

Republic of Iraq  
Federal Supreme Court  
Ref. (126/federal/2019) unified with  
(127/federal/2019), (130/federal/2019)  
(145/federal/2019), (148/federal/2019)



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 17/12/2019 headed by the Judge Medehat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

**The plaintiffs in the lawsuit (126/federal/2019):**

Muhamad Numan Abd Alrahman, Baidaa Salim Sulaiman, Ayman Numan Eada, Raed Abd Zaid Jadoee, Muhamad Juad Hamed, Husam Ali Hasan, and Jasim Muhamad Musaheb.

♦ Their agents the attorneys Dr. Eskander Najy Almasoudy and Nour Karem Alalawy.

**The plaintiffs in the lawsuit (127/federal/2019):**

Qaysar Ahmed Aukla, Falah Hasan Muhana and Saed Yasin Musa.

♦ Their agents the attorneys Muhamad Majed Alsaedy, Ahmad Mazen Makea and Husain Naser Alsaedy

**The plaintiffs in the lawsuit (130/federal/2019):**

Ahmed Banwan Hasan, Abd Alhusain Qadory Abd, Raad Khalid Authman and Wedad Abd Ali Erhaif.

♦ Their agent the attorney Ali Eed Khalaf.

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**The plaintiff in the lawsuit (145/federal/2019):**

The engineer Kareem Thabet Jasim Hasan Altimemy/ inspector  
general office of the internal affair ministry.

- ◆ His agent the attorney Zaineb Ali Husain Alseaedy.

**The plaintiff in the lawsuit (148/federal/2019):**

Raed Husain Ali

- ◆ His agent the attorney Oday Muhamad Harjan.

**The defendant:**

The speaker of the Iraqi council of representatives (I.C.R.)/  
being in this post- his agents the legal officials the director  
Salim Taha Yasein and the legal advisor Haytham Majid Salim.

**The claim:**

The agents of the plaintiffs claimed in the case petition that the  
defendant (the speaker of the I.C.R./ being in this post) has  
legislated the Law No.(24) of 2019 and approved by the President  
of the republic and was published in the official Gazette issue  
(4560) on 28/10/2019 were it include revoking the Order of the  
dissolved Coalition Authority No.(57) for 2004, as the mentioned  
Law was issued in contrary to the constitution and violation to its  
principle therefore they initiated a challenge of it unconstitutionality  
for the existence of serious interest for the plaintiffs and the public  
interest, and requested to rule to revoke it for the following reasons:

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**First:** The formal reasons:

1. The legislation of the challenged Law was in exceptional session and not ordinary one, the vote on it wasn't in the agenda of that session that the I.C.R. has held according to article (56/1<sup>st</sup>) of the constitution which was particulate for discussing the demands of the protestors only.
2. The mechanism of legislating the Law violated the constitution, as the previous judgments of the F.S.C. has decided that the law bills must be submitted by the executive authority and to be discussed in the Council of Ministers then to be presented on the State Council or throw the Presidency of the Republic, especially that legislating this Law has financial aspects and affected the legal posts of thousands of citizens from the personnel of these important offices, and cause confusion for the governorate and its work and its program, as it came under a parliamentary proposal without the executive power of the Council of ministers in pass over his constitutional role as the executive responsible to the general policy of the State according to the provisions of article (75) of the constitution.

**Second:** the objectives reasons:

1. the Council of Ministers has issued the divan order No.(47) of 2019 -which includes the appointment of the plaintiffs and transferring others to other ministries- according to his

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- jurisdictions of article (77/1<sup>st</sup>) of the constitution that authorized him to issue regulations, instructions, and decisions in order to implement the Laws, revoking this order under article (4) of the challenged Law authorize the executive authority of it constitutional jurisdictions, and represent violation to the principle of separation of powers.
2. There is no national interest from revoking the Law No.(57) of 2004 as the national interest require establishing oversee institutions to protect and conserve the public funds, which was included in the obligated reasons of legislating the revoked Law, while the obligated reasons of the challenged Law are brief and does not correspond to cause.
  3. The work of the inspectors general offices are stipulated in other Laws such as the integrity committee law No.(30) of 2011 article (21) of it, and the law of the financial supervision office No.(31) for 2011 articles (14, 7/2<sup>nd</sup>) of it.
  4. Abolish the offices of the inspectors generals came against the will and directions of the Council of Ministers to eliminate the scourge of corruption. For these reasons the agents of the plaintiffs requested the F.S.C. to rule the unconstitutionality of the Law No.(24) for 2019 with all its articles (1, 2, 3, 4, 5, 6) and its obligated reasons for violating the constitution.

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After informing the defendant with the case petition, his agents responded with the answering draft dated on (12/11/2019) that included the following:

1. The plaintiff has based on article (56/1<sup>st</sup>) of the constitution regard the subject of the exceptional session is irrelevant to the case subject, also listing the voting on the law was done according to article (37/2<sup>nd</sup>) of the I.C.R. Bylaw under the request of the Speaker and the approval of the members.
2. Referring to what the judicial of the F.S.C. in its decision No.(21/federal/2015 unified with 29/federal/2015) that authorizes the I.C.R. to legislate the laws which is in the origin a laws bills with controls available in the challenged law, and it is not obliged to present it to the council of ministers, also the challenged law didn't affect the principle of separation of powers, and didn't cause financial implications on the government but on the contrary, it caused positive financial implication on the public funds and didn't conflict with the governmental program and didn't regard the judicial authority, in addition, the challenged law stipulated in article (3/2<sup>nd</sup>) of it on protecting the legal positions of the employees of the inspectors offices and the plaintiff is not an agent for thousands of the mentioned employees and he shouldn't defending them without power of attorney or substantiation, and not of the council of ministers who deals with the law and issued group of decisions to

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implement it, also the plaintiff's agents didn't mentioned the constitutional text that support the lawsuit.

3. The I.C.R. is the one that express the people and represent them constitutionally and legally according to the constitution, the challenged law was enacted according to article (60/2<sup>nd</sup> and 61/1<sup>st</sup>) of the constitution as it represent legislative choice adopted by the council throw it legislative and constitutional jurisdictions.
4. The I.C.R. stipulated in article (5) of the challenged law on not to work by any text that contradicts with this law. For the aforementioned the agents of the defendant requested to reject the case.

After completing the required procedures according to the F.S.C. Bylaw No.(1) of 2005 the date (17/12/2019) was scheduled for the argument in the lawsuit No.(126/federal/2019), the court convened and call upon the parties of the lawsuit (127/federal/2019), the agents of the plaintiffs has attended Muhamad Majed and Ahmad Mazen Makea, the agent of the defendant has attended and started the argument in presence and public, the agents of the plaintiffs repeated the case petition and requested to judge according to it, the agent of the defendant repeated the answering draft and requested to reject the lawsuit for the reasons listed in it. During scrutiny the court found that there are several lawsuits filed in this court similar to the lawsuit 127 which is (126/federal/2019), (130/federal/ 2019),

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(145/federal/2019) and (148/federal/2019), in order to save time and effort and according to the provisions of articles (75, 76) of the Pleading law the court decided to unified these lawsuits and to consider them together and to regard the lawsuit (126/federal/2019) is the original as it was submitted first, and call upon the plaintiffs in the listed lawsuits, the agent of the plaintiff in the lawsuit (130/federal/2019) and the agent of the plaintiff in the lawsuit (148/federal/2019) has attended while the rest of the plaintiffs' agents in the unified lawsuits didn't attended despite the informing according to the law, the agents of the plaintiffs in the lawsuits repeated the case petition and requested to judge according to what listed in it, the agent of the defendant in the original and unified lawsuits repeated the answering draft and requested to reject the case for the reasons listed in it. The agents of the plaintiffs in the lawsuit (127/federal/2019) submitted answering draft summarized it stating that the defendant agent has admitted that the challenged law to be unconstitutional included a financial burden. The agent of the plaintiff commented that the answering draft didn't include any admission of any financial burden in the challenged law to be unconstitutional. During scrutiny the court found that the lawsuit judgments reasons are completed. The argument is closed and the decision is issued publicly.



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### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs in the original and the unified lawsuits has challenged the Law No.(24) for 2019 to be unconstitutional (the law of revoking the Order of the dissolved Coalition Provisional Authority No.(57) for 2004) for two reasons, first that the I.C.R. has legislated the law -subject of challenge- in an exceptional session as it wasn't listed on the agenda of that session, second reasons is that this law was not submitted by the executive authority but by the I.C.R. despite that it includes financial aspects and affects the legal positions of the citizens, the plaintiffs claimed that there is no national public interest from legislating this law, and it differ with the prime minister' tendency to fight corruption. the defendant/ being in this post replied that listing the voting on the law the subject of challenge in the session agenda was done according to article (37/2<sup>nd</sup>) of the I.C.R. Bylaw under a request of the council speaker and the approval of the members, and that legislating the laws as decided by the F.S.C. in its decision No.(21/federal/2015 unified with 29/federal/2015) doesn't contradict with the constitutional texts if it was submitted by the I.C.R. itself and that the law doesn't affect the principle of separation of powers, and don't cause financial burden on the government, and doesn't regard the affairs of the judicial authority. By reviewing the claim and the defendant's answer the F.S.C. finds that the issuance of the law No.(24) for 2019 (the law of revoking the Order of the dissolved Coalition Provisional Authority No.(57) for 2004) was not violating the constitution as it didn't affect the principle of separation of



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powers or cause financial implications added on the budget, and also didn't cause financial implications on the government, or affecting the affairs of the judicial authority, and it came as legislative choice for the I.C.R. according to it stipulated jurisdictions in article (61/1<sup>st</sup>) of the constitution, also there is no objection was received from the government against it legislation, therefore the plaintiffs case is not based on a substantiation of the constitution. Accordingly the court decided to reject it and to burden the plaintiffs the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars. This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C.'s law No.(30) for 2005 and issued publicly on 7/12/2019.