

Republic of Iraq
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The Federal Supreme Court (F S C) has been convened on 5/10/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mayor of Maysan/ being in this capacity- his agents the official jurists Ali Mujbil Zaer, Ali Hashin Dawood, and Abdul Zahra'a Hussein Najim.

The defendants: 1- the Prime Minister/ being in this capacity – his agent the legal counselor Hayder Al-Sofi.

2. Speaker of the ICR/ being in this capacity- his agent the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

3. Minister of Health/ being in this capacity – his agents the official jurists Laith Ismaeel Khaleel and Fareed Kdhim Sidra.

4. Minister of Education/ being in this capacity – his agents the official jurists Neeran Khaleel Ibrahim and Adham Abul Aziz Challab.

5. Minister of Finance/ being in this capacity- his agent the official jurist Jamal Ali Hussein.

6. Minister of Labour and Social Affairs/ being in this capacity –his agent the official jurist Mohammed Abdul Razzak Abdul Kareem.

7. Minister of Agriculture/ being in this capacity – his agent the official jurist Salam Hano Hameed.

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8. Minister of Youth and Sports/ being in this capacity – his agent is the official jurist Laith Hazim Abdul Rahman.
9. Minister of Reconstruction, Housing, Municipalities, and Public Labours/ being in this capacity – his agent is the senior legal counselor Haytham Ali Khudhair.

The Claim

The plaintiff/ being in this capacity by his agent claimed that the Constitution of the Republic of Iraq in 2005 granted the provinces broad administrative and financial powers to enable them to manage their affairs in accordance with administrative decentralization and this is regulated by law under article (122/2nd) of it as well as the terms of reference of the Federal Authority under article (110) of it, as well as specifying the common terms of reference under article (114) of it, the Second Amendment to the Law on Irregular Provinces in The Territory of No. (19) of 2013 set out the amendment provided for in article (12) First) from him to establish the high body for coordination between the provinces headed by the Prime Minister and the membership of the ministers referred to in the article above-mentioned and Governors and heads of governorates councils have the task of transferring the sub-departments, organs, functions, services and competences exercised by the ministries referred to in the article above with their appropriations allocated to them by the general budget and employees and workers to the provinces within the scope of their functions described in the Constitution within two years of the date of the effectiveness of this law and automatically transferred by law after the end of that period as well as according to Law No. (10) of 2018, the third amendment of the governorates law which annulled the text of paragraph (1) of section

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(1st) of article (12) and emphasized the transfer of departments, organs, functions, services and competences exercised by ministries (municipalities and public works, reconstruction and housing, work and social affairs, agriculture, planning, finance, youth and sports) and thus the federal ministries have the development of plans and public policy through constitutional institutions and sectoral committees and since the defendants did not comply with the provisions of the Constitution and the laws in force and the ministries took procrastination and did not commit to the transfer of powers and competences to The province violates the aforementioned constitutional texts and the powers of the ministries (health and education) are granted by authorization of instructions issued by the Council of Ministers. Therefore, the plaintiff/ being in this capacity requested the Federal Supreme Court to judge that the defendants must transfer the powers referred to in the Constitution and the laws in force above, and that article (12) of Law No. (10) of 2018 (the third amendment of the governorates not incorporated into a region Law) is unconstitutional. The case was registered with this court in the number (87/Federal/2021) and the legal fee was met based on the article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendants with its petition According to the article (2/1st) of the Bylaw above, the first defendant's agent (prime minister/being in this capacity) replied in the answering draft of 17 August 2021 as following: first: formally: 1. The appeal is filed outside the legal period as the plaintiff did not object to the transfer of powers in court within (15) days of the date of notification, otherwise, the decision is based on the text of the article (45/3rd) of the Provincial Act No. (21) of 2008 (amendment) so that the appeal is not supported by the law, which requires its response formally because the period specified for the appeal is an inevitable period

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resulting in the failure to observe the fall of the right to appeal. 2. Article (93) of the Constitution had determined the Bylaw of the Federal Supreme Court, not including the decision on the transfer of powers, in addition to the inability to apply article (4/1st) of its law as the subject of the earlier appeal does not relate to the dispute of jurisdiction between the federal government and the province and therefore comes out the subject of Appeal against the jurisdiction of the honorable court, which has already issued its numbered decision (99/federal/2017) dated 14/11/2017 to have jurisdiction only in matters stipulated in article (31/11th/3) of the law of governorates not incorporated into a region. Second: objectively: The Federal Government has implemented article (45) of the provincial law through the formation of the supreme committee for coordination between the provinces and the authority has applied article (45) of the provincial law through the transfer of powers, departments, employees, personnel and budgets to the provinces, and this was done on the approval of the provinces, in addition to the fact that the governors are represented in the aforementioned body. Moreover, the Council of Ministers' decision No. (62) was issued for 2019 to transfer the allocations of real estate owned by the Ministry of Finance and used and occupied by federal ministries to the provinces. The plaintiff also did not specify the constitutional articles proving the unconstitutionality of the article in question, which excluded the ministries (education and health) from transferring their authority to the provinces, nor had the Federal Court issued its numbered decision (80/federal/2018) dated 11 June 2018, which included that the legislation of article (12) of the Third Amendment Law of the governorates not incorporated into a region and maintain the role of the ministries in the planning of public policy which became as a legislative choice that doesn't violate the provisions

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of the Constitution because the governorates are a part of the federal system. For the ongoing reasons, and for other reasons which the Court may see, he requested to reject the case of the plaintiff formally and objectively and to burden him with the case's expenses and the advocacy fees. The defendant's agents (speaker of the Council of Representatives/ being in this capacity) responded to the answering draft of 2 August 2021 and requested from the court to reject the case because it was considered outside its jurisdictions specified under article (93) of the Constitution and because the plaintiff did not make a constitutional violation, and the article in question was a legislative option for the Council of Representatives and its implementation is entrusted to the executive branch, so the case must be rejected by the litigation as well. The third defendant's agent (Minister of Health/ being in this capacity) responded to the answering draft dated 8 August 2021, which included the following: 1. The state council previously issued decision No. (79/2018) on 31 July 2018, which created a legal principle that the Third Amendment Law of the Governorate not incorporated into a Region of 2018 (10) re-linked the departments of the Ministries of Health and Education in the provinces to the two ministries mentioned). 2. According to the letter of the General Secretariat of the Council of Ministers/Legal Department numbered (Sin/05/16358) on 21 June 2021, the provincial health services have been reconnected with the Ministry under the Third Amendment Law of Governorates not incorporated into a region Law and the Health Insurance Law No. (22) of 2020 and are not covered by the transport referred to in the budget. 3. Article (38) of the Health Insurance Law abolished the association of all health departments with the provinces, removed them from the provincial councils, and returned them centrally to the Ministry of Health and abolished all legal provisions allowing the association of

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health departments in the provinces. 4. The Administrative Judiciary Court previously issued its decision No. (1184/2020) on 26/February/2020) which included ((the judgment of obliging the defendant, the governor of Najaf/ being in this capacity to disengage the Najaf Health Department from the province and reconnect it with the Ministry of Plaintiff the Minister of Health/ being in this capacity)) which became final. 5. The abolition of all letters and circulations addressed to the health departments and compliance with the laws issued by the Iraqi Parliament and the circulations issued by the General Secretariat of the Council of Ministers as the authorities responsible for organizing the affairs of all ministries and their government departments and institutions and obliging them to implement the circulations and directives issued by the Federal Ministry to promote the health reality in the provinces, which has been hit by the delay as a result of the administration in the provinces and its lack of competence. Accordingly, and for ongoing reasons, he requested to reject the case of the plaintiff and to burden him with the expenses and fees. The fourth defendant's agent (Minister of Education/ being in this capacity) answered according to his answering draft dated 24 August 2021: 1. There is a contradiction between the plaintiff's petition before the Federal Supreme Court and his petition before the Administrative Court of Justice, which he filed, demanding that the Ministry of Education be obliged to implement the Third Amendment No. (10) of 2018 and the cancellation of the letter of the Ministry of Education in the issue of 20336 in 31/12/2020, which includes the reconnection of provincial education directorates with conservative gentlemen, as stated in his petition, is based on the fact that this book contains a clear legal violation of the Third Amendment Law of the Governorates Law No. (21) of 2008. 2. The plaintiff issued

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administrative order No. (14) in the issue (99) on 20 February 2020, in which he aims to restore the central powers and link the departments of education in the provinces to the Ministry of Education to unify administrative procedures and to keep educational and health cadres away from the attractions of the transfer of powers and to ensure the stability of the legal centers, where it is mentioned in paragraph (1) of it to reconnect the Directorate General of Education of Maysan with the Ministry of Education and this is another clear and explicit contradiction between the administrative order above and its lawsuit before the distinguished court. 3. The Council of State was invoked on the transfer of sub-departments and powers to the Ministries of Education and Health after the issuance of the third amendment law earlier, and the Decision of the Council of State in the number (77) for the year 2018 to reconnect the departments of the ministries of education and health in the provinces with the two ministries mentioned. 4. The letter of the General Secretariat of the Council of Ministers in the issue (Sin/2/5/42/1816) on 21 June 2021 included the obligation to implement Cabinet Resolution No. (159) of 2021 paragraph (5) on the activation of the text of the article (12) subject of the case as much as the matter of reconnecting the Directorates-General of Education in the provinces with the Ministry to end the conflict of jurisdiction between the ministry and the province concerned. Accordingly, he requested to oblige the plaintiff to clarify the contradiction in the petition of his case which was filed before the FSC, and between what he presented before the Administrative Judiciary Court and to reject his case because it lacks the legal substantiation, in addition to burden him the all the expenses and the advocacy fees. The agent of the fifth defendant (the Minister of Finance/ being in this capacity) answered by the answering draft dated 24/August/2021 as

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follows: First: formally, he requested that the case be dismissed from his client based on the article (4) of the Civil Procedures Law No. (83) of 1969 amended because he could not be an adversary because he was not the one who issued the law in question, and the discrepancy in the plaintiff's requests was required to dismiss his claim based on section (64) of the Amended Evidence Law No. (107) of 1979. Second: objectively: 1. The functions, tasks, and competencies performed by his client's department/ being in this capacity are sovereign functions and therefore cannot be transferred to the provinces because article (110) of the Constitution specified the exclusive powers of the federal authorities, including the authority listed in paragraph (3rd) of which to draw up fiscal and customs policy, issue currency and draw up the general budget of the state. Article 2 of the Federal Financial Administration Law No. (6) of 2019 amended stipulates that (the federal-state budget consists of a centrally funded government sector budget that includes the budgets of all spending units in their current and investment sectors, which are determined under the Federal Budget Law), and expenditures on investment projects for self-funded departments, expenditures and revenues of the governorate and governorates not incorporated into a region, and article (2/V) of Law No. (19) of 2013 (Second Amendment Law of the Law of governorates not incorporated into a region No. (21) for 2008 stipulates that (local governments exercise the powers established by them in the Constitution and federal laws in local affairs except the exclusive jurisdictions of the federal authorities provided for in article (110) of the Constitution) so it is not possible to transfer the departments and tasks performed by his client's office to the governorates, and article (114) of the Constitution provided for the common competences between federal and local authorities in the territory and governorated

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not incorporated into a region, including the development of fiscal policy. 2. The Treasury Directorate in the province cannot be technically linked to the province because of the existence of other departments operating within the scope of the province but not related to it (i.e. the province) but directly related to the treasury of the province, considering that the latter does its work according to its specifications in the Bylaw of his client's department No. (1) for the year 1990 amended has a current account in which revenues are deposited and expenses are recorded and carry out the previous audit of all related departments and unify the accounts at the end of each month and send them within the unified account of each month of his client's office to enable it from putting the necessary allocations, and make the financing of each Ministry or body not incorporated to a Ministry or Governorate according to the provisions of the article (31/1st/Beh) of the federal finance administration law No. (6) for 2019 amended which stipulated (the Treasury Department in the province should be technically linked to the Federal Ministry of Finance and be responsible for the validity of its financial and accounting transactions). The same applies to taxes, where it is not possible to transfer the branches of the General Tax Authority (one of the formations of his client's department) and make them related to the province since administrative performance will not be possible to deal with the tax system as a single unit if it is dispersed between the provinces, and this is contrary to the provisions of article (110/3rd) of the Constitution and it is no secret that taxes are one of the instruments of fiscal policy and so on for matters of customs and the preparation of the general budget of the state and other issues that fall within the policy The state's finances and therefore it is not possible for the tasks of his client's department to be limited to a particular province because its functions are federal and go beyond the

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scope of the work of a particular province. 3. The role of his client's department in the issue of disengagement and transfer of departments is nothing more than the opening of two accounts (operational and investment) in the province because its departments (for his client's department) are not limited to one province, but go beyond them to all provinces, so they are not covered by the terms of the transfer of powers. This was stated by the High Authority for Coordination between the Provinces in its two letters (3/160 on February 11, 2016, and 1/407 on April 2, 2018). 4. The General Secretariat of the Council of Ministers indicated in its numbered letter (Qaf/2/2/21/4804) on 16 February 2016 that the concept of (sub-departments) goes to departments whose scope of work is limited to the province and provides direct services to their children and that the Ministry of Finance is not covered by the provisions of the transfer of powers listed in the article (45) of the Law of governorates not incorporated into a region No. (21) for the year 2008 amended. 5. That his client's department/ being in this capacity has shown its readiness and full cooperation with the provinces, including the plaintiff's department / being in this capacity (Maysan province) by taking all measures on the subject of the transfer of powers and functions to the ministries covered by this, under its circulation numbered 8821 on 19 /1/2016 and its numbered letters (21646) on 6/11/2016 and (22266) on 14/11/2016. Therefore, and for ongoing reasons, he requested to dismiss the case against his client/ being in this capacity and to burden the plaintiff with all the expenses and fees. The sixth defendant's agent (Minister of Labor and Social Affairs/ being in this capacity) answered by his answering draft dated 24 August 2021 and requested to dismiss the case from his client and to burden him with all fees and expenses because the powers were transferred to the provinces, personnel and jobs except

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those that it is one of the exclusive powers of the Ministry under labor law No. (37) of 2015 and Article 4th of the International Labour Convention No. (81) of 1947 on labor inspection, which states (work inspection is placed under the supervision and control of central authority...) and the Small Income-Generating Enterprise Support Law No. (10) of 2012 and the Industrial Services Regulation Law No. (30) of 2000, in addition to the fact that the regulation of the foreigners' residence is an exclusive jurisdiction of the federal authority under article (110/5th) of the Constitution. The agent of the seventh defendant (Minister of Agriculture/being in this capacity) replied in the answering draft dated 24 August 2021 that his client proceeded to implement the article in question and as permitted by agricultural legislation under the ministerial orders mentioned in his draft, that the directorates of agriculture in the provinces that were disengaged from the ministry became non-ministry entities and that agricultural legislation provided for the authorization of the Ministry of Agriculture or its Minister exclusively and can not be authorized to the provinces and departments until after the issuance of law or legislation to do so. He, therefore, requested that the plaintiff's case be dismissed for not being based on a legal basis and to burden him with fees, expenses, and advocacy fees. The eighth defendant's agent (Minister of Youth and Sports/being in this capacity) responded with an answering draft requesting that the case be dismissed because it was not based on a law basis because the Ministry of Youth and Sports complied with the provisions of the article in question and transferred the employees from its staff to the staff of the Maysan by the Administrative Order (4155 on 5 March 2017). The ninth defendant's agent (Minister of Reconstruction, Housing and Public Municipalities/being in this capacity) responded with a letter requesting dismissal because his client had implemented

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the provisions of the article in question except for the exclusive powers of the Minister exclusively listed in the special laws (35 of 2002 / Roads and Bridges Law) and (21 of 2013 / Law on the Sale and Rent of State Funds) and Cabinet Resolution No. 10 of 2018. After completing the proceedings in accordance with the provisions of the Bylaw mentioned above, a date was set for the case and the parties were informed in accordance with article (2/2nd) of the aforementioned Bylaw and on the appointed day the court was formed, and the plaintiffs' agent, the official jurists Ali Hashim Daoud and Abdul Zahra Hussein Najm, attended by the defendants and their aforementioned agents, except the Minister of Youth, who did not attend or represent him despite being informed in accordance with the law, and did not send a legitimate excuse and the public in presence argument proceeded. The defendants' agents answered the case for the reasons listed in their answering drafts, and each party's agent repeated his previous statements and requests, and where there is nothing left to say, the end of the argument has been made clear, and 5 October 2021 was appointed as the date for the decision, in which the court was formed and issued the following decision.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff/ being in this capacity claimed that the Constitution of the Republic of Iraq in 2005 granted the provinces broad administrative and financial powers to enable them to manage their affairs in accordance with administrative decentralization, which is regulated by the law based on an article (122/2nd) It specified the jurisdictions of the Federal Authority under article (110) of it as well as

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the common jurisdictions under article (114) of it, and subsequently passed the Second Amendment to the Law of governorates not incorporated into a region No. (19) of 2013 Under article (12) of it, article (45) of Law No. (21) of 2008 was repealed and replaced by a new text bearing the same number, which included paragraph (1st) of the amended article (45), under the aforementioned Second Amendment to establish a higher body for coordination between the provinces headed by the Prime Minister and the membership of the ministers referred to in the article mentioned above and governors and heads of provincial councils with the task of transferring the sub-departments, offices, jobs, services and competences exercised by the ministries referred to in the aforementioned article with their allocations in the general budget and employees and workers to the provinces within the scope of their functions described in the Constitution within two years of the effective date of this law. Since the defendants did not comply with the constitution and the laws in force, the ministries were delayed and not obliged to transfer powers and competencies to the provinces, and the powers of the ministries (health and education) were granted through a mandate of instructions issued by the Council of Ministers under article (12). From the Third Amendment Law No. (10) of 2008, he, therefore, requested that defendants be invited to plead and rule that they be obliged to transfer the powers referred to in the Constitution and the laws in force and the unconstitutionality of Article (12) of Law No. (10) for the year 2018 (the third amendment of governorates not incorporated into a region law No. (21) for 2008). The FSC finds that the request of the plaintiff/ being in this capacity to oblige the defendant to transfer the powers aforementioned in the Constitution and the laws in effect doesn't go within the jurisdictions of this Court which determined by the article (93) of the Republic of

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Iraq Constitution for 2005 and the article (4) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. Moreover, the jurisdiction of the Federal Supreme Court listed in the Law of governorates not incorporated into a region No. (21) of 2008 is limited to the article (31/11th/3) of it and it is not within this jurisdiction to decide on the plaintiff's application/ being in this capacity, as for the request of the plaintiff to judge by unconstitutionality of the article (12) of the law No. (10) for 2018 (the third amendment of the governorates not incorporated into a region law No. (21) for 2008 amended) which stipulated (the text of paragraph (1) of the item (1st) of the article (45) of the law shall be annulled, and the following takes its place:- first: Transfer of sub-departments, offices, jobs, services and specialties practiced by ministries (municipalities, public works, reconstruction and housing, work and social affairs, agriculture, finance, youth, and sports) with its funds allocated to it in the general budget and employees and workers to the provinces within the scope of its functions described in the constitution and related laws gradually and the role of ministries in planning for public policy and on both the Minister of Education and the Minister of Health each according to his competence delegate the necessary powers, which are issued under instructions from the Council of Ministers). This court has already issued its decision in the number (80/federal/media/2018) on 11 June 2018, which includes ((The Legislation of the Council of Representatives for Article (12) of Law No. (10) of 2011 8 (challenged) is within his legislative choice and from his powers stipulated in article (61/1st) of the Constitution and does not include a violation of the provisions of article (122/2nd) of the Constitution, so the case is lacking its legal basis and accordingly the court decided to dismiss the case). Accordingly, and because the Court previously decided on the same

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subject of this case according to the aforementioned decision, this case shall be rejected from this aspect. Accordingly, the Court decided to reject the case of the plaintiff the governor of Maysan/ being in this capacity and to burden him with the fees, expenses, and advocacy fees for the agents of the defendants/ being in their capacities amount of one-hundred thousand Iraqi dinars divided between them according to the law. The decision has been issued unanimously, final, and binding for all powers according to the articles (93 and 94) of the Republic of Iraq Constitution for 2005, and articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 27/Sufur/1443 Hijri which coinciding 5/October/2021 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

**Signature of
The member**

**Sameer Abbas
Mohammed**

**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**

**Abdul Rahman
Suleiman Ali**

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**Signature of
The member**

**Diyar Muhammad
Ali**

**Signature of
The member**

**Ghalib Amir
Shunayen**

**Signature of
The member**

Ayoob Abbas Salah