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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: Mayor of Salah Al-Deen/ being in this capacity – his agent the legal adviser (sin.mim.shin).

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

### The Claim

The agent of the plaintiff claimed that the ICR previously issued the law No. (10) For 2018, the law of third amendment for governorates not incorporated into a region No. (21) For 2008. The ICR decided according to the article (12) of it to annulling clause (1) of item (1<sup>st</sup>) of the article (45) of governorates not incorporated into a region law (above-mentioned), whereas it stipulated ((annulling the text of clause (1) of item (1<sup>st</sup>) of the article (45) of the law, and the following takes its place: ((1-to move the offices of quality, employments, services and specialties which practiced by the Ministries of ((municipalities and public labor, reconstruction and housing, labor and social affairs, agriculture, finance, sport and youth), and these offices shall be moved with its allocations in the general budget. The employees and workers shall be moved to the governorates in the range of its employments mentioned in the

Constitution and law that related gradually, the role of these Ministries shall remain in planning for general policy and the Minister of health and the Minister of education each one according to his specialty, has the authority to grant required powers which issued by instructions from the Cabinet)). The plaintiff wasn't satisfied by the text aforementioned, his agent initiated to challenge it for the following reasons: 1. Above-mentioned amendment violates the text of article (122/2<sup>nd</sup>) of the Iraqi Constitution for 2005 which stipulates (governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law). 2. Enacting the article (45/1<sup>st</sup>/1) of the second amendment for governorates not incorporated into a region law No. (21) For 2008 (amended) came as implementation to what listed in the text of article (122/2<sup>nd</sup>) of the Constitution. 3. The governorates made a good progress in executing provisions of clause (1) of item (1<sup>st</sup>) of article (45) of governorates not incorporated into a region law No. (21) for 2008 (amended), and this progress was achieved with the program made by the government according to the text of above-mentioned article, including the time table to move powers to the governorates according to the Cabinet's decision No. (304) for 2015. 4. The Ministries that included by provisions of article (45/1<sup>st</sup>/1) had issued a ministerial orders to disengage directorates which attached to it in the governorates, and attach it administratively and financially to the governorates. These orders came as executing to what above-mentioned. 5. This amendment will weaken the role of the local governments, and it will restrict its authorities as well as it will weaken activation of decentralization which guaranteed by the Constitution. Also it will effect negatively in presenting and simplifying the administrative, financial and legal procedures for the Iraqi community components. Accordingly, the agent of the plaintiff requested to ((judge by obliging the defendant/ being in this capacity to annul the article (12) of the law No. (10) For 2018 the third amendment of governorates not incorporated into a region law No. (21) For 2008, and to burden him all the expenses and advocacy fees)). The agents of the defendant answered the petition

of the case with the following: 1. Challenged article (12/1<sup>st</sup>/1) doesn't violate the article (122/2<sup>nd</sup>) of the Constitution, on the contrary it is implementation of it, whereas it came to regulate the authorities which granted to the governorates. These authorities are not general or definite, but it is disciplined by the law which issued by the ICR to regulate it, and this what actually happened. 2. When some Ministries and governorates executed in the past some of the article requirements (annulled), if really it did, doesn't restrict the powers of the ICR which stipulated in the article (62/1<sup>st</sup>) of the Constitution about enacting law, or amending it. 3. The text – challenge subject- is not weaken the role of local governments, but it regulates its works. It is normal that each regulation has a restriction, and this restriction issued with a law. So, it is considerable and legitimate, also it is intangible just for skepticism. This matter will produce another results when executed. Accordingly, the agents of the defendant requested to reject the case. After registering this case according to provisions of clause (3<sup>rd</sup>) of the article (1) of the FSC's bylaw No. (1) For 2005, and after completing required procedures according to clause (2<sup>nd</sup>) of the article (2) of aforementioned bylaw. The day 11.6.2018 was set as a date for argument, on that day the Court has been convened, and the both parties attended. The public in presence argument proceeded. The agent of the plaintiff repeated what listed in the petition of the case, and he requested to issue a decision according to it, and the agents of the defendant answered that they repeat what listed in the answering draft and requested to reject the case for recitals listed in it. The agent of the plaintiff commented that the article (12) wasn't exist in the bill of law amendment, and he requested to introduce the higher secretary committee of coordination between governorates as a third party, because it considered responsible of implementing the article (45) of governorates' law. The Court scrutinized the request, and it found it unproductive in the case, therefore it decided to reject it. Whereas nothing left to be said, the end of the argument has been made clear and the Court recited the decision publicly.

## The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff is challenging unconstitutionality of the article (12) of the law No. (10) For 2018, the third amendment of governorates not incorporated into a region law No. (21) For 2008. According to this amendment the clause (1) of item (1<sup>st</sup>) of the article (45) of governorates law aforementioned has been annulled, whereas it stipulated (((1-to move the offices of quality, employments, services and specialties which practiced by the Ministries of ((municipalities and public labor, reconstruction and housing, labor and social affairs, agriculture, finance, sport and youth), and these offices shall be moved with its allocations in the general budget. The employees and workers shall be moved to the governorates in the range of its employments mentioned in the Constitution and law that related gradually, the role of these Ministries shall remain in planning for general policy and the Minister of health and the Minister of education each one according to his specialty, has the authority to grant required powers which issued by instructions from the Cabinet)). The agent of the plaintiff claims that the article (12) of the law No. (10) For 2018 (challenged for unconstitutionality) violates the provisions of article (122/2<sup>nd</sup>) of the Constitution which stipulates (governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law). He claimed that this article kept a role for Ministries to planning the general policy, and this matter will weaken the role of the local governments, and it will restrict its authorities as well as it will weaken decentralization which guaranteed by the Constitution. Also it will effect negatively in presenting and simplifying the administrative, financial and legal procedures for the Iraqi community components. Therefore, the agent of the plaintiff requested ((to oblige the defendant by annulling the article (12) of the law No. (10) For 2018, and to burden him all expenses and advocacy fees)). The FSC finds that the system in Iraq consist of, and according to provisions of article (116) of the Constitution (is made up of capital, regions, decentralized governorates, as well as local administrations). The

Cabinet exercises its authorities according to the article (80/1<sup>st</sup>) of the Constitution, these authorities are related to planning and executing general policy of the state, public plans and overseeing the works of Ministries and offices unassociated to a Ministry. The Cabinet is exercising these authorities via the Ministries that forming the Cabinet. Keeping the role of Ministries in planning for general policy doesn't violates provisions of the article (122/2<sup>nd</sup>) of the Constitution, because governorates are a part of Federal system in Iraq according to provisions of article (116) of the Constitution. Accordingly, the Court sees that enacting the article (12) of the law No. (10) For 2018 by the ICR (challenged) came within its legislative choice, and its powers stipulated in the article (61/1<sup>st</sup>) of the Constitution. It also doesn't includes any violation to the provisions of article (122/2<sup>nd</sup>) of the Constitution. Therefore, the case is lacking to its constitutional substantiation, and accordingly the Court decided to reject the case and to burden the (plaintiff/ being in this capacity) the expenses and advocacy fees for the agents of the defendant amount of (one hundred thousand) dinars. The decision has been issued decisively, unanimously and obliging for all authorities according to provisions of article (94) of the Constitution and article (5/2<sup>nd</sup>) of the FSC's law No. (30) For 2005. The decision was recited publicly on 11.6.2018.