



The Federal Supreme Court (F S C) has been convened on 27.6.2018 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 Maysan Governorate Council/ being in this capacity – his agent the jurists (alif.heh. dal) and (sin.ra.ghain).

The Defendant: The 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 agents of the plaintiff claimed that the ICR had previously enacted the third amendment of governorates not incorporated into a region law No. (21 for 2008 (amended)), and it stipulated in clause (2nd) of article (4) of the amendment (to approve nomination of high-level posts in the governorate with absolute majority of the Council's members by choosing one nominee among (3) three individuals. Those nominee shall be nominated by the governor, and concerned Minister has the right to reject the nominee if he wasn't complying the certified standards, and this rejection shall be token within (15) days from the date of nomination received by his office. In case there was no decision took about nomination, it will be considered acceptance. The nominee whom in post of general director of who's in the same post shall be presented on the Cabinet to approve it according to the law). Therefore, this text grants the

Minister and the Cabinet the right of approval or objection of choosing high-level posts whom doing local services within the administrative borders of the governorate. This matter is contradicts with the principle of administrative decentralization, as well as wide financial and administrative powers which the Constitution stipulated in item (1st) of article (122). Also, the item (4th) of article (1) of the amendment stipulated on defining the local Council by district Council without mentioning subdistrict Council. Therefore, removing districts' Councils contradicts with the principle of administrative decentralization which largely depends on local elected Councils with lowest levels. This matter had violated the text of article (116) of the Constitution (the federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations), and article (122). As well as article (11) of amendment, adding to article (45/3rd) stipulated (the governorate is committed by the general policy which set by the Cabinet and specialized Ministries. Each one of them or both has the right to cancel any behavior may contradicts with the general policy). It means that this amendment had violated the text of articles (110, 112, 113, 114) of the Constitution which stipulated on determining the exclusive and joint jurisdictions of the federal government, and article (115) which 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). They requested to annul the articles listed in the petition of the case, because it touches the rights of Maysan governorate and contradicts with the Iraqi Constitution. Answering draft was received from the agent of the defendant the PhD. (sad.beh), and he requested to reject the case for reasons listed in his draft, these reasons are, that the text of article (4/2nd) which allowed the Minister to reject the Nominee of governorate Council is a legislative choice for the ICR according to the article (61/1st) of the Constitution, it also was a correct implement for the principle of administrative decentralization. The right of the Minister is restricted in rejecting the nominee who is not compatible to

nomination standards, as well as the wide financial and administrative powers of the governorates are not absolute, and it doesn't considered higher than a law. As for the article (1/4th) of the law (challenge subject), it wasn't mentioned to define district Council, and the article (15) of it had annulled the jurisdictions of district Council jurisdictions. This matter is not contradicts with the principle of decentralized administration, and the rationales of enacting the law is to reduce the number of district Council members which may improve work progress and expenditure reduction. This is the competence of the government according to the article (80/1st) of the Constitution, and what the agents of the plaintiff indicated to that the article (11) of the law (challenge subject) allows the Cabinet and the Ministries to cancel any procedure in the governorates that contradicts with the general policy of the state. Also their pretending that this matter contradicts with the articles (110, 112, 113, 114) of the Constitution is incorrect quotation, and the article (11) (challenge subject) didn't stipulate on what the plaintiff claimed. He requested to reject the case. After registering this case in this Court, whereas it called upon both parties to the argument, and on the set day 3.6.2018 the agents of the plaintiff and the defendant attended. The public in presence argument proceeded, and the agents of the plaintiff repeated what listed in the petition of the case. They requested to judge according to it, and he requested from the Court to postpone the argument till he present and illustrative draft in the case and its substantiations in the Constitution. The Court decided to postpone the argument till 27.6.2018, and on 14.6.2018 the agents of the plaintiff presented an illustrative draft, and they listed the following: 1. the legislative choice of the ICR shouldn't be out of the Constitutional frame, and this matter should be considered. 2. The article (11) of governorates not associated into a region law No. (10) For 2018 had differed between two types of policy-making, and restricting policy-making by the Cabinet and Ministers is violating the texts of articles (112, 113, 114) of the Constitution which stipulates that the policy-making of the governorate shall be done by coordination between the federal government and the governorates. It also violates the text of article (115) of the Constitution, and he requested to annul the text of article (1) of item (2nd) of article (4) of governorates law

amendment No. (10) For 2018 and the article (11) of the law aforementioned. In the session dated on 27.6.2018, the FSC convened and the agents of the defendant attended (the Speaker of the ICR/ being in this capacity). But the plaintiff didn't attend (the Head of Maysan governorate Council/ being in this capacity), and he didn't send his agent in spite of he was notified by the minutes of the previous session. The agents of the defendant requested to proceed the case, and the argument proceeded. The Court scrutinized the case's petition and the answers listed about it, and it found that the case is completed to take a decision in it. The Court has accomplished its investigations, and it decided to end the argument. The decision was recited publicly in the session dated on 27.6.2018.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff (the Head of Maysan governorate Council/ being in this capacity) and after he restricted his request in challenging the text of clause (1) of item (2nd) of article (4) of third amendment law of governorates which includes the necessity of the Minister approval to appoints high-level posts in the governorate, or rejecting it if the nominee's conditions weren't available in him. The plaintiff finds that this matter forms an intervention to the governorate affairs, and contradicts decentralized administration. The FSC finds that the text (challenge subject) doesn't contradicts with the provisions of the Constitution, whereas the conditions which must be available in the nominees for high-level posts in the governorate requires coordination with the federal government which set these conditions. As well as the approval of nominees by the Cabinet is a context for those with the post of general Director and higher. Therefore, the text of (challenge subject) doesn't contradicts with provisions of the Constitution. As for the second challenge which related to article (11) of amendment law that obliges the governorate to commit the general contexts which set by the Cabinet. The FSC finds that the Cabinet and according to provisions of article (80/1st) of the Constitution is the office which planning and executes the general policy of the State. Therefore, the obligation listed in the article (challenge subject) is relies on the text of article (80) of the

Constitution, and doesn't intersect with it. Accordingly, the case is lacking to its constitutional substantiation. Based on that, the Court decided to reject the case and to burden the plaintiff/ being in this capacity the expenses and advocacy fees amount of (one hundred thousand Iraqi dinars). The decision has been issued unanimously, decisively and obligatory according to the article (94) of the Constitution and the article (5) of the FSC's law No. (30) For 2005, and made clear on 27.6.2018.