

Republic of Iraq
Federal Supreme Court
Ref. 22 / federal / 2020



Kurdish text

The Federal Supreme Court (F.S.C.) convened on 13.6.2021 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:

Jamal Maolod Babeer/ his agent the attorney Ahmed Fateh Allah Abas.

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 Saman Muhsen Ebraheem.

The claim:

the plaintiff claimed that the I.C.R. has voted on 26.11.2019 on amending the Law of electing the councils of governorates, districts, and sub-districts No. (12) of 2018, which includes terminating the work of these councils from the date of its issuance, as this decision of voting to amend the law violates the Constitution in the article (93/1st, 2nd, 3rd, 4th) we challenging it for the following reasons:

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First: the governorate's Council is stipulated constitutionally in chapter two section five (governorates that are not incorporated in a region) article (122) of it (1st, 2nd, 3rd, 4th, 5th) its continuance grant the legitimacy for the governor and his deputies, the absence of the Council means illegitimacy of the governor and his deputies.

Second: The constitutional articles stated that Iraq is Federal in the article (116).

Third: The I.C.R. is obligated constitutionally according to the provision of the article (56) of the term of four years, a new Council to be elected before (45) days of the end of its term, as for the governorates Council there is no such obligation, the continuation of their work until the elections stipulated in the Governorates Councils Law, and that the councils do not bear the responsibility of not holding the elections, but rather it is the responsibility of the government, Parliament and the Commission, therefore their work must continue until they hand over power to a new council so that there is no constitutional vacuum.

Fourth: The competencies of the I.C.R under the provision of the article (61) of the Constitution are:

1. Enacting federal laws.
2. Oversee the executive power. This indicates that the I.C.R. has no authority on the governorates councils, and ends its work according to articles (116) and (122).

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Fifth: Article (13) of the Constitution stated, 1. this Constitution is the preeminent and supreme law in Iraq and shall be binding in implementation. 2. no law that contradicts this Constitution shall be enacted. The I.C.R. contradicts the Constitution when enacted the law of elections in articles (61, 66, 105, 106, 110, 111, 47, 48, 93/4th and 5th, 94, 100, 112, 113, 114, 115) and chapter fifth section one articles (116, 119/1st and 2nd, 121) section two chapter fifth article (122) and article (123) and chapter four local administrative, articles (125, 131, 141, 144), these articles includes the governorates rights represented by its elected councils.

Sixth: it is clear that the parliament has violated the constitution and the law through its decisions that it took outside the scope of the authorities granted to it by the constitution and the law, and the work of the governorates councils must continue until new elections are held or until the case before your esteemed court is resolved.

Seventh: The second amendment law of the governorates councils elections law No. (12) of 2018 included constitutional and legal violations, as article (21/1st, 2nd, 3rd) set the legal path for dissolving and ending and the election method of the council so that no constitutional vacuum in the governorate and the administrative unites, despite our conviction that the original legislation of the governorates councils law and the governorates councils elections law is contrary to the Constitution and the

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right to be robbed from the governorates, which are responsible for legislating local laws based on the Article (122/1st, 4th) of the Constitution.

For these reasons and other reasons your esteemed court deems, I ask your court to call upon the defendant for argument, set a date for that, and rule to cancel all legal texts in violation of the constitution in the aforementioned law. The case petition was registered and its legal fee was collected on 3.2.2021 by the No. (22/ Federal/2020), according to the provision of the article (1/3rd) of the bylaw of the F.S.C. No. (1) of 2005, the defendant was informed with the case petition, his agent responded by the draft dated on 26.2.2020, his defenses stated that:

1. The law of governorates not organized into a region No. (21) of 2008 stated in article (4) of it the election term of councils of four calendar years started at its first session, also the law of electing the councils of governorates, districts No. (12) of 2018 assure the legal term of the Council work mentioned in the article (48) of it of four calendar years started in its first session.
2. The legitimacy of the continuation of the work of the governorates, district, and sub-district councils despite the expiry of the four years specified by the law derives from the provisions of article (44/3rd) of the also the law of electing the councils of governorates, districts No. (12) of 2018, which stipulates that (the work of the governorates districts and sub-districts councils that are not organized in a region, shall end on 1.3.2020, it is a

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legislative option of the Council of Representatives, which represents the will of the people). Law No. (14) of 2019 the Law of the First Amendment to the Governorates, District, and Sub-district Elections Law No. (12) of 2018 to confirm once again that the work of the governorate councils that are not organized in the region, districts and sub-districts will end on the same mentioned date (1.3.2020) in accordance with Article (13/third) thereof to give it legal legitimacy to carry out its functions.

3. Law No. (27) of 2019 the Second Amendment Law to the Governorates, District and Sub-district Elections Law No. (12) of 2018, which decided to amend the date for the end of the work of governorate councils that are not organized in a region, districts, districts, and municipal councils affiliated with them due to the end of the legal period prescribed for them in performing its tasks and responsibilities entrusted to it to regulate the work of the local administrations of the governorates that are not organized in a region, as Article (1) of the law stipulates (ending the work of the governorates councils that are not organized in a region and the councils of districts and sub-districts).
4. The effective date of the provisions of Law No. (27) of 2019 the Second Amendment Law of the Governorates, District and Sub-district Elections Law No. (12) of 2018 will be on 26.11.2019 in accordance with what was decided by Article (5) as it represents the date of voting on the law that entails that the functional tasks

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and legal positions of the members of the councils covered by its provisions shall be ended.

5. The direction of Law No. (27) of 2019 in accordance with the provisions of Article (2) thereof, decided that the governor, his two deputies, and heads of administrative units would continue to exercise the tasks and powers stipulated in the Governorates, District and Sub-district Elections Law No. (12) of 2018 as amended, as well as what was stated in the provisions of Article (3), according to which the members of the Council of Representatives, as far as the matter is concerned with the governorate he represents, are granted the right to supervise and control the work of the governor and his two deputies in each governorate and to make the necessary recommendations in this regard is in accordance with the nature of the competences of the governor and heads of administrative units mentioned in the article (31) of the law No. (21) for 2008 related to the implementation of the general policy set by the federal government within the borders of the governorate, this competence represents an integral part of the powers of the Council of Ministers established in accordance with the provisions of Article (80/1st) of the Constitution), the plaintiff was notified of the answering draft submitted by the defendant's agent, in addition to his post.

after completing the required procedures in accordance with Article (2/1st) of the aforementioned bylaw, the date (2.6.2021) was

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appointed as the date for the pleading in implementation of the provisions of Article (2/2nd) of the aforementioned bylaw, in which the court was formed and the parties were summoned, so the two parties' attorneys attended and started the public pleading, the plaintiff agent repeated the case petition adding that his client claim is based on challenging the constitutionality of the law No.(27) of 2019, the Second Amendment Law of the Governorates and District Council Elections Law No. (12) for the year 2018 for the reasons listed in the case petition, he presented to the court a list in the light of what was mentioned in the answering draft submitted by the defendant's attorney in addition to his post, provide the defendant's attorney, in addition to his post, a copy of it, which included (Attached to our draft submitted before your esteemed court on 27.1.2020, we would like to state the following:

1. Kirkuk governorate is of a special legal nature since Coalition Authority Order No. (71) of 2004 is still valid, and where it can be said that the existence of a legislative conflict and contradiction between those laws in force.
2. Law No. (36) for the year 2008 and its amendments is considered the basis for the governorates elections in the Republic of Iraq, and Article (23) of it has given privacy to the Kirkuk Governorates Council and outlined a way for its election in paragraphs (3) And (4) and (5) thereof, and that the continuation of the work of the Kirkuk Governorates Council came in the fifth of this legal article, therefore, Kirkuk is not

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covered by Governorates Law No. (21) of 2008 and its amendments.

3. Article (35) of the Governorates and Districts Councils Elections Law No. (12) for the year 2018 stipulates (the elections for the Kirkuk governorate and district councils will be held in accordance with the provisions of this law).
4. Article (51) of it also stipulates (The Governorates, District and Sub-district Council Elections Law No. (36) for the year 2008 shall be canceled with the exception of Article (23) of the law until local elections are held in Kirkuk).

For all these reasons and other reasons that your esteemed court deems appropriate, we repeat what was stated in the petition of the case and request a ruling that the termination of the work of the Kirkuk governorate councils is unconstitutional and the abolition of all legal texts that contradict the constitution. the defendant agents responded requesting to dismiss the lawsuit for the reasons listed in the draft dated 5.5.2020, the court checked the regulations presented by the two parties' attorneys, and after the two parties' attorneys repeated their last statements and requests, the court found that the case had become completed for the reasons for the judgment, so it decided to close the pleading and set June 13, 2021, as the date for issuing the judgment, and with it was formed and issued the decision of the following judgment and publicly understood on the date of 13 /6/2021.

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The decision:

Upon examination and deliberation by the Federal Supreme Court and after reviewing what was stated in the plaintiff's lawsuit, it became clear that its summary included: (challenging the unconstitutionality of Law No. (27) of 2019, the Second Amendment Law of the Governorates and District Council Elections Law No. (12) of 2018, especially Article (1) thereof, which stipulates that ((clause (Third) of Article (44) of the law shall be amended and replaced by the following: Third: Termination of the work of the governorates councils that are not organized in a region and the District Council and its sub-districts), for violating the Constitution of the Republic of 2005 with articles (61, 66, 105, 106, 110, 111, 47, 48, 93/4th and 5th, 94, 100, 112, 113, 114, 115, Chapter Five, part one, Article 116, 119/1st and 2nd, 121 and part two, Chapter Five, Article 122, Article 123 and part four, Local Administrations 125 and Article 131, 141 and 144) for the reasons referred to in detail in the case petition, on the basis of the foregoing, he requested to rule the unconstitutionality of all legal texts that contradict the constitution contained in the aforementioned Second Amendment Law, which decides to end the work of the governorates councils, especially the Kirkuk Governorate Council. The Federal Supreme Court finds that the plaintiff's lawsuit is binding to be dismissed formally as it already has been adjudicated, based on the decision issued by this

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court in No. (155/Federal/2019 unified with 157, 160, 161, 162, 164, 165, 166, 167, 168, 171/2019 and 5/Federal/2021) on 2.6.2021. For the reasons indicated in it in detail, on the basis of which it was decided to reject the appeal of the unconstitutionality of Law No. (27) of 2019, the Second Amendment Law of the Governorates and District Council Elections Law No. (12) of 2018, especially Article (1) of it, which stipulates that (clause (Third) of Article (44) of the law to be amends and replace with the following: (Third: Termination of the work of the governorate councils that are not organized in a region and the District Council and its sub-districts), based on the decision issued by this court No. (117/Federal/2019) on 2.5.2021, according to which it was decided that Article (14/first) of Law No. (10) of 2018 was unconstitutional, the Third Amendment Law to the Law of Governorates Not Organized in a Region No. (21) of 2008, which stipulated that (the current governorates and district councils shall continue it work until the election results of the new councils are released), for the reasons referred to in detail, since the rulings issued by this court are final and binding on all authorities based on the provisions of Article (94) of the Constitution and Article (5/Second) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) for the year 2021 and Article (17) of the Federal Supreme Court bylaw No. (1) for the year 2005, and since the judgments issued by the Iraqi courts that have achieved the degree of finality are plea of the rights they have decided, and it is not permissible to accept evidence that contradicts them according to

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articles (105, 106) of the Evidence Law No. (107) of 1979, as amended, and as the plaintiff's lawsuit was previously decided according to the aforementioned detail, which means that he has no interest in filing the lawsuit, and since the constitutional lawsuit revolves with the interest, whether or not existed, if this court decides the constitutionality of a law or a provision in it or its unconstitutionality, the final and mandatory character on all authorities and individuals, enjoyed by the ruling issued by it, would deny the existence of the interest of the plaintiff and nullify it, if the case is filed again to challenge the unconstitutionality of the same law whose constitutionality the court previously ruled, whether the lawsuit was filed by the same plaintiff or another plaintiff, and since the lawsuit are not valid, if it was filed without interest based on Article (6) of the Civil Procedures Law No. (83) of 1969 as amended and Article (6/First) of the bylaw of the Federal Supreme Court, which stipulated that the interest in the case to be direct and influential in the legal position of the plaintiff, and it must be present and available when the case is instituted and until a judgment is issued in it, and since the plaintiff's lack of interest in filing the case is due to a prior ruling in it, therefore, the plaintiff's lawsuit is obligatory to be dismissed formally. the Federal Supreme Court decided to rule on the following:

First: to reject the lawsuit of the plaintiff, Jamal Mouloud Babir, submitted to this court by his attorney, Ahmad Fathallah Abbas, in the number (22/Federal/2020), to appeal: (The

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unconstitutionality of Law No. (27) of 2019, the Second Amendment Law of the Governorates and District Council Elections Law No. (12) of 2018, especially Article (1) of it, which stipulates that (Clause (Third) of Article 44 of the law to be amended and replaced by the following: Third: Ending the work of the governorate councils that are not organized in a region and the council of districts and sub-districts affiliated to it).

Second: charging the plaintiff, Jamal Mawloud Babir, with attorney fees, like the attorneys of the defendant, the Speaker of the Council of Representatives / in addition to his post, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars, distributed according to the law, the decision of the ruling was issued by agreement, finally based on the provisions of Article (94). From the Constitution of the Republic of Iraq for the year 2005 and Article (5/Second) of the Federal Supreme Court Law No. (30) for the year 2005 as amended by Law No. (25) for the year 2021 and publicly understood on (2/ Dhu al-Qa'dah/ 1442 AH.) corresponding to 13.6.2021 AD.

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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**

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