

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 134/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Ismail Mosbeh Muhammad Al-Waeli - his attorney, Mustafa Jassim Muhammad.

The Defendants: 1- The President of the Republic / being in his capacity - his deputy, the chief legal expert, Ghazi Ibrahim Al-Janabi.

2- Speaker of the Iraqi Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and jurist Saman Mohsen Ibrahim.

3- The Prime Minister /being in his capacity - his deputy the legal advisor Haider Ali Jaber.

The Claim:

The plaintiff claimed, through his attorney, that according to Legislative Order (71) of 2004, it organized the work of local governments after 9/4/2003 in how to choose the governor, his deputies, and the district directors, as well as how to choose the president of the

provincial council and the powers he enjoys, and because the governor is elected by The provincial council is also said by it, and when the law of governorates not organized in a region was enacted No. (21) of 2008, Legislative Order No. (71) of 2004 was repealed, to strengthen local governments in accordance with the principle of administrative decentralization contained in Article (122) of the constitution valid, the provincial council is not subject to the control or supervision of any party not linked to a ministry and has independent finance. Law No. (36) of 2008 regulating provincial, district, and sub-district council elections, as amended by Law No. (44) of 2008 and Law No. (54) of 2012, has also been enacted. The third amendment to Law No. (55) of 2012 and the fourth amendment to Law No. (114) of 2012, the explanatory decision of the FSC issued in No. (67/federal/2012) on 10/22/2012 considered the text of Article (13/fifth) of the Provincial Councils Elections Law No. (36) for the year 2008 to be unconstitutional because what was stated in it led to the diversion of votes Voters to those whose will is not directed to elect them, and amended by Law No. (12) of 2018, and Article (48) of it stipulates ((The duration of the electoral cycle for the Provincial Council and the Judiciary shall be (4) four calendar years starting with its first session)), and this article is consistent with the provisions of Article (56) of the Constitution, which states: “First – The duration of the electoral cycle of the Council of Representatives shall be four calendar years, beginning with its first session and ending at the end of the fourth year. Secondly, the election of the new Council of Representatives shall take place forty-five days before the date of the end of the session previous election)) thus, a return to the harmonious harmony between the work of the Council of Representatives and the work of the Provincial Council in determining the duration of the legislative session in the Council of Representatives is in the Provincial Council, and because the clear principle in democratic work is that in the absence of the legislative authority (the Council of Representatives), the Council of Ministers is considered resigned and continues (conducting daily affairs) as stated in

the provisions of Article (64), and this applies to the work of governors in the absence of provincial councils, and because the second defendant has enacted Law No. (10) of 2018, which includes repealing Articles (3-4-5-12-14-15) of Law of governorates not organized in a region No. (21) of 2008, and because the FSC's decision issued in No. (117/federal/2019) on 2/5/2021 ruled that Article (14/1st) of Law No. (10) of 2018 was unconstitutional As well as repealing Article (15) of the same law regarding its abolition of Articles (4 and 5) of the Provincial Law. Therefore, the solution of the provincial councils is correct and sound, and the work of the governors must be transformed into something similar to the situation of ministerial work, which must be under the supervision of the work carried out by the governors, similar to what the executive authority does in the absence of the legislative authority, which is concerned with legislation and oversight, and for the reasons presented above. The plaintiff requested the FSC to invite the defendants to plead and oblige them to transfer the governors' work to (conducting daily affairs) as of the date of the end of the provincial councils' work and charge them fees, expenses, and attorney fees. The case was registered with this court in No. (134/federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/3rd) of the FSC's bylaw No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/1st) from the same bylaw above, the first defendant's attorney answered the President of the Republic/ being in his capacity, in the answer draft dated 11/19/2021 and included the following: **1.** The FSC is not competent to hear the case because the decisions related to the provincial councils and how the work goes on in their governorates and the governors are subject to appeal before the Administrative Court. **2.** There is no apparent interest for the plaintiff in his request to transfer the governor's business to the management of daily affairs in accordance with what was decided by Article (6) of the bylaw of the FSC No. (1) for the year 2005 because the plaintiff did not provide evidence that real harm had been caused to him.

3. The plaintiff did not specify the type of constitutional violation in the governors carrying out their current duties, and his desire to issue an order defining the governors' daily actions despite the presence of this provision in the law of governorates not organized in a region, as the governor is responsible for all the governorate's services and running work in it under the supervision of the head of the council Ministers, the highest executive official in the state, and the Council of Representatives. This authority is among the core duties of the governor, and it may not be restricted, as is the case with the competent minister. 4. The functions and duties of the Council of Ministers defined by the constitution include all governorates of Iraq, and they are tasks related to political, social, economic, and security matters that may affect the functioning of the Council, which is formed in the future. Who is the supreme responsible for the work of his province in providing services to the citizens of the province, and because the tasks of the governor are purely service and administrative works that do not go beyond sovereignty and contracts with security or long-term economic dimension, yet his actions are subject to oversight? 5. The enforcement of the powers of the heads of local units is a guarantee that they will continue to provide services in accordance with the tasks outlined in the Provincial Councils Law. Accordingly, the governor has the authority and authority to determine the provision of public services to the governorate. 6. What Article (61/2nd/dal) of the Constitution indicated, with regard to the withdrawal of confidence from the entire Council of Ministers, that the Prime Minister and the ministers continue in their positions to manage daily affairs, is a temporary measure that may not last for a long time, and because The work of the Council of Ministers is of importance to the conduct of state affairs. The work of the Council of Ministers cannot be measured with the work of the governors, and there is a great discrepancy between their duties, so they cannot be equated in the conduct of daily matters, and the expression (the conduct of daily affairs) has not been clearly defined in the laws. Therefore, he requested that the plaintiff's lawsuit be dismissed and he is charged with fees, expenses, and

attorney's fees. The two attorneys of the second defendant, the Speaker of the Council of Representatives/ being in his capacity, responded to the answer list dated 19/10/2021 and requested that the case be dismissed as a form for the lack of interest from the appeal, and no evidence of damage to the plaintiff as required by Article (6) of the court's internal system, and that the plaintiff's request focuses obligating the legislative authority to transfer the work of governors to the work of managing daily affairs, and that this requires, for example, the enactment of a law or the amendment of law (legislative intervention), and that this matter is outside the jurisdiction of the FSC specified in Article (93) of the Constitution, therefore, they requested that the plaintiff's lawsuit be rejected and that he be charged with all legal fees, banks, and attorney's fees. The third defendant's attorney, the Prime Minister/ being in his capacity, responded to the answer draft dated 21/11/2021, which included the following: **First:** From the formal point of view: The plaintiff's lawsuit lost one of the conditions it instituted based on Article (6/2nd and 3rd) of its internal system regarding the availability of interest and harm to the plaintiff, and his request is outside the jurisdiction of the court specified in Article (93) of The constitution and Article (4) of its law, as he did not specify the legal text challenging his constitutionality, and did not reinforce his request with a legal or constitutional basis, in addition to the fact that what he requested requires legislative intervention to legislate new legal texts that address this issue if the legislator finds real reasons that require that and all of these matters do not fall within the jurisdiction of the FSC. **Second:** From an objective point of view: 1. the direction of Law No. (27) of 2019, and in accordance with what was stated in Article (2) of it, that the governor and his two deputies continue to exercise the tasks and powers stipulated in Provincial Law No. (21) of 2008, as an exception to the provisions of Article (30) of it, came as a legislative option that convenes for the Council of Representatives which represents the people to ensure the functioning of public utilities and not to disrupt them in a manner that guarantees the provision of services to the public.

2. The plaintiff's claim is legally rejected, as the FSC Decision No. (155/federal with its unified/2019) stated that the governor and his two deputies are subject to two types of constitutional oversight: parliamentary oversight in accordance with the powers of the Council of Representatives, and administrative oversight by the executive authority, especially since The executive work that he exercises within the governorate is linked to all the federal ministries, so the ruling was requested to dismiss the appeal in form and substance, and to charge the plaintiff with expenses, fees, and attorney fees. After completing the procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading in accordance with the provisions of Article (2/2nd) of it, and the parties were informed of it. On the appointed day, the court was formed. The attorney general of the plaintiff, Mustafa Jassim Muhammad, attended. On behalf of the first defendant, his representative, Ghazi Ibrahim Al-Janabi, the chief legal expert, attended and on behalf of the second defendant and his attorney, the legal employee, Saman Mohsen Ibrahim, and behalf of the third defendant, the legal advisor Haider Ali Jaber attended. The pleading was commenced in public and immanence. The plaintiff's attorney repeated what was stated in the lawsuit pleading and requested a judgment accordingly. The defendants' attorneys repeated their statements contained in their answer drafts and requested that the lawsuit be rejected on behalf of their clients for the reasons stated in their drafts, and where there is nothing left to be said, the end of pleading has been made clear and the court issued the following judgment decision:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff requested to invite the defendants/ being in their capacity, to plead and judge the transfer of the governor's work to the conduct of daily affairs, starting from the date of the end of the work of the provincial councils and charging them with fees and expenses. **First:** It is stipulated in the ordinary lawsuit that the interest that is a condition for accepting the lawsuit must be available. Interest means the practical benefit that accrues to the plaintiff if he is judged by his requests contained in the lawsuit. If there is no benefit recognized by law for the plaintiff in his lawsuit, it is not accepted. The purpose of the lawsuit is to protect, necessitate, or ascertain the right or obtain material or moral satisfaction. Therefore, the condition of interest deals with the existence or non-existence of the right to pursue the lawsuit, Article (6) of the Civil Procedures Law No. (83) of 1969, as amended, stipulated in The case is that the plaintiff has a known, conditional, feasible and verified interest. However, the potential interest is sufficient if there is reason to fear causing harm to those concerned. The aforementioned article permitted the claim of a deferred right, provided that the term is taken into account when ruling on it. In this case, the plaintiff bears the costs of the lawsuit. Article (6/1st) of the FSC C's bylaw No. (1) of 2005 required that the plaintiff in the case have a direct, immediate, and influential interest in his legal, financial or social position, although all of this was not achieved by the plaintiff in this case. **Second:** The main purpose of the direct constitutional lawsuit is to achieve judicial protection for constitutional rights, as no person can use this right unless he has an interest in this appeal and there is no interest since the law is not applied to those who claim an interest in filing a constitutional lawsuit as the article stipulates (6/6th) of the internal system of the FSC provided that the text required to be repealed has been applied to the plaintiff or is intended to be applied to him. Constitutionalism is unacceptable.

Third: The plaintiff's interest in the constitutional lawsuit must be direct and real, and that this is achieved if the legislative text whose constitutionality is challenged would cause direct harm to the plaintiff if it was applied to him, and that the harm would not be theoretical, future, or unknown. Therefore, item (3rd) of Article (6) of the bylaw of the FSC required that the damage be direct and independent of its elements and can be removed if a ruling is issued that the legislation required to be repealed is illegal, and the availability of interest requires that the plaintiff not have benefited from part of the text required to be repealed based on clause (5th) of the aforementioned article, therefore, and for all of the above, and since the plaintiff's request to transfer the governors' work to managing daily affairs as of the date of the end of the work of the provincial councils contradicts the provisions of Article (6) of the FSC's bylaw No. (1) of 2005 because the conditions of interest that must be met in the case are not met by him The FSC decided the following:

1. The ruling rejecting the claim of the plaintiff, Ismail Mosbeh Muhammad Al-Waeli.
2. Charge the plaintiff with fees, expenses, and attorney fees for the defendants' attorneys/ being in their capacity, an amount of one hundred thousand dinars to be distributed among them in accordance with the law and issued by agreement based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5) of the FSC Law No. (30) of 2005 as amended by Law No. (25) for the year 2021 final and binding on all authorities and the decision had made clear public on 9/Jumada al-Ula/1443 coinciding with 14/December/2021.