

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 35/federal/media /2013



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 28. 8. 2013 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (zin. alif. ha.) districted administrate Al-Meqdadiya District / being in this capacity his agent (ain. feh. ha. alif.).

The Defendants: 1- Chairman of the Diyala Provincial Council/ being in this capacity his agent (feh. mim. jim. alif.).  
2- Governor of Diyala/ being in this capacity his jurist (alif. alif. ha.).

The Claim:

The deputy prosecutor claimed that Diyala province and the provincial council distributed financial allocations for the reconstruction and development of the province and its districts and areas (in the form of projects) and approved the provincial development budget for the province by the provincial council by resolution No. (61) on 11/3/2013, violate to the Constitution and the law of the irregular provinces in the province no. (21) of 2008 (amended). And the federal budget law of the Republic of Iraq for

fiscal year 2013 and that this measure was inflicted on the Al-Meqdadiya District unjustly and transgression and wrong and stupidly, a small amount was allocated that is not commensurate with the percentage of the judiciary, where it was allocated (14) million dinars, while it is supposed to (30) billion Iraqi dinars, while another population is allocated a larger amount, which means transferring part of the judicial allocations to other units without Constitutional or legal justification. The fact that this action constitutes a violation of article (112/1<sup>st</sup>) and violation of articles (31/1<sup>st</sup>) and (7/5<sup>th</sup>/2) of the Law on Irregular Provinces in Province No. (21) of 2008 and Article (2/1<sup>st</sup>/dal-1) of the Federal General Budget Act of the Republic of Iraq No. 7 of 2013, the plaintiff initiated this lawsuit, requesting the cancellation of the decision of the Diyala Provincial Council No. (61) on 11/3/2013, which included the approval of the budget of the Diyala Provincial Council for 2013, and directing the Governor of Diyala and the Provincial Council to apply constitutional and legal articles in the distribution of financial allocations for the ages of the portfolio fairly and according to the population ratios on its administrative units. After the registration of the case in accordance with paragraph (3<sup>rd</sup>), article (1) of the Bylaw of the FSC No. (1) of 2005, a date was set for the argument and the plaintiff's agent/ being in this capacity attended and the first defendant's agent/ being in this capacity attended and the second defendant did not attend, despite being informed of and the argument was initiated in presence and publicly. The plaintiff's agent repeated his requests in the petition and requested the verdict, the first defendant's agent repeated what was contained in his answer draft and asked for a rejection of the case in a formal and objective way, since the plaintiff is not authorized to file a lawsuit, since he has no right in an objective way to challenge the decisions of the Provincial Council. Article (31) of the Law on Irregular Provinces in Province (21) of 2008 has limited the competences of the FSC, accepting the appeal from the governor exclusively, after the provincial council rejected his objection and not to any head of another administrative unit to challenge it before the FSC, the agents of the two parties repeated their

previous statements and where there was nothing left to say the end argument has been made clearly, the decision had made clear public.

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff districted administrate Al-Meqdadiya District/ being in this capacity Challenges Diyala provincial council resolution No. (61) of 2013, which includes the approval of the Diyala Provincial Council on the provincial development budget for the province contrary to the Constitution and the law of the non-regular provinces in the province No. (21) of 2008 amended and the Federal General Budget Act of the Republic of Iraq for fiscal year (2013) and the establishment of the Governor of Diyala/ being in this capacity distributing financial allocations for the reconstruction and development of the province and its districts and areas and the Federal General Budget Act of the Republic of Iraq for fiscal year (2013) and the distribution of financial allocations to the reconstruction and development of the province and its districts and areas (in the form of projects) in contrast to the constitutional and legal articles referred to above. The FSC finds that article (31/1<sup>st</sup>) of the Law on Irregular Provinces in Province No. (21) of 2008 has given the governor the power to prepare the general budget for the province in accordance with constitutional standards, except that falls within the jurisdiction of the federal government to submit it to the provincial council and that paragraph (eleven) of article (31) referred to above, the Governor/ being in this capacity has been granted exclusively the power to challenge the decisions of the provincial council or the local council if they are contrary to the Constitution or the laws in force or if it is not the council's prerogative or if it is contrary to the general plan of the federal government or the budget, the governor will return the decision to the council concerned within a maximum period (fifteen days) from the date of notification accompanied the reasons for his objection and his remarks if the Council insists on its decision or if it is amended without removing the violation that the governor has to refer to the FSC to decide

the verdict. The above shows that the appeal against the decision of the Governor's Council is the prerogative of the Governor/ being in this capacity exclusively and does not exceed others and the competences of the FSC in the law of the irregular provinces in the province No. (21) of 2008 were contained exclusively in the same subject referred to above and it does not include accepting the appeal from a non-governor in this regard. The Districted administrate is not fit to be a litigant in this case. The court decided on the basis of the provisions of Article (80) of the Civil Pleadings Act No. (83) of 1969 amended and Article (93) of the Constitution to reject the case on the side of the litigation and to charge the plaintiff/ being in this capacity expenses and the fees of the lawyers to the agent of the defendants Lawyer (feh. mim. jim.) and jurist (alif. alif. ha.) amount one hundred thousand Iraqi dinar (100,000) between them and the decision was issued unanimously and the decision had made clear public on 28/8/2013.