



The Federal Supreme Court (F S C) has been convened on 6.5.2018 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-Temimi, 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: Mayor of Mayssan/ being in this capacity – his agent the official jurist (ain.ha.nun).

The Defendant: the Head of Mayssan governorate Council/ being in this capacity – his agents the official jurists (alif.ha.dal) and (sin.ra.ghain).

The Claim

The agent of the plaintiff claimed in the case No. (23/federal/2018) that Mayssan governorate Council previously issued its decision No. (48) For 2017 on (28.11.2017) which included a number of clauses, all of them violates the Constitution and the Federal laws according to the text of article (122/2nd and 5th) of the Republic of Iraq Constitution for 2005. The text of these clauses are (the governorates which doesn't associated to a region shall be granted the wide administrative and financial powers, and these powers enables it from administrating its affairs depending on administrative decentralization). Clause (5th) of the same article stipulated that the Council of the governorate has an independent finance, as long as the governorate Council enjoys a financial independence and legal entity according to the Constitution and the law, as well as the governorate according to article (2/1st of second amendment of governorates law No. 21 for 2008). Article (22) of the same law which stipulated that the governorate Council and the

administrative units shall enjoys personal entity and the financial independence. Therefore, insistence of the Council of Mayssan governorate according to decision No. (2) For 2018 on (9.1.2018) on executing the decision No. (48) Items in spite of his client's objection according to Mayssan governorate letter No. (15390) on (20.12.2017) has no substantiation in the law for the following reasons: 1. The Federal Supreme Court previously judged by unconstitutionality of Mayssan governorate Council No. 30 for 2017 which related to the same subject according to the decision No. (76/Federal/2017). 2. Enjoying of local Council by personal entity grant it an obligation and financial independence, benefiting others' properties without a legal substantiation will become unjustified enrichment). 3. The decision violates the texts of the Constitution and the Federal laws relying on that to the text of article (31/2nd) of governorates law No. (21) For 2008. Requesting to judge by annulling the decision No. (48) For 2017 and the decision No. (2) For 2018 which produced from it, and to burden him the fees and expenses. After registering this case at this Court according to clause (3rd) of article (1) for 2005. The answer from the agent of the defendant/ being in this capacity has been received according to his draft dated on (21.2.2018), and he requested to reject the case. He added 1. That his client's office enjoying of personal entity and financial independence doesn't hindering it from practicing its right by issuing local enactments, and the office of his client issued its decision No. (48 for 2017) according to item 2nd of article (122) of the Constitution and item 1st of article (2) of governorates law No. (21 for 2008) amended, and because of annulling the governorates law No. (59 for 1969) and the decisions of his client's office are obligatory for the Mayor according to the text of item (3rd of article 122) of the Constitution. Annulling of their Council's decision No. (30 for 2017) doesn't inhibits his client's office from issuing a new decision corresponds with the Constitution and the Federal laws within the exclusive competences. After completing required procedures according to clause (2nd) of article (2) of the same order. The day (9.4.2018) was set as a date to try the case, and on that day the Court had been convened. The agent of the plaintiff (ain.ha) attended, and the agents of the defendant (alif.ha) and (sin.ra). The public in presence argument proceeded, and the agents of the both parties said that they have nothing to add on our

previous sayings. Whereas the case became completed for its reasons, and the Court completed its investigations. The end of the argument was made clear, and the decision was recited publicly on 6.5.2018.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff the Mayor of Mayssan/ being in this capacity is challenging the Council of Mayssan governorate decision No. (48) For 2017 issued on 28.11.2017 because it is violating the provisions of the Constitution and the Federal laws. It was previously challenged at the governorate Council, and because the Council insisted on it, he proposed to challenge it during the legal duration. The Court decided to accept the challenge formally, and after reviewing the content of the decision (challenge subject) the Court found that the Mayor is the Head of the administrative office. He also enjoys financial and administrative independence, and he has the right manage the State's real estates according to the provisions of articles (22) and (23) of governorates unassociated into a region law. The Council of the governorate doesn't needs who authorizes it with this. Besides, when the Council of governorate decided to obliges the Mayor not to demands from the Councils and administrative offices whom occupies the State's real estates by the payment of occupation, and considering the occupation of these real estate for free. The FSC finds that challenged decision from this aspect violates provisions of article (27/1st) of the Constitution which grants public funds inviolability, and obliges every citizen to protect it. Therefore, the Court decided to judge by unconstitutionality of Mayssan governorate Council decision No. (48) For 2017 issued on 28.11.2018 for aforementioned reasons, and to burden him the expenses and advocacy fees for the agent of the plaintiff amount of one hundred thousand Iraqi dinars. The decision issued decisively and binding according to provisions of article (94) of the Constitution and article (5) of the Federal Supreme Court No. (30) For 2005. The decision made clear on 6.5.2018.