

Republic of Iraq
Federal Supreme Court
Ref 9/ federal /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussain, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Basim Khazal Khashan/Member of the council of Representatives.

The Defendant: Head of the Council of Representatives/ being in this capacity-his two agents, the official jurists Saman Mohsen Ibrahim and Aseel Samir Rahman.

The Request:

The plaintiff claimed in the lawsuit petition that law No. (4) of 2023 is the third amendment to the Council of Representatives Elections Law and the provincial councils and districts No. (12) of 2018, has collected the elections of the Council of Representatives and provincial councils in one law, and this is a legislative option that reflects the importance of provincial councils and local governments whose powers are not set limits by the constitution, while limiting the powers of the federal authorities and leaving everything that the constitution is silent about to regions and governorates that are not organized in a region, and favoring their laws in the event of disagreement over what comes out of the exclusive powers of the federal authority, in accordance with the principle of administrative decentralization contained in article (122/2nd) of the Constitution, according to which governorates that are not organized in the region were granted broad administrative and

Zainab

Republic of Iraq
Federal Supreme Court
Ref 9/ federal /2024



Kurdish text

financial powers, and the powers of all ministries were transferred to the governorates, expanding the limits of the powers of provincial councils and governors, doubling the funds allocated by the state to the governorates, and doubling their resources in accordance with the laws in force, so the position of a member of the provincial council became equivalent to the position of a member of the Council of Representatives, and the governor had a greater role in building the state, and in accordance with article (20/2nd/Beh) of the law on irregular Governorates in region No.21 of 2008, as amended by the Council of Representatives, the provincial council is dissolved by an absolute majority of its members based on the governor or one-third of its members, and in accordance with article (20/3rd/2), requests one-third of the members of the council or the dismissed member to object to the decision of the Council of Representatives to dissolve the council before the Administrative Court within fifteen days from the date of its issuance, this is in blatant contradiction with the constitution, because it encroaches on the powers of the Federal Supreme Court, which is competent in accordance with article (93/3rd) to hear cases arising from the application of decisions and actions taken by the Council of Representatives as one of the federal authorities, and in accordance with article (7/8th/2) of the law on Governorates Not Organized in a Region, the Council of Representatives may dismiss the governor by an absolute majority upon the proposal of the Prime Minister, the dismissed governor may, in accordance with article (8/8th/4), to appeal the decision of the Council of Representatives before the Court of Administrative Justice, and this is another violation of the powers of the Federal Supreme Court, and in accordance with article (6/3rd) of this law, a member of the Council may appeal the decision to terminate his membership before the Court of

Zainab

Republic of Iraq
Federal Supreme Court
Ref 9/ federal /2024



Kurdish text

Administrative Justice within fifteen days from the date of notification thereof, and the court shall decide on the appeal within a period of thirty days from the date of receipt of the appeal, and its decision shall be final, and this provision violates the principle of equality before the law, Immunizing the decision of the Administrative Court from appeal violates the principle of equality before the law, because all decisions that are subject to appeal before it are challenged before the Supreme Administrative Court, in all cases, the members of the provincial councils and the governors are elected and not entrusted with a public service from a central authority, but are entrusted with public service by the people who elected them, and the will and authority of the people exercised in accordance with article (20) of the Constitution by direct secret universal suffrage may not be subject to appeal before the Court of Administrative Justice, whereas articles (6/3rd) , (7/8th/4), and (20/3rd/2) exceed the powers of the Federal Supreme Court stipulated in Article (93/3rd) of the Constitution, it contradicts articles (14,16, and 20) thereof, so the plaintiff asked this court to rule it unconstitutional, and amend it by replacing the phrase "Court of Administrative Justice" with the phrase "Federal Supreme Court" in these articles, to correct this grave constitutional violation. After registering the lawsuit with this court No. (9/Federal/2024) and collecting the legal fee for it and informing the defendant of its petition and documents in accordance with article (21/I and II) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, his agents responded with the reply regulation dated 14/1/2024, and requested to reject the lawsuit due to the lack of interest condition for the plaintiff to file the lawsuit, it is also not permissible for him to replace the person who has the right to appeal, which is (the President of the Federal Supreme Court / being in this capacity), in addition to the fact that the article - subject to the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 9/ federal /2024



Kurdish text

appeal - was issued in accordance with the competencies of the Council of Representatives based on article (61/1st) of the Constitution. 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, in which the court was formed, and the plaintiff attended, the defendant's agents attended, the public presence pleadings were initiated, and after the court heard the statements of each party and completed its scrutinies, the end of the argument has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit included a request to rule on the constitutionality of Articles (6/3rd), (7/8th/4) and (20/3rd/2) of Law No. (4) of 2023 third amendment law to the Council of Representatives Elections Law and provincial and district councils No. (12) of 2018, for violating and inconsistent with the provisions of Articles (14, 16, 20 and 93/3rd) of the Constitution of the Republic of Iraq for the year 2005, for the reasons stated in his petition. Whereas the constitutional lawsuit, like other lawsuits, requires for its acceptance the fulfillment of the interest condition of the plaintiff at the time of its filing and until the issuance of the final judgment in it, as stipulated in Article (6) of the Civil Procedures law No. (83) of 1969, as amended, and Article (20) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, as it is required that the plaintiff in the subject matter of the lawsuit has a case-to-case, direct and influential interest in his legal, financial or social status, and that this interest is available starting from the establishment of the lawsuit until the issuance of a judgment, it is also required that the appealed text has actually been applied to the

Zainab

Republic of Iraq
Federal Supreme Court
Ref 9/ federal /2024



Kurdish text

plaintiff and that he has not benefited from the appealed text in whole or in part, and since the interest condition is in accordance with the foregoing statement is not realized in the plaintiff's lawsuit, so his claim must be to reject from this side, and according to the foregoing, the Federal Supreme Court decided to reject the lawsuit of the plaintiff Basim Khazal Khashan because there is no necessary condition for its establishment and charge him fees, expenses and attorneyship fees for the defendant's agents in addition to his job each of the human rights employees Saman Mohsen Ibrahim, Aseel Samir Rahman received an amount of one hundred thousand dinars distributed to them in accordance with the law. The decision has been issued unanimously, final and according to the provisions of the articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, 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 15/Ramadan/1445 A.H. corresponding to 26/3/2024 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

Zainab