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The Federal Supreme Court (F S C) has been convened on 11.6.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, 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: Head of Dhi Qar governorate Council/ being in this capacity – his agent the jurist official (jim.ain.mim).

The Defendant: Speaker of the ICR / being in this capacity – his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

### The Claim

The plaintiff/being in this capacity claimed that the defendant/being in this capacity had ratified the third amendment of governorates not incorporated into a region law No. (21) For 2008 in its session convened on 14.1.2018, and he, the plaintiff/ being in this capacity challenges three articles which the amendment included. These articles are (1/7<sup>th</sup>) of amendment No. (10) For 2018 which excluded the general companies from describing high-level positions. This mean the governorate will be deprived from practicing its monitory role stipulated in the article (7/6<sup>th</sup>) of governorates not incorporated into a region law No. (21) For 2008, and this article aforementioned granted the governorate Council the competence of overseeing all local activities. The amendment didn't mention general companies. The plaintiff also challenges the article (4/2<sup>nd</sup>/1) of the amendment, this article allowed competent Minister to refuse nomination the governorate Council's nominee from assuming one of

the high-level positions. Finally, the plaintiff challenges the article (11<sup>th</sup>) of the amendment which stipulated on the governorate commitment by the general policy which set by the Cabinet and specialized Ministries. Accordingly, the plaintiff is challenging unconstitutionality of articles above-mentioned because it takes the jurisdictions which granted to the governorate by the Constitution. After notifying the defendant by the petition of the case, its documents as well. The agent of the defendant presented an answering draft dated on 7.5.2018, and he requested to reject the case for the reasons he listed in it. After registering this case, and set a date for argument, the Court has been convened on 11.6.2018 and the public in presence argument proceeded. The agent of the plaintiff repeated his previous sayings and request, and he presented an answering draft, its summary that challenged unconstitutional amendment will concentrate on the role of Ministries in the governorates by forming general companies, and this matter will weaken administrative decentralization. It also inhibits overseeing the new title. The agents of the defendant/ being in this capacity repeated their previous sayings and requests, and they requested to reject the case for the reasons they listed. Whereas nothing left to be said. The end of the argument was made clear, and the Court issued the following decision:

### The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff/ being in this capacity is challenging in the petition of his case the article (1/7<sup>th</sup>) of the third amendment of governorates not incorporated into a region law No. (10) For 2018 which includes an exclusion for general companies from describing (high-level positions). This meaning according to the claim that the governorate will not be able to exercise its monitory role which stipulated in the article (7/6<sup>th</sup>) of governorates not incorporated into a region law No. (21) For 2008. This article granted the Council of the governorate the power of overseeing all local activities. The plaintiff is challenging the text of article (4/2<sup>nd</sup>/1) of the amendment which stipulated on nomination of high-level positions with absolute majority of the Council's members by choosing one nominee among (3) individuals whom nominated by the Mayor. Concerned Minister

has the right to reject the nominee if he wasn't comply with approved criteria, and the plaintiff also challenging the article (11<sup>th</sup>) of the amendment. This article stipulated the governorate commitment by the general policy which set by the Cabinet and concerned Ministries. The plaintiff mentions the same reasons about his challenge on the article (1/7<sup>th</sup>) in the petition of his case. The FSC finds after scrutinizing that the Cabinet and according to the article (80) of the Constitution in clause (1<sup>st</sup>) of it stipulated the following: (the Council of Ministers shall exercise the following powers: to plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a ministry). This power had been granted to the Cabinet according to the Constitution, and by amendment on governorates not incorporated into a region law. Therefore, the enactment of the ICR for challenged unconstitutional amendments is corresponding to the Constitution, and it considered a legislative choice which doesn't violate the Constitution in any articles of it. Also it doesn't deprive the governorate's Council its overseeing role which stipulated in the article (7/7<sup>th</sup>) in the governorates not incorporated into a region law No. (21) For 2008. Accordingly, the case of the plaintiff has lacked its legal substantiation, and this requires to reject it. Therefore, the FSC decided to reject the case of the plaintiff (Head of Dhi Qar governorate Council/ being in this capacity) and to burden him the expenses and advocacy fees for the agents of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars, and to be divided between them according to the law. The decision has been issued in presence of both parties, decisively and unanimously according to the provisions of article (94) of the Constitution and article (5) of the FSC law number (30) for 2005. The decision has been made clear on 11.6.2018.