

Republic of Iraq  
Federal Supreme Court  
Ref. 16 / federal / 2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 9.6.2021 headed by Judge Jasem Mohammad Abbood 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:**

The Prime Minister /in addition to his post, his agent the legal advisor Haider Al-Soffy.

**The Defendant:**

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official director Saman Muhsen Ebraheem.

**The claim:**

The agent of the plaintiff claimed that the defendant (the speaker of the I.C.R. in addition to his post) has enacted article (3) of the Law of Second Amendment for the Law of Governorates and Distracts' Councils Elections No.(12) of 2018 which states that (the members of the Council of Representatives, as far as the matter is concerned with the governorate they represents, shall exercise supervision and oversee over the work of the governor and his two

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deputies in each governorate and submit the necessary recommendations in this regard to the Council of Representatives), as the function of the I.C.R. is limited to enacting laws under the provision of article (61/1<sup>st</sup>) and monitoring the executive authority according to article (61/2<sup>nd</sup>), but the I.C.R. has enacted the text subject of challenge adding new competence to himself which is oversee the work of the governor and his deputies in each governorate, as the oversight exceed the limit of the monitoring the practice of executive work and interfering the functions of the executive authority, and violate the principle of separation of powers stipulated in article (47) which obligates that no authority interfere the work of any of the other three authorities, that what has been decided by the judgments of the Federal Supreme Court in its decisions No.(57/federal 2011), (11/federal/2013), and (140/141/federal/2018). Therefore, the agent of the plaintiff requested the F.S.C. to rule the unconstitutionality of the text regarding granting the I.C.R. members the authority to oversee the work of the governor and his deputies mentioned in the article (3) of the Law of Second Amendment for the Law of Governorates and Distracts' Councils Elections No. (12) of 2018 and to burden him the expenses and fees. The agent of the defendant responded with the answering draft dated 17.2.2020 requesting to dismiss the lawsuit because it is based on interpretation of the legal text which makes it out of the jurisdiction of the Federal Supreme Court according to the provision of the article (93/1<sup>st</sup>) of the Constitution, as interpreting the law is the jurisdiction

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of the State Council, also the text subject of the challenge came as legislative choice according to the jurisdiction of the I.C.R. under article (61/1<sup>st</sup>) of the Constitution, it doesn't violate any of the texts listed by the plaintiff' agent. After completing the required procedures according to the article (2/1<sup>st</sup>) of the F.S.C. bylaw No. (1) of 2005, the court scheduled the date 1.6.2021 for the argument as the implementation of the article (2/2<sup>nd</sup>) of that bylaw, on that date the court convened and call upon the parties, they attended and started the in presence public argument, the agent of the plaintiff repeated the case petition requesting to rule according to it, adding that granting the right of oversight to the I.C.R. over the work of the governors contradicts articles (114) and (115) of the Constitution. the defendant agents responded that they requested to dismiss the lawsuit for the reasons listed in their answering draft dated 17.2.2020. The court decided to close the argument to issue the decision, the following decision was issued publicly.

### **The decision:**

During scrutiny and deliberation by the F.S.C. of what listed in the plaintiff claim and the drafts of the parties and what their agents submitted in the argument session, it found that the plaintiff' agent requested to rule the unconstitutionality of article (3) of the law No.(27) of 2019 (the law of Second Amendment to the Law of Governorates and Distracts' Councils Elections No.(12) of 2018 which states that (the members of the Council of Representatives, as

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far as the matter is concerned with the governorate they represents, shall exercise supervision and oversee over the work of the governor and his two deputies in each governorate and submit the necessary recommendations in this regard to the Council of Representatives), he based his request to that the tasks of the I.C.R. under the provision of article (61/2<sup>nd</sup>) is limited to monitor the executive power, in time the text under challenge added new competence to the I.C.R. which is oversee the work of the governor and his deputies, as the oversight exceed the limit of the monitoring the practice of executive work and interfering the functions of the executive authority, which is violation to the principle of separation of powers, in addition, granting such jurisdiction to some of the I.C.R. members consider as violation to the provision of the Constitution because they don't have the authority granted to the Council, as the Council decisions are issued by the majority. This court finds that the plaintiff lawsuit was under the court consideration in the lawsuit No.(155/federal/2019 with its unified) which was decided on 2.6.2021 by dismissing the challenge, whereas the court finds that stipulating the right of the I.C.R. members to oversee and monitor the work of the governor and his deputies doesn't violates the constitutional provision for the reasons listed in details, and as the decisions issued by the F.S.C. are final and binding on all powers including the executive power that the plaintiff in addition to his post is one of its two pillars, so if the court decided the constitutionality of legal text which has been challenged by persons or official parties, the final and binding characters of that

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decision would eliminates the interest of filing another lawsuit to challenge the constitutionality of the same text, whether it is filled by the same person or party or by different plaintiff, as the interest is fundamental condition for initiating lawsuit according to the provision of article (6) of the amended Civil Procedures Law No.(83) of 1969, in addition to what required in the F.S.C. bylaw No.(1) of 2005 of special conditions for the interest that is required in order to accept the constitutional lawsuit, accordingly, the lack of interest is binding to dismiss the lawsuit, therefore the Federal Supreme Court decided the following:

1. dismiss the plaintiff lawsuit.
2. burden the plaintiff in addition to his post the expenses and fees for the defendant agents amount of (one hundred thousand) IQ.D distributed according to the law.

This decision has been issued according to article (94) of the Constitution of 2005, and article (5) of the Federal Supreme Court amended law No. (30) for 2005, and article (6) of the F.S.C. bylaw No. (1) of 2005 unanimously and final, issued publicly on (27. Shawal .1442) AH., (9.6.2021) A.D.

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Signature of  
The president

**Jasem Mohammad  
Abbood**

Signature of  
The member

**Sameer Abbas  
Mohammed**

Signature of  
The member

**Ghaleb Amer  
Shnain**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Khalaf Ahmad Rajab**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Abdul Rahman  
Suleiman Ali**

Signature of  
The member

**Diyar Muhammad  
Ali**

**Athraa**