

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 32/federal/2021 unified with
37/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14. 9 .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 in the lawsuit (32/federal/2019): The Minister of Finance /being in his capacity - his attorneys are legal employees Khalil Ibrahim Nasser, Janan Abdul-Jalil Abdul-Karim, and Shatha Ashour Alwan.

The Plaintiff in the lawsuit (37/federal/2021): Governor of Wasit /being in his capacity, his agent is the legal advisor, Sahib Matar Khabat.

The Defendant: Speaker of Council of Representation/being in his capacity
his agents are legal advisor Haitham Majed Salem and human rights officer Saman Mohsen Ibrahim.

The Claim:

The plaintiff, the Minister of Finance/being in his capacity, claimed that the defendant/being in his capacity had legislated Law No. (10) of 2018 (the Third Amendment Law of the Law of Governorates Not Organized in a Region No. (21) of 2008), in contrast to the government project established by Cabinet Resolution No. (389) of 2016 And the

defendant's addition of articles and paragraphs that constitute financial burdens on the state treasury without taking the opinion of the government about the amendments and additions, and in violation of the provisions of the Iraqi constitution and what the constitutional judiciary has settled in Iraq, as explained below: 1. The Constitution has approved a parliamentary system based on the principle of distribution of powers and respect for each authority, the powers and authorities of the other authority, and this is what was approved by Article (47) of it. Under Article (80) of the Constitution, the (Council of Ministers) has the authority to present bills as one of the two pillars of the executive authority (the Council of Ministers and the Prime Minister) Republic), which is entrusted with, and under Clause (1st) of Article (60), presenting draft laws, and since the draft law differs from the proposed law since the latter is only an (idea) and the idea is not a project unless it makes its way to one of the aforementioned implementers. The Council of Representatives by adding or amending that causes the addition of financial burdens without taking the opinion of the Council of Ministers, and this violates Article (130) of the Council of Representative's bylaws. 2. Article (13) of the law stipulates regulating the legal status of the members of the local councils mentioned in this law, the provincial councils and the district councils, before the enforcement of this law, as follows: First: Referral to retirement for those who meet the conditions for obtaining the pension, since the respondents are not referred to retirement, However, their relationship with the position ends at the end of the electoral cycle or one of the reasons for the termination of membership mentioned in Article (6) of the law, which is not among its paragraphs referring to retirement. 3. It was stated in Article (12) Paragraph (1) of Item (1st) of Article (45) of the Law (Transfer of subsidiary departments, devices, jobs, services and competencies exercised by ministries (municipalities and public works, construction and housing, labor and social affairs, agriculture, finance, Youth and Sports) and this was not mentioned in the submitted government project, and the Budget

Department in the Ministry of Finance requested, in its letter No. (51833) on 29/7/2018, that it be provided with the cost incurred more than what is planned to implement the above-mentioned law. 15) of the contested law Articles (3, 4, 5, 12, 14, and 50) of the law shall be repealed, and the phrase (district council) shall be deleted wherever it appears in the law. It came in the government project, but deleting Article (5) leads to a defect in the legal basis of the law, and its cancellation leads to the cancellation of the conditions that must be met in running for membership in the councils. Therefore, he requested to invite the defendant to plead and judge the following: A. Suspension of the contested articles until the court's decision. B. Ruling that Article (13) of Law No. (10) of 2018 was unconstitutional for violating Article (130) of the Council of Representatives' bylaw, as it constitutes a financial burden on the state's treasury, and the approval of the Council of Ministers has not been obtained. C. Judging the unconstitutionality of Article (12) of Law No. (10) of 2018 for violating Article (130) of the Council of Representatives' bylaw, because its implementation constitutes a financial burden, and the government's approval for the amendment was not taken. D. Judgment to cancel the inclusion of Article (5) of Law No. (21) of 2008 with Article (15) of Law No. (10) of 2018 for breaching the provisions of Law No. (10) of 2018, and charging the defendant with fees, expenses and attorney's fees, and based on the provisions of Article (1/3rd) of the bylaw of the FSC No. (1) of 2005 The case was registered with this court in the number (32/federal/2019) and the defendant/being in his capacity is informed of its petition and all documents attached to it in accordance with the provisions of Article (2/1st) of the aforementioned system and his attorneys, Legal Counsel Haitham Majed Salem, and legal employee Salem Taha Yassin, in accordance with the regulations submitted by them on 4/14/2019, replied that the plaintiff's claim/being in his capacity, must be answered for the following reasons:

1. The plaintiff's attorney relied on the violation of Article (13) of the law, subject of the case, of Article (130) of the Council of Representatives' bylaw, and the fact that the Council of Representatives has a constitutional mandate to legislate federal laws in accordance with Article (61/1st) of the Constitution and has the right to amend The addition and deletion of the texts that he deems necessary, and that the text under appeal does not constitute a financial burden, as the plaintiff's attorney argues, as the first paragraph of it refers (referral to retirement for those who meet the conditions for obtaining the pension salary) and this paragraph is consistent with the general provisions of the Unified Retirement Law No. (9) for the year 2014, as well as the return of the employee from them to his job after the end of his membership, and this is a legislative option that does not violate the provisions of the constitution and the internal system of the Council of Representatives.

2. The plaintiff's representative points to the violation of Article (12) of the law subject of the case to Article (130) of the internal system of the Council of Representatives, and that the aforementioned text includes the transfer of sub-departments, agencies, and jobs to the governorates with their appropriations allocated to them in the general budget, and there is no basis for the prosecutor's protest that this It arranges financial burdens, the allocations are the same as those approved by the general budget.

3. The plaintiff's attorney's request is to cancel the inclusion of Article (5) of Law No. (21) of 2008 with Article (15) of Amendment Law No. (10) of 2018 and that the aforementioned text was a legislative option, and the plaintiff/being in his capacity has no interest to include an appeal against him. For the reasons mentioned above, the defendant's attorney/ being in his capacity requested that the plaintiff's lawsuit/being in his capacity be dismissed and that he be charged with all judicial expenses. After the court completed all its procedures, a date was set for the pleading in accordance with the provisions of Article (2/2nd) of the bylaw and notifying the two parties of it. Legal Counsel Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim and started the public

pleading procedure. The two attorneys of the plaintiff reiterated what was stated in the lawsuit petition and requested a ruling according to what was stated in it. The defendant's attorney requested to dismiss the lawsuit for the reasons mentioned in the regulation dated 14/4/2019. And when the court decided in a session on 7/7/2021 to unify the case (37/federal/2021), the plaintiff is the Governor of Wasit/ being in his capacity and the defendant is the Speaker of the Council of / being in his capacity with this case based on the provisions of Article (76/2) of the Law Civil Pleadings No. (83) of 1969, amended, and considering the case (32/federal/2019) as the original, for the unity of the subject matter of the two lawsuits, where the plaintiff (Wasit Governor/ being in his capacity) claimed that the defendant (the Speaker of the Council of Representatives/ being in his capacity) had previously issued Law No. (10) of 2018 (the Third Amendment Law to the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended) where Article (12/1) of it stipulates (The text of Paragraph (1) of Clause (1st) of Article 45) shall be canceled. From the law and replaced by the following: 1. Transferring the sub-departments, organs, jobs, services, and competencies exercised by the ministries (municipalities and public works, construction and housing, labor and social affairs, agriculture, finance, youth, and sports) with their appropriations allocated to them in the general budget and their employees and workers to the governorates Within the scope of its functions set out in the Constitution and related laws, gradually The role of the ministries remains in planning the general policy, and the Minister of Education and the Minister of Health, each according to his competence, must delegate the necessary powers, which are issued by instructions from the Council of Ministers.) And he challenges the unconstitutionality of the aforementioned article for the following reasons:

1. The text of Article (12/1) of the aforementioned amendment contradicts the provisions of Article (122) of the Constitution, which states: “The governorates that are not organized in a region are granted broad administrative and financial powers to enable them to manage their affairs in accordance with the principle of administrative decentralization. That is by law). 2. The text of Article (12/1) of the amendment contradicts the text of Article (115) of the Constitution, which states: “Everything that is not stipulated in the exclusive powers of the federal authorities is within the authority of the regions and governorates that are not organized in a region, and the other powers shared between The federal government and the regions, in which priority is given to the law of the regions and governorates that are not organized in a region, in the event of a dispute between them). Article (114) of the constitution defines the common powers between the federal authorities and the regional authorities and stipulates in paragraph (6th) of it that (the general educational and educational policy is drawn up in consultation with the regions and governorates that are not organized in a region). 4. The text of Article (12/1) of Law No. (10) of 2018 added exclusive competencies to the exclusive competencies stipulated in Article (110) of the Constitution instead of being eight paragraphs that made them nine, and this is considered a constitutional amendment inconsistent with Articles (5) and (13) of the constitution. 5- The constitutional legislator was conscious of giving the governorates wide powers that would enable them to manage their financial and administrative affairs in accordance with the principle of administrative decentralization in line with the increasing numbers of the population and the diversity and increase of their needs and the need for the federal authorities to pay attention to the main issues of a sovereign nature such as defense, foreign affairs, financial and customs policy, which are considered acts of sovereignty. For all of the above, the plaintiff’s request is the Governor of Wasit /being in his capacity, to invite the defendant to plead and judge the unconstitutionality of Article (12) of Law No. (10) of 2018 (the Third Amendment Law to the Law of

Governorates Not Organized in a Region No. (21) of 2008 as amended) and charge him fees and expenses and attorney fees. And when the court decided to include the head of the National Pension Agency/ being in his capacity as a third person in the case for clarification from him, And when the representative of the third person clarified that the former members of the provincial councils were granted pension rights based on the necessary conditions in the amended Unified Pension Law No. (9) of 2014 As for the law of governorates not organized in a region No. (21) of 2008, it is based on the provisions of Article (18) From him, according to which they were granted pension rights if they had a one-year job service or if they were disabled, and this included council members who held their positions before the issuance of Provincial Law No. (21) of 2008. As for members of provincial and district councils that were formed after the enforcement of Law No. (21) of 2008, they are entitled to the pension salary after the end of the four-year electoral cycle or disability and the issuance of Law No. (15) of 2010 Law of the First Amendment to the Law of Governorates Not Organized in a Region. For the year 2008 and by the same law, members of municipal councils were granted pension rights based on the provisions of Article (55/2nd) of the same law, and Articles (37 and 38/3rd) of the Law were canceled. Unified retirement following the FSC Decision No. (36/federal/2014), and thus the general rules for granting pension rights were referred to. After the court completed its clarification from the third person, he decided to remove him from the pleading, and on 9/10/2019, the prosecutor's deputy, the Minister of Finance/being in his capacity, submitted a request to this court that included a challenge to the unconstitutionality of Article (6) of Law No. (10) of 2018 the Third Amendment Law of governorates that are not organized in a region. The attorneys of the two parties repeated their requests and statements, and since there was nothing left to be said, the end of pleading has been made clear, and 14/9/2021 was set as the date for the issuance of the decision, and on the day appointed for the issuance

of the decision, the court was formed and issued the decision of the following ruling in public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff in the lawsuit (32/federal/2019) the Minister of Finance /being in his capacity claimed that the defendant is the Speaker of the Council of Representatives /being in his capacity, Law No. (10) of 2018 (the Third Amendment Law of the Law of Governorates Not Organized in a Region No. (21) of 2018 legislated 2008) in contrast to the government project established under Cabinet Resolution No. (389) of 2016 and the defendant adding articles and paragraphs that constitute financial burdens on the state treasury without consulting the government, in violation of the provisions of Article (47) of the Constitution of the Republic of Iraq for the year 2005, which stipulated: (The federal authorities consist of the legislative, executive and judicial authorities, exercising their powers and tasks on the basis of the principle of separation of powers) and also in violation of the provisions of Paragraph (1st) of Article (60) of the Constitution, which stipulates (drafts of laws are submitted by the President of the Republic and the Council of Ministers.) Article (80/2nd) of the constitution, which stipulates that (The Council of Ministers exercises the following powers: Second: Propose draft laws) and also violated Article (130) of the Council of Representatives' internal system, so the plaintiff requested a ruling that Articles (6), (12) and (13) and (15) regarding their inclusion in Article (5) of Law No. (10) of 2018 (the Third Amendment Law to the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended), where the aforementioned Article (6) stipulates that (repealed The text of item (2nd) of Article (17) of the law and replaced by the following (Second: In return for their service in the local council, members of local councils are entitled to a monthly remuneration equivalent to the salary and allowances received by the assistant director general, and the President of the Judicial Council shall

receive a monthly remuneration equivalent to the salary and allowances received by the Director-General. Article (12) of the same law stipulates that (the text of Paragraph (1) of Clause (1st) of Article (45) of the law shall be repealed and replaced with the following: 1. Transferring the sub-departments, organs, jobs, services, and competencies exercised by the ministries (Municipalities and Public Works, Construction and Housing, Labor and Social Affairs, Agriculture, Finance, Youth and Sports) with their appropriations allocated to them in the general budget and their employees and workers to the governorates within the scope of their functions outlined in the Constitution and the laws The relevant authorities gradually, and the role of the ministries remains in planning the public policy. The Minister of Education and the Minister of Health, each according to his competence, delegate the necessary powers, which are issued by instructions from the Council of Ministers. Article (13) of the law stipulates (regulating the legal status of members of the local councils mentioned in this law) (Provincial councils, district councils, and district councils) the problem before the enforcement of this law is as follows: First: Referral to retirement for those who meet the conditions for obtaining a pension. Be an employee according to his qualifications) Article (15) stipulated that (the provisions of articles (3, 4, 5, 12, 14, 50) of the law shall be repealed, and the phrase (the district council) shall be deleted wherever it appears in the law) and the plaintiff's request in the case (37/federal/2021) Wasit Governor /being in his capacity to call the defendant the Speaker of Parliament /being in his capacity to plead and rule the aforementioned Article (12/1) unconstitutional, the FSC finds that the federal authorities in Iraq and based on the provisions of Article (47) of the Constitution of the Republic of Iraq for the year 2005 consist of legislative, executive and judicial authorities It exercises its competencies and tasks based on the principle of separation of powers. The federal executive authority, in accordance with Article (66) of the Constitution, consists of the President of the Republic and the Council of Ministers. It exercises its powers in accordance with the constitution and the law. The

Council of Ministers exercises its specific powers under Article (80) of the Constitution, including planning and implementing the general policy of the state and supervising The work of ministries and agencies not associated with a ministry, so the Council of Ministers, which consists of all the ministries that make up the Iraqi government, is the one who implements the general policy of the state, and the one who manages the Council of Ministers is the Prime Minister Based on the provisions of Article (78) of the Constitution, and the responsibility of the Prime Minister and Ministers before the Council of Representatives is joint and personal, based on the provisions of Article (83) of the Constitution. Therefore, the ministries must abide by the general policy approved by the Council of Ministers as a part of it, and the general policy approved by the Council of Ministers is a reflection of the total policies approved by all the ministries on it. The challenge to the unconstitutionality of law before this court as it contradicts the government project or is Arranges additional financial burdens that must be one of the tasks and competencies of the Council of Ministers represented by the Prime Minister. Therefore, the claim of the Minister of Finance /being in his capacity is obligatory in this regard. As for the governor of Wasit /being in his capacity, according to the provisions of Article (122 /3rd) of the Constitution is considered The chief executive officer in the governorate to exercise his authorized powers as stipulated in Article (31/3rd) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, that (the governor shall exercise the following powers: Third: Implementation of the general policy set by the federal government within the boundaries of the governorate) and thus the governor is obligated to follow the general policy set by the federal government and he may not deviate from that. It is drawn up by the Council of Ministers and the relevant ministries, and the aggrieved party may appeal the decision issued before the competent court within (15) fifteen days from the date of its notification, and its decision shall be final of the constitution and that the Council of Ministers is the one who plans and implements the

general policy of the state and supervises the work of ministries and entities not associated with a ministry in accordance with what was stated in Article (80/1st) of the constitution. Appealing the unconstitutionality of law as it contradicts the government project, as this is within the competence and tasks of the Council of Ministers, especially since the governor represents an extension of the executive authority represented by the Council of Ministers. Therefore, the claim of the plaintiff, the governor of Wasit /being in his capacity, must be answered by the litigant side. Accordingly, and for all of the above, the FSC decided to rule dismissing the plaintiffs' case, the Minister of Finance /being in his capacity and the governor of Wasit /being in his capacity, because the litigation was not directed to them and charged them with fees, expenses and attorney fees for the plaintiff's attorney /being in his capacity, legal adviser Haitham Majid Salem and legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand Dinars are to be distributed between them in accordance with the law, and the ruling was issued by agreement conclusively and binding on all authorities in accordance with the provisions of Articles (78), (80), (83), (94) and (122/3rd) of the Constitution of the Republic of Iraq for the year 2005 and Article (5/2nd) of FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and had made clear public on 6/Safar/1443 coinciding with 14/September/2021.

Signature of
The president

**Jasem Mohammad
Abod**

Signature of
The member

Samir Abbas Mohamed

Signature of
The member

Ghaleb Amer Shnain

Signature of
The member

Haider Ali Noory

Signature of
The member

Haidar Jaber Abed

Signature of
The member

Khalf Aihmad Rajab

Signature of
The member

Ayoub Abbas Salih

Signature of
The member

**Abdul Rahman Suleiman
Ali**

Signature of
The member

**Diyar Muhammad
Ali**