plaintiffs requested this court to rule on the annulment of Articles (1/6th, 2, 9, 12, and 51) of Law No. (12) of 2018 as amended by the Third Amendment Law in force on 26/3/2023, in addition to examining its constitutionality in terms of being defective by the defect of legislative deviation, and ruling its unconstitutionality based on the competencies entrusted to the court following the text of Article (93) of the Constitution, due to the violation of the law and the contested articles of the provisions of Articles (1, 2, 5, 6, 14, 16, 20, 50, 49, 122, 128). of the Constitution in force and charging the defendant with fees and expenses. The lawsuit was registered with this court at the number (73/Federal/2023), the legal fee was collected for it, and the defendant was informed of its petition and documents in accordance with Article (21/1st and 2nd) of the Court's Rules of Procedure No. (1) of 2022, and his agents replied with the regulation dated 17/4/2023 Conclusion: The law - the subject of the lawsuit - is a legislative option following the provisions of article 61 of the Constitution in the competence of the Council of Representatives to legislate federal laws, the reference of the plaintiffs' attorney to the inability and violation of the unification of certain laws in one law has no basis in law and no constitutional or legal impediment in the legislation of laws that unite in their objectives and provisions The provisions of the law are regulated, each of which is in a special text for the provisions for which the legislation came, and we show that the legal texts are legislated by the will represented by the representatives of the people, who are members of the Council of Representatives, and that the descriptions given by the plaintiffs' attorney regarding the factional, personal and partisan goals of legislation and regarding legislative deviation are It is not valid and there is no evidence for it, it cannot be attributed to the members of the legislative authority, because the legal texts and their legislation are approved by voting by a majority, which represents the

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legislative will that the prosecutor's agent describes as a legislative deviation, and what was stated by the prosecutor represents his personal point of view that does not find support in the constitution and the law, as for challenging the text of articles 9 and 12 of the law, these texts are a legislative option that does not violate the constitutional texts, and they have already been adopted in previous electoral cycles and there is no constitutional violation in them. Especially since it represents the legislative will to approve the texts under challenge, therefore, they asked this court to dismiss the plaintiffs' lawsuit and charge them judicial fees, expenses, and advocacy fees. After completing the procedures required by the court's internal regulations, a date was set for the pleading following Article (21/3rd) thereof and notified to the parties, on the appointed day, the court was formed, and the plaintiffs and their attorney attended, and the defendant's attorney attended, and the public presence pleadings began, the court noted that the lawsuit numbered (79/Federal/2023) considered by the court and its subject matter is the subject of this lawsuit, Accordingly, the court decided to unify them and consider the lawsuit (73/Federal/2023) as the original, so the plaintiff himself and his agent attended, and the court also noted that the lawsuits (89, 103, 104, 114, 118, 144 and 145/Federal/2023) have the same subject matter for the two unified lawsuits, therefore, it decided to unify them together, based on the provisions of Article (76/2) of the Civil Procedure Law No. (83) of 1969, as amended, so the plaintiffs' agents in the lawsuit attended (103 and 114/federal/2023), the plaintiffs and their agents attended the lawsuits (89, 104, 118 and 144/federal/2023), and the plaintiff, in particular, attended the lawsuit (145/federal/2023), the plaintiffs and their agents repeated what was stated in the lawsuit petition and the regulations submitted and requested a judgment according to them, the defendant's agents answered and requested the dismissal of the lawsuit for the reasons mentioned in the response regulations, and the parties repeated their previous statements and requests, and after the court completed its scrutinies, the end of the argument has been made clear and the court issued the following decision:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs in the consolidated lawsuits are challenging before this court the constitutionality of several articles of Law No. (4) of 2023 The Third Amendment Law to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018 and requested from the court to examine the constitutionality of the law in terms of being defective by the defect of legislative deviation and ruling its unconstitutionality and the unconstitutionality of Article (1/6th) and (9) of the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of the year 2018 amended, and for the public presence pleading and informing the court of the defenses of the defendant's agents (Speaker of the Council of Representatives / in addition to his position) under which they requested the dismissal of the lawsuit Since the law was promulgated in accordance with the competence of the Council of Representatives under Article (61) of the Constitution, and came as a legislative option that does not violate the provisions of the Constitution According to the details contained in the preamble to this provision, this court finds the following:

First: The system of government in Iraq, as contained in the Constitution of the Republic of Iraq of 2005, is a representative democratic republic based on the principle of separation of powers, as it defined the federal authorities under the provisions of Article (47) of the Constitution, which stipulates that: (The federal authorities consist of the legislative, executive and judicial authorities, exercising their powers and functions on the basis of the principle of separation of powers) and the components of the said authorities are also defined in accordance with Articles (48), (66) and (89) of the Constitution and considering that The legislative authority consists of the Council of Representatives and the Federation Council, the competencies of the Council of Representatives have been determined under the provisions of Article (61) of the Constitution, as for the competences of the Federation Council, the Constitution leaves the determination of its competencies to the law enacted in accordance with Article 65 of the Constitution, which stipulates that: ((A legislative council called the

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(Federation Council) shall be established that includes representatives of regions and governorates that are not organized in a region, and its composition, membership conditions, competencies and everything related to it shall be regulated by a law enacted by a two-thirds majority of the members of the Council of Representatives)) Although Article (61/1st) of the Constitution stipulates: (The Council of Representatives shall have the following competencies: First: Enacting federal laws), there is a constitutional fact that cannot be bypassed, which is that the Constitution considered the Federation Council (a legislative council) and since the provisions of the Constitution Complementary texts with a common fabric, which requires the implementation of all articles of the Constitution and not neglecting them, the principle of separation of powers and the commitment of each authority to the limits of its constitutional competencies is the cornerstone of democratic systems, and the aim of this in its constitutional goals is to ensure the fundamental freedoms of man and the subordination of the state to the law, as democracy is closely linked, strong and fundamental to freedom and there is no democracy without freedom and to say that democracy is the rule of the people themselves by themselves, does not mean the freedom of the people as a whole only to govern themselves, but also includes the freedom of each member of the people. The principle of separation of powers is of great importance in building state institutions and preserving public and private rights and freedoms, as though this principle lies the guarantee to achieve a balance between the powers entrusted with carrying out the functions of the state (legislative, executive and judicial) to prevent the concentration of power in the hands of one person or even one institution, thinkers in different eras have unanimously agreed that: (Absolute power would tempt to abuse it, and absolute power is absolute corrupting), If everyone agrees that power is aggressive and greedy, it must be restricted so that it does not exceed the limits prescribed for it, therefore, the best way to confront this threat is to distribute powers so that each authority stops at its limit by the other so that no one can abuse its power or tyrannize power, the principle of legality also requires that the legislative rules be characterized by generality and abstraction, so legislation is issued without regard to individual cases, but the rule is applied

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to each individual who meets the conditions for its application, and this is achieved only if the legislator and the executor are separated, so the principle of separation of powers is one of the important guarantees that ensure the establishment of the legal state, as it is an effective way to ensure respect for laws and their fair and proper application. One of these authorities rushed to tyranny and exceeded its competencies possible for the principle of separation of powers was considered a criterion for classifying political systems. On the other hand, electoral systems translate the votes cast in the elections into the number of seats won by the parties and candidates participating in them, and the choice of the electoral system has an impact on the way electoral districts are demarcated, how voters are registered, how ballots are designed, how votes are counted, in addition to many other aspects of the electoral process. The factors that influence the choice of the electoral system are the ideological, religious, tribal, regional, linguistic, and class composition of society, and affect this area if the country concerned enjoys democracy, whether the country has a coherent party system, whether its parties are still at the beginning of their formation, how many parties there are, whether the party's supporters are geographically concentrated in a specific part of the country or are spread over large areas. The nature of the constitutional system of government in the country is also influential in the choice of the electoral system. In most federal countries, the bicameral system is adopted in their legislature, and members of both chambers are elected in different ways, this makes sense for two reasons: first, the task of the second chamber (senate) of the legislature is limited to representing the provinces that make up the federal country and each of them is usually allocated a similar number of representatives regardless of their geographical or demographic size, and the second reason is due to the uselessness of having two chambers if not each of them has different roles, and if the same electoral system is used for both, the result will most likely be the repetition of the same electoral results in the composition of both, thus, producing the same parliamentary majority in each of the two chambers, especially if elections for both chambers are held simultaneously and the second chamber provides an opportunity to introduce creative solutions in order to enable some groups to obtain representation in it,

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while it is difficult for them to be represented in the first Council (Representatives). Elections, no matter how good and positive, may mean little to voters if they are unable to participate or if they feel that their votes have no value in influencing the way public affairs are managed in their country, the ease of voting depends on various factors such as the simplicity and clarity of the ballot paper, the ease of access to voting places, the accuracy and modernity of voters' lists, and the extent to which voters are convinced of the secrecy of the ballot. Participation levels in elections increase when election results, whether at the public or local level, have an actual impact on governance, the actual power exercised by the elected body on the ground contributes to giving more consideration and importance to the electoral process itself, as elections organized by dictatorial regimes that do not give the voter any real choice, as the elected legislative authority does not exert any influence in the formation of the government or its decisions is much less important and attractive than those organized in countries where their elected legislative authority plays a fundamental role in everything related to the main issues of the citizen's daily life. In addition to being how governing institutions are elected, electoral systems can also be seen as a tool for managing conflicts in society. Some electoral systems may in certain circumstances push political parties to move towards a broader base of supporters outside the narrower framework of their regular supporters. In this way, the party's platform becomes more inclusive and less factional. Electoral systems can lead voters to get out of the traditional constituencies to which they are accustomed and to consider voting for other parties. They are considered representative of groups and groups other than those to which they belong, which generates more coexistence and compatibility. For all of the above, and since the Council of Ministers is responsible for drawing up the general policy of the state, developing general plans, and supervising the work of ministries and bodies not associated with a ministry following the provisions of Article (80/1st) of the Constitution. The Council of Ministers shall also issue regulations, instructions, and decisions to implement the laws following the provisions of Article (80/3rd) of the Constitution, and since the competencies of the Council of Representatives are determined under Article

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(61) of the Constitution, article 5 of Law No. 4 of 2023 did not include who sets a date for the elections of the Council of Representatives, as paragraph (b) thereof included ((After the end of the electoral cycle for the provincial councils stipulated in item (first) of this article, the elections shall be held 45 (forty-five) days before the date of the elections shall be determined by a decision of the Council of Representatives in coordination with the Commission before a period of no less than (90) ninety days) Therefore, and for violating paragraph (b) of item (first) of Article (5) of Law No. (4) of 2023 to the provisions of Article (61/1st) and (80) of the Constitution, which requires ruling them unconstitutional. Second: Article (7) of Law No. (12) of 2018 of the Provincial and District Councils Elections Law stipulates that: (The candidate must be: First: A fully qualified Iraqi who has completed (30) thirty years of age in the year in which the elections are held. Second: Hold a bachelor's degree or its equivalent at the time of nomination. Third: Good conduct, reputation, and behavior that the candidate is not covered by a previous amnesty for crimes of financial and administrative corruption and misdemeanors involving moral turpitude. Fourth: From the people of the governorate according to the status register civil or residing continuously for a period of not less than (10) ten years, provided that his residence therein is not for demographic change. Not covered by the provisions of the Accountability and Justice Procedures or any law that replaces it. Sixth: Not convicted of illegal enrichment at the expense of the homeland or public funds by a final court ruling. Seventh: He must not be a member of the armed forces or security services or a judge when nominated) Then the above article was amended under Article (5) of Law No. (14) of 2019 Law of the First Amendment to the Law on Elections of Governorates Councils not Organized in the Region and its Districts No. (12) of 2018, as Article (5) of the amendment stipulates ((Items (1st/2nd/3rd/4th/7th) of Article (7) shall be amended to read as follows: Third: To be of good conduct and behavior not convicted of a felony or misdemeanor involving moral turpitude, including cases of administrative and financial corruption by a final court ruling, whether it is covered by pardon or not)) Then Article (7) itself was amended under Article (6) of Law No. (4) of 2023 The Third Amendment Law to the Law on Elections of the Council of

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Representatives, Governorate Councils and Districts No. (12) of 2018, and item (third) under the amendment became as follows: ((Third: To be not convicted of a felony or misdemeanor involving moral turpitude or cases of administrative and financial corruption stipulated in Articles (330, 333, 334, 335, 336, 338, 339, 340) of the Penal Code No. (111) of 1969, as amended by a final court ruling, whether it is covered by pardon or not) Whereas Article (49/2nd) of the Constitution stipulates that: (The candidate for membership of the Council of Representatives must be a fully qualified Iraqi) Clause (Third) of the same article states (The conditions of the candidate and the voter and everything related to the election shall be regulated by law.) Whereas the Council of Representatives consists of several members with a ratio of one seat for every hundred thousand people of Iraq representing the entire Iraqi people in accordance with the provisions of item (1st) of Article (49) of the Constitution, whereas the Council of Representatives, in accordance with its competencies specified under Article (61) of the Constitution and Article (70/1st) of the Constitution, which granted the Council of Representatives the right to elect the President of the Republic by a two-thirds majority of its members, and Article (76/1st) of the Constitution, which required the President of the Republic to assign the candidate of the most numerous parliamentary bloc to form the Council of Ministers within fifteen days from the date of the election of the President of the Republic, and the Prime Minister-designate shall present the names of the members of his ministry and the ministerial curriculum to the Council of Representatives, and shall be deemed to have its confidence upon approval, the ministers individually and the ministerial curriculum by an absolute majority in accordance with the provisions of Article (76/4th) of the Constitution, therefore, the Council of Representatives represents the first nucleus for the formation of the legislative and executive authorities, which requires that the candidate meets all the conditions that qualify him and in a manner that does not conflict with the provisions of the above constitutional articles, so what was stated in item (3rd) of Article (6) of Law No. (4) of 2023 is contrary to the provisions of Articles (49 / 1st and 2nd), (61), (70/1st), (76/1st) and (76 / 4th), which requires ruling it unconstitutional, and then the amendment contained in item (3rd) of Article (5) From Law No. (14) of

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2019, the First Amendment Law to the Law on Elections of Governorate Councils Not Organized in the Region and its Districts No. (12) of 2018, which stated (that he must be of good conduct and behavior not convicted of a felony or misdemeanor involving moral turpitude, including cases of administrative and financial corruption, by a final court ruling, whether he is covered by pardon or not). Third: The issue of determining the electoral districts is one of the procedures paving the way for the electoral process and has its importance in terms of determining the number of members of the Council of Representatives within each constituency and knowing the number of voters in each constituency and the electoral district is defined as a part of the territory of the State within which the electoral process is exercised for its population to be represented in the parliaments with several seats commensurate with their number, as Article (49/1st) of the Constitution of the Republic of Iraq of 2005 stipulates that: (The Council of Representatives consists of some members at a ratio of one seat for every hundred thousand people of Iraq representing the entire Iraqi people, elected by direct secret universal suffrage, taking into account the representation of all components of the people in it), therefore, the electoral districts represent the spatial framework for voters and candidates in exercising their political rights, as for voters they represent the spatial framework for exercising their right to vote to express their opinions and political orientations, and for candidates it represents the spatial framework for promoting their electoral campaigns and programs and practicing the activities and events they deem necessary to win the seats allocated to that constituency within what is permitted by law. All citizens, men, and women, have the right to participate in public affairs and enjoy political rights, including the right to vote, vote, and be elected in accordance with the provisions of Article 20 of the Constitution. The electoral district is considered to be a part of the territory of the State less or more for which one or more candidates are assigned to be selected by the voters in that area, and thus represents an electoral unit, in its own right, whose members registered in its registers elect their representatives following the electoral rules, and since electoral laws must be fair and so must the process of apportioning electoral districts must be fair; the fact that such justice is achieved in the legal text and in

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the apportionment of electoral districts depends on the ability of the legislator to legislate such a provision. On the other hand, the electoral districts are the first and most important stations to reach power, as the competing political parties and forces shed their attention on the nature of the electoral districts and their electoral weight, and in light of that, they organize their electoral campaigns, and it is concluded from all that that the electoral districts in their origin are a set of measures taken by the competent authorities in dividing the territory of the state into a certain number of electoral areas to facilitate the election process and implement the philosophy of the political system in the formation of the Council of Representatives. It is one of the important procedures that most political systems have been keen to organize under ordinary legislation, and thus these procedures have acquired their legal nature that the electoral districts are not fixed, but rather characterized by continuous amendment and review to accommodate the variables in the political reality, and they are characterized by comprehensiveness, meaning that they are comprehensive for the entire territory of the state, whether the single-district system or the multi-district system is adopted, in all cases the entire territory of the state is subject to the division of districts and no part of it can be excluded because this is linked to the need to achieve justice and equality, on which the electoral process must be based, as it must guarantee all individuals the right to participate in public affairs without discrimination or exclusion, electoral districts are also described as general, meaning that they do not belong to a specific sect or political party per se, but rather they aim to facilitate the voting process for all voters without discrimination and ensure candidates fair competition based on equality and equal opportunities, and generality in the division of electoral districts does not mean in all cases that the division system is the same for all components and geographical areas in the country, in the federal state, the system of division can vary from one region to another, as can countries that are interested in the representation of minorities in parliaments and are keen to devote their presence under special regulations that guarantee them the achievement of that representation, especially when dividing electoral districts, for this we see that the constitutional legislator, under the provisions of Article (49/1st) of the

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Constitution of the Republic of Iraq for the year 2005, obligated (representation of all components of the people in it) and also required (achieving a percentage of representation of women not less than a quarter of the number of Members of the Council of Representatives) under item (fourth) of the same article above and considering that the system of government in Iraq is a republican representative (parliamentary) democratic in accordance with the provisions of Article (1) of the Constitution, the purpose of such a system and its main objective is to preserve the unity of the State and its entity and at the same time to preserve the specificities of the national and religious components, since Iraq, in accordance with the provisions of Article (3) of the Constitution is a multinational, multi-religious and multi-confessional country, as it includes Iraqi society at the national level: Arabs, Kurds and Turkmens in addition to the rest of the nationalities, at the religious level, Iraqi society consists of: Muslims, Christians, Shabaks, Yazidis, Sabean Mandaeans, in addition to other religions, and what must be realized and become, is the necessity of preserving rights and freedoms for all in a way that ensures loyalty to the homeland as the unifying identity of all nationalities, religions and sects, so the state cannot be for a component, religion or nationality, nor can the experiences of the former regime be repeated when minorities felt persecuted and marginalized, which sometimes made them seek their freedom outside the country, coexistence and tolerance among all components of the Iraqi people must be based on national identity and the creation of a sincere political will to achieve this, especially since the issue of diversity prevails in most countries of the world, diversity is a fixed fact and this fact must be dealt with and must also search for the political identity of the state administration, which is based on citizenship outside the scope of social, national and religious identities and not conflict with the principles, values and beliefs of any component Based on all that, the Constitution and under the provisions of Article (20) It guarantees to all citizens, without exception or discrimination, men and women, the right to participate in public affairs and to enjoy political rights, including the right to vote, vote and be elected, therefore, what is stated in paragraph (Jim) of item (1st) of Article (9) of Law No. (4) of 2023, which stipulates that: ((Seats allocated to the Christian component for membership of

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the Council of Representatives) and the nomination shall be individual within the electoral district, and the winner shall be considered the winner with the highest votes, and their constituencies shall be divided as follows: 1- Erbil and Dohuk seats of the Kurdistan region with its administrative borders shall be one constituency. 2- Seats in Baghdad, Nineveh, Kirkuk Iraq (except for the Kurdistan Region) shall be one constituency. It contradicts the provisions of Article (49/1st) of the Constitution, which requires taking into account the representation of all components of the people in the Council of Representatives, and contradicts the provisions of Article (14) of the Constitution, which requires the equality of Iraqis before the law without discrimination for any reason, and contradicts the provisions of Article (109) of the Constitution, which obliges the federal authorities to preserve the unity, safety, independence, sovereignty and federal democratic system of Iraq, which requires ruling them unconstitutional. Also, the phrase (Sabian Mandaean) mentioned in paragraph (Dal) of item (first) of Article (9) of Law No. (4) of 2023 contradicts the provisions of Article (14) of the Constitution, which requires a ruling on its unconstitutionality. Paragraph (d) mentioned above shall remain as follows: (The seat allocated to the component Iraq shall be one electoral district and the candidacy shall be individual within the electoral district of the winner is considered the one who obtained the highest votes), and paragraph (Dal) of item (1st) of Article (9) of Law No. (4) of 2023, which stipulates ((the seats allocated to the components (Yazidis, Shabaks, Faili Kurds), the governorate for which the quota seat has been allocated shall be one electoral district for the elections of the Council of Representatives, and the nomination shall be individual within the electoral district and the winner shall be considered the winner with the highest votes)), also, paragraph (Heh) of item (first) of Article (9) of Law No. (4) of 2023, which stipulates ((the seats allocated to the components (Yazidis, Shabaks, Faili Kurds), the governorate for which the quota seat is allocated shall be one electoral district for the elections of the Council of Representatives, and the nomination shall be individual within the electoral district and the winner shall be considered the one with the highest votes)), contradict the provisions of Articles (49/1st) and (14) of the Constitution for the same reasons mentioned above, which requires a ruling on their

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unconstitutionality. Fourth: It has become a given at present that the exercise of public freedoms can only be if the principles of equality and non-discrimination prevail among individuals, and the principle of equality between individuals in assuming public office derives its distinctive importance through the correlation between freedom and equality, and that this requires that all citizens have the right to assume public office without discrimination because of their political affiliations, opinions, ideas or beliefs, as long as the conditions determined by law are met by them and according to the criterion of merit and competence. which should be the primary criterion in selecting people for public office, and the creation of differentiation between citizens for reasons outside the scope of competence and merit leads to the absence of competencies, the waste of the principle of equal opportunities, the spread of manifestations of corruption, the decline of the administrative apparatus in general and the detriment of the public interest, Article 16 of the Constitution of the Republic of Iraq of 2005 stipulates: "Equal opportunities are a right guaranteed to all Iraqis, and the State shall guarantee that the necessary measures are taken to that end." The principle of equality in access to public office is one of the most important manifestations of the equality of individuals before the law without discrimination as to sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status following Article 14 of the Constitution. The principle of equality enshrined in the aforementioned article of the Constitution means non-discrimination and distinction between individuals who meet the same conditions and in the same circumstances and conditions, on the other hand, the principle of equality is linked to justice and freedom as they can only be achieved by applying the principle of equality, and that equality is the basis for the principle of legitimacy and achieving justice in society and Islam has approved the principle of equality among all people, as the Almighty said in his Holy Book (O people! We created you from a male and a female, and made you races and tribes, so that you may know one another. The best among you in the sight of God is the most righteous. God is All-Knowing, Well-Experienced) Surat-Al-Hujarat – verse 13. Article 21/2 of the Universal Declaration of Human Rights of 1948 stipulates: "Everyone has the right to hold public office in his country" and

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Article (25 /Jim) of the International Covenant on Civil and Political Rights of 1966 stipulates that: "Every citizen, without any of the distinctions mentioned in Article 2, shall have the following rights, which he must have the opportunity to enjoy." Without unreasonable restrictions: (Jim) To have access, on a general basis of equality with others, to public service in his country. Article 26 of the International Covenant also provides: "All persons are equal before the law and without any discrimination shall enjoy the equal right to its protection." In this regard, the law must prohibit any discrimination and ensure to all persons alike effective protection against discrimination on any grounds, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other grounds. The constitutional legislator in Iraq, following Article 107 of the Constitution, has identified a competent authority to regulate the affairs of the federal public service. The aforesaid aforementioned: (A council, called the Federal Public Service Council, shall be established to regulate the affairs of the federal public service, including appointment and promotion, and its composition and competencies shall be regulated by law) and the legislator has his discretion and the requirements of the public interest to set objective conditions by which the legal positions in which individuals are equal before the law are determined, where the principle of equality before the law is represented by the subjection of all similar legal centers to the same legal treatment in a manner commensurate with the objective envisaged by law and the principle of equality is achieved by determining different legal treatment for different legal centers or because of the public interest if all of this is consistent with the goal envisaged by Law. Therefore, the principle of equality is the cornerstone and fulcrum of any legal regulation of public rights and freedoms, without which the meaning of democracy disappears and all the meaning of freedom collapses. Therefore, the principle of equality is one of the most important rights that the constitutional judiciary seeks in most countries of the world to protect as one of the main pillars of the rule of law, considering that the rule of law does not prevail unless it is applied on an equal footing. Therefore, what is stated in Article (21 / 1st and 2nd) of Law No. (4) of 2023 is the third amendment to the Elections Law of the Council of Representatives, Provincial

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Councils, and Districts No. (12) of 2018, which stipulates ((First: The Federal Service Council shall appoint those covered by the provisions of Article (1) of Law No. (27) of 2019 from the members of (governorates, districts, and sub-districts) who continue to serve until 26/11/2019 and distribute them to ministries and entities not associated with a ministry according to specialization and geographical location, and their previous service is calculated for bonus, promotion, and retirement. Second: Governorates that are not organized in a region must provide the Federal Service Council with support for continuity of service and a certificate of the last salary until 26/11/2019 for those covered by the provisions of item (1st) of this article), contrary to the provisions of Articles (14 and 16) of the Constitution, which requires ruling them unconstitutional. Fifth: Chapter 7th of Law No. (12) of 2018 entitled Electoral Crimes has been mentioned from Article (36) to Article (43) thereof, and Article (37/2nd) of the same law stipulates (Whoever shall be punished by imprisonment for no less than one year: Second: He gives, offers or promises to give a voter a benefit to himself or others to get him to vote in a certain way or abstain from voting) and amended by Article (14) of the Third Amendment No. (4) of 2023, as Article (14) The text of item (2nd) of Article (37) of the law shall be deleted and replaced by the following: (Second: Entities and individuals that prevent political parties from opening their headquarters and practicing their electoral activities)). Whereas electoral crimes are one of the most important items to be contained in the electoral law due to their danger to the course of the electoral process, although the electoral legislation is aware of the organizational aspects of the electoral process in most of its details, but this did not prevent the election process from being subjected to various forms of manipulation. All of this violates the integrity of the elections, and thus the loss of the electoral process to an important pillar of its pillars, which is to gain the confidence of citizens in it, and since one of the requirements for building democracy in its proper form is the holding of free and fair elections, therefore, the use of illegal methods legally to influence the will of the voter leads to the political process being based on unfair elections, so preserving the freedom of the voter to vote is the essence of the electoral process, so since Article (20) of the Constitution stipulates that:

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(Citizens, men and women, have the right to participate in public affairs and enjoy political rights, including the right to vote, elect and be nominated) therefore, what is stated in Article (14) of Law No. (4) of 2023 Amendment Law The third of the Council of Representatives, Governorate Councils and District Elections Law No. (12) of 2018 is contrary to the provisions of Article (20) of the Constitution, which requires ruling it unconstitutional, then the text of item (second) of Article (37) of the original Law No. (12) of 2018, which states (give, offer, or promise to give

elector benefit himself or others to get him to vote in a certain way or abstain from voting). Therefore, for all of the above, the Court decided the following:

First: Ruling on the unconstitutionality of paragraph (Beh) of item (1st) of Article (5), item (3rd) of Article (6), paragraph (Jim) of item (1st) of Article (9), the phrase (Sabian Mandaean) of paragraph (Dal) of item (1st) of Article (9), paragraph (Heh) of item (1st) of Article (9) and Article (21) of Law No. (4) of 2023 Third Amendment Law to the Elections Law of the Council of Representatives, Provincial Councils and Districts No. (12) of 2018.

Second: Addressing and ruling on the unconstitutionality of Article (14) of Law No. (4) of 2023.

Third: Dismissing the plaintiffs' lawsuit regarding the appeal against the rest of the articles of Law No. (4) of 2023.

Fourth: The parties shall burden the relative fees and expenses, and each party shall charge the attorney's fees of the other party's attorney an amount of one hundred (thousand) dinars to be distributed equally among the plaintiffs' agents, in accordance with the law for the defendant's agent in addition to his position. 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) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 11/Sufur/1445 Hijri coinciding with 24/August/2023 A.D.

Judge

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