

Republic of Iraq
Federal Supreme Court
Ref. 98/ federal / 2013



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 24.6.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, and it issued the following decision:

The Plaintiff:

Qasm Mohammad Abd/ Member of the Anbar Provincial Council – his agents the attorneys Dir' Hammad Abd and Mohammed Alsaid Jasem.

The Defendants:

1. Governor of Anbar/being in this post _ his agents the attorneys Shaker Hmod Almrdr and Rabah' Mahdy Salh Ali.
2. Chairman of the Anbar Provincial Council/being in this post/ his agents the legal officials Majed Hammad Mahmood and Ebrahim Nory Hamd.

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The Claim:

The agent of the plaintiff claimed that on 7/31/2013, the Anbar Provincial Council, in its first session, issued a decision to elect the Chairman of the Anbar Provincial Council and his deputy, in its second session, another decision was made to elect Mr. (Ahmed Khalaf Muhammad), governor of Anbar, and since this decision was incorrect and contrary to the provisions of Article (7 / Seventh / Paragraph 1) of the Law of Governorates Not Organized in a Region No. (21) of 2008 and is contrary to the provisions of the Constitution. Where the governor of Anbar was elected and the quorum was correct and according to the provisions of the mentioned article, however, after the Federal Supreme Court issued Decision No. 36 / Federal / 2013

Four members of the council were replaced by others, and the council was not convened under the leadership of the oldest member, who is the plaintiff, and that its meeting and that it took place in a different time and place previously appointed, which deprived some members of the council from attending and that this is a confiscation of the votes of voters and directing them to the ones whom did not want to vote for them. This is an explicit violation of the provisions of the constitution and the law, as the quorum for the assembly was not achieved due to the absence of some of the council members, including the plaintiff,

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for not informing them of the time and place of the first and second sessions, as it was changed under the pretext of security conditions in the governorate Since 13 members did not attend the above sessions, and they represent a popular base, they were prevented from choosing their representatives as governor of Anbar. Accordingly, the attorney's attorney requested the ruling to annul and nullify the decisions of the Anbar Provincial Council taken in its first and second session held on 7/31/2013 being null for their violation of the provisions of the constitution, law, and the council's bylaws, and considering all the measures taken by the provincial council null and obligating the council And the head of the age in it to repeat the elections of the provincial council president, his deputy, the governor and his two deputies in accordance with the proper legal procedures and approach the president of the republic to cancel the minutes of the election of the speaker and the governor and cancel the republican decree appointing the governor until a court decision in this regard is issued.

The first defendant's attorney replied that the quorum for holding the session was correct for the attendance of 18 members of the council

And that the first session was held on 7/31/2013 because the eldest member (the former governor) and the plaintiff in this

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lawsuit were procrastinated to convene the session and tried to postpone it more than once under the pretext of security conditions in the governorate, as the plaintiff's attorney wasn't able to determine the constitutional articles that have been violated by his client, especially since the election was conducted in accordance with the law, with a complete legal quorum and under the eyes of the judiciary, and no action was taken that contradicts the text of Article (14) of the constitution. And that the competent court to hear this case is the Administrative Court and not the Constitutional Court, so he requested to dismiss the case.

The second defendant's attorney also replied to the lawsuit petition by his regulation dated 10/28/2013 requesting "to dismiss the case for the same reasons that the first defendant's attorney referred to in his list of reply mentioned above

The plaintiff's attorney responded to the first and second defendant's proxy lists with a list that included a repetition of what was stated in the case petition.

After registering the case with this court in accordance with paragraph (third) of Article (1) of the procedure of the Federal Supreme Court Bylaw No. (1) of 2005 and after completing the required procedures in accordance with paragraph (Second) of Article (3) of the aforementioned court's internal system Above

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5/5/2014 was set as the date for the pleading, and the court was formed, so the two attorneys Muhammad Jassim and Dir` Hammad Abed attended according to the agencies linked to the case file.

Attorney Rabah Mahdi attended an attorney for the first defendant, and the second defendant did not attend despite the notification in accordance with the law.

And the public in present pleading began; the plaintiff's attorney repeated what was mentioned in the lawsuit's petition.

The first defendant attorney requested that the pleading be postponed due to the newness of his power of attorney in this case. He also requested the court to assign the plaintiff attorney to explain the constitutional articles that were violated in order for him to answer during the postponement period, as the plaintiff's attorney requested to granted them for the purpose of presenting a detailed list of what their colleague, the attorney general, requested, so the court decided to give the two parties' agents their request and postpone the pleading until 2/6/2014.

And on this day the court was formed, so the plaintiff's attorney attended as well as the first and second defendant's attorneys, and the public exclusive pleading began as before.

The plaintiff's attorneys submitted two regulations, the first dated 5/29/2014 and the second dated 6/2/2014, and for the

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purpose of enabling the defendant's attorneys to study these two regulations and answer them, so they were given suitable period to respond , so the court decided to postpone the pleading to 24/6/2014.

And on this day the court was formed and the attorney of the plaintiff and the attorney of the first defendant and the representative of the second defendant (the head of the Anbar Provincial Council) and each of the parties repeated their previous statements.

Whereas nothing left to be seed, the argument is closed, the decision issued publicly on 24/6/2014.

The decision:

During scrutiny and deliberation by the F.S.C., it found that on 7/31/2013, the Anbar Provincial Council issued in its first session a decision to elect a president and vice president of the council, and the governor and his two deputies were elected in the second session, and because the plaintiff in this case is not convinced of the measures taken by the Anbar Provincial Council in electing the aforementioned gentlemen for the positions assigned to them, since these procedures were carried out in contravention of the constitution, law, and the internal system of



the council, so he requests the ruling to annul and invalidate the decision of the Anbar Provincial Council that were issued in its first and second session on (7/31/2013).

And the Federal Supreme Court finds that its jurisdiction regarding the application of the provisions of the Governorates Not Organized in a Region Law No. (1) of 2008 is stipulated in Articles (31 eleven) and (20 / Third / 2) thereof, and the above-mentioned law did not stipulate the validity The court (considering the validity of voting procedures for the election of the provincial council president, his deputy, the governor and his two deputies).

Therefore, the aforementioned law has delegated the authority to consider this to the general jurisdiction of the judiciary and did not entrust it to the Federal Supreme Court, because the court's jurisdiction is mentioned and defined under Article (4) of its Law No. (30) of 2005 and in Article (93) of the Constitution The Republic of Iraq for the year 2005, and none of them had the authority to consider the validity of the ongoing vote to elect the provincial council president, his deputy, the governor and his two deputies.

Therefore, the Federal Supreme Court is not competent to hear this lawsuit, and for the aforementioned reasons, the plaintiff's claim must be dismissed from the point of lack of jurisdiction.

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Therefore the court decided to dismiss the case and to burden the plaintiff/being in this post the expenses with the advocacy fees for the first defendant agent Rabah' Mahdy Salh Ali and the second defendant agents the legal officials Majed Hammad Mahmood and Ebrahim Nory Hamd Amount of (one hundred thousand) IQ.D. This decision has been issued decisively based on the provisions of Article (5/Second) of the Federal Supreme Court Law No. 30 of 2005 and Article (94) of the Constitution of the Republic of Iraq for the year 2005 and by agreement and was publicly understood on 24/6/2014.