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The Federal Supreme Court (F S C) has been convened on 15.5.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Aboud Salih Al-Tamimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge, and they made the following decision:

The Plaintiff: Minister of electricity/ being in this capacity – his agent the official jurist (nun.alif.heh).

The first Defendant: Mayor of Dhi Qar/ being in this capacity – his agent the official jurist (ain.ain.jeem).

The second defendant: Head of Dhi Qar governorate Council/ being in this capacity – his agent official jurist (jeem.ain.meem)

### The Claim

The agent of the plaintiff claimed that Baghdad today news agency published that Mayor of Dhi Qar had rejected denationalizing of electricity, and he considered this matter a threat to the governorate. He also called upon all southern governorates to stand in one line before electricity tariff, and this matter will burden the citizens' shoulders. He claimed that going on the collecting project threatens civil peace in the southern governorates, whereas he requested to make electricity tariff realistic and takes in consideration the economic status of the people, and to return to the previous tariff which canceled on 1.1.2016 because it was the most suitable. Also, the defendant/ being in this capacity announced on 23.2.2017 his rejection to the Ministerial project of denationalizing electricity

distribution sector. He described it by unsuccessful and requires specific mechanisms for the participation of local governments. According to above-mentioned, she wanted to clarify the following: - the general secretariat of the Cabinet/ legal department previously issued a number of decisions which concerns Councils of governorates rejection for projects of collecting, rehabilitation and maintenance of electricity network according to their letter No. (28079) on 29.8.2017. This letter granted it the right to challenge before your Court according to provisions of item (3rd) of article (93) of the Constitution, including the letter of Dhi Qar governorate Council presidency No. (8072) on 18.7.2017 which captioned to Dhi Qar governorate to not proceed the investor and cease all works that related to this project (collecting) according to the two decisions of Dhi Qar governorate Council No. (3) For 2016 and (5) For 2017 on 8.5.2017. Worthy to mention service and collecting contracts were corresponding to the policy of the State and the Federal budget law. It also corresponds to the social status of all citizens' levels, in addition to the power it provided because of consumption reduction processes. Therefore, the biggest number of people will enjoy electricity service, and according to that the agent of the plaintiff requested from the FSC (to judge by annulling the governorate's Council decisions according to the Ministry of electricity law No. (53) For 2018 article (3/5th) which included (to continue expanding the systems of (production and distribution) which diverted from the State and owned by the public sector. It shall be expanded by investment according to the general policy of the State, and her client has the right to demands compensation of any impairments may affect the Ministry, and to burden the defendant/ being in this capacity the case's expenses). The agent of the first defendant answered the petition of the case by a written draft dated on (24.1.2018) that article (2/1st) of the second amendment of governorates unassociated into a region No. (21) For 2008 which stipulated ((the Council of the governorate is the legislative and monitory power in the governorate, and it has the right of issuing local legislation which enables it to administrate its affairs according to the principle of (administrative decentralization). This matter shall not contradict with the Constitution and Federal laws which listed includes exclusive jurisdictions)). Therefore, the Council of the governorate has the legislative power which doesn't contradict

with the Constitution and the Federal laws that listed including the exclusive jurisdictions of the Federal power. As a result, he requested from the Court to reject the case with burdening the plaintiff all expenses and advocacy fees. The agents of the second defendant answered the petition of the case according to their answering draft dated on (29.1.2018) that the case must be rejected for incompetence of the FSC to trying it because the plaintiff didn't mention a constitutional substantiation about the Council of the governorate violation by issuing the decision of non-implementing the denationalizing contract in the governorate of Dhi Qar, and he was satisfied with what listed in the generalization of the general secretariat of the Cabinet No. (28079) on 29.2.2015. As well as it must be rejected objectively, because the plaintiff in his case didn't rely on a constitutional substantiation. Whereas article (114) of the Republic of Iraq permanent Constitution for (2005) ((the above-mentioned competencies shall be shared, including power sources and its distribution. As well as environmental policy, health, education, and water)). Add to this, that article (115) of the Constitution stipulated (all powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute), and to the end of what listed in their draft. They requested to reject the case with burdening the plaintiff all expenses and advocacy fees. They also highlighted with their draft a copy of the decision issued by Dhi Qar governorate Council by No. (3) On 1.2.2016, and a copy of the decision No. (5) On 10.4.2017. The Court set a date for argument, and on the argument day, the agent of the plaintiff attended according to her power of attorney which attached to the case's file. Also, the agent of the first defendant and the agent of the second defendant attended. The public in presence argument proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and she requested to judge according to it. She also requested to burden the defendants' expenses and advocacy fees, and she highlighted an illustrative draft for her case. As well as the agent of the first defendant repeated his sayings, and he presented an answering draft

with and he requested to reject the case. Also, the agent of the second defendant repeated his sayings and he requested to judge according to it with burdening the plaintiff all expenses and advocacy fees. Therefore, and whereas nothing left to be said. The end of the argument made clear, and the decision recited publicly.

### The Decision

After scrutiny and deliberation by the FSC, the Court found that the agent of the plaintiff/ being in this capacity requested from the FSC in the petition of her case to judge by annulling the decision of Dhi Qar governorate Council No. (3) Dated on 1.2.2016 which included disapproval of the Council on offer presented by investor in investing electricity distribution in governorate of Dhi Qar. The present tariff shall be reconsidered by the regional government according to provisions of article (114) of the Republic of Iraq Constitution for 2005 clause (2nd) which included shared competence between the Federal government and regional government in what related to electrical power sources organizing and its distribution...Etc. and the decision No. (5) Dated on 10.4.2017 which included in clause 1st of it (the directorates of Dhi Qar electricity distribution and electricity of north Nasiriyah distribution shall carry out the coordination with the regional government the administration of electrical distribution sector in the governorate. This matter must be achieved according to conditions and stipulations of electricity operation room in the governorate (enclosed), with regard of article (114) clause (2nd) provisions of the Republic of Iraq Constitution which included organizing the electrical power sources and distributing it as shared competence...etc. This matter shall be achieved according to the Ministry of electricity law No. (53) For 2017 article (3/5th) of it, and according to the generalization of Ministry of planning according to its letter No. (3/1/2373) on 2.2.2017 about directing the State to encourage the investment and partnership between the public sector and the private sector. His client has the right to demand compensation for any damages may affect the Ministry, and to burden the defendants the expenses and advocacy fees. The FSC finds that governorates incorporated into a region law No. (21) for 2008 (amended) had determined the competences of the

FSC exclusively in what related to provisions of the aforementioned law in the article (31/11th/3) and not among these competencies trying of annulling the governorate's Council decisions. Therefore, the FSC is incompetent in trying the case. Besides, the request of the plaintiff's agent of annulling the decisions of the governorate's Council because it violates the electricity law No. (53) For 2017. So, the FSC is incompetent in trying the violations of decisions to the laws, but it is competent according to the provisions of the Constitution to trying unconstitutionality of valid laws and regulations. For the aforementioned reasons, the case must be rejected for incompetence. Therefore, the FSC decided to reject the case with burdening the plaintiff/ being in this capacity the judicial expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued decisively and binding according to provisions of article (5/2nd) of the FSC law No. (30) For 2005 and article (94) of the Republic of Iraq Constitution. The decision made clear on 15.5.2018.