

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.100 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 15/3/2015, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman, Mohammed Rajab AL-Kubaisi, and Sulaiman Abd Allah Abd AL-Samad, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: (Ain.Ain.Kha.Zin) his two agents the barristers (Ha.Ain.Ain) and (Ain.Ain.Alif) collectively and individually

The defendant: the president of the Republic/ being in this capacity- his agent head of legal advisors.

The Claim:

The plaintiff agent claimed that the defendant/ being in this capacity has already issued the republican decree No.(64) dated on (17/9/2015) that included the discharge of their agent from his post as the governor of the holy Najaf governorate, and he issued a republican decree by No.(65) dated on (17/9/2015) included the assignment of (Lam.Jim.Ha.Sin.Yeh) for the post of the governor of the holy Najaf governorate. Their client has already challenged in the court of cassation the decision of the court of administrative judiciary No.(890/2015) in the case no.(806/Qaf/2015) issued on (24/8/2015). He presented the challenge before the higher administrative court and registered by no.(422/Teh. Qaf.2015) and it still under the investigation of cassation. No final decision is issued yet and the challenged decision No.(980/2015) issued by the administrative judiciary in its first stage

can't be under implementation because he can be submitted to cassation and it is not final according to the public rules and the Constitutional rules and what the law stipulated. the decision becomes final or is revoked by the competent body. In addition he knew about prime minister's directing- by the letter No.(46/12361) on 27/8/2015- to the governor of the holy Najaf which included (there is no legal substantiation for the implementation of the Administrative judiciary court's decision until the subject settled by the higher administrative court which required the governor to continue doing his tasks and proceeding the work according to the law, until the subject will be settled judicially.). For the above, the two agents of the plaintiff requested from the court to decide the unconstitutionality of the two republican decrees No.(64, 65) dated on 17/9/2015 for violating the legal and constitutional rules and to obliges the defendant the president of the Republic/ being in this capacity- to annul them or to wait until the result of the challenge at the cassation and the decision will be final. Also, they requested to decide the validity of the republican decree of appointing the plaintiff as the holy Najaf Governor No.(144) on 9/7/2015. The defendant's agent answered on the case petition by his draft dated on 20/12/2015 that his client is obliged -based on the item (1st) from the article (26) of the law of governorates not related to region No.(21) of 2008- to issue a republican decree for appointing the elected governor from the council of governorate within fifteen days from the date of been elected. Since the holy Najaf governorate's council appointed the mister (Lam.Jim.Sin.Yeh) for the post of Najaf governor, so the plaintiff the president of the Republic/ being in this capacity- can't be a litigant in this case. He requested to reject the case. After the case registered according to provisions of the clause (3rd) from the article (1) of the FSC's bylaw No.(1) of 2005, and the required procedures was completed according to the clause (2nd) from the article (2) of the aforementioned system, the day (16/2/2016) was selected as the day of the argument. The court held the session so the barrister (Ha.Ain.Ain) attended as the agent of the plaintiff and the defendant didn't attend despite the notifying. It was noticed that the defendant agent the counselor (Feh.Jim) sent a request on 12/2/2016 for delaying the case due to the listed reasons in his

request. The plaintiff agent answered that he doesn't mind to delay the case for letting the defendant agent attend and say what he has of defenses. He added that the important point of the case is that the president of the republic issued a Republican decree of appointing the current governor before the issued decision of discharge his client become final. The decision of discharging has been ratified later, after the issuing of the decree from the higher administrative court. the case initiated by the plaintiff according to this point, so the court decided to delay the argument to 15/3/2016 as long as the defendant will be notified by what listed in the case petition and the session's record. On 15/3/2016 the court held the session so the plaintiff agent attended and the defendant agent also. The plaintiff agent repeated the case petition and requested to decide according to it. The defendant agent answered we repeated what listed in the answering draft and summarized what was listed in the reply of the answer. He focused on the principle of separation between the powers and the prime minister shall return to the ICR for amending the laws. Each party repeated their sayings and whereas nothing left to say, the court made the end of the argument understood and the decision was understood publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the two agents of the plaintiff challenge the republican decree no.(64) on 17/9/2015 which included the discharge of their client from the post of holy Najaf governorate and the republican decree no.(65) on 17/9/2015 which included the appointment of the mister (Lam.Jim.Ha.Sin.Yeh) instead of the plaintiff. They claimed that their plaintiff has already challenged the decision of his dismissal at the court of administrative judiciary. The mentioned court issued its decision No.(890 of 2015) to reject his case so he initiated to challenge the issued decision of the court of the administrative judiciary at the cassation in the higher administrative court. he requested to revoke the decision, but the two decrees were issued while the case was under the investigation of the cassation so the decision under cassation can't be valid because he doesn't become final yet. The defendant could wait to issue the

two decrees until the challenged decision become final. Based on the request of the two agents of the plaintiff, the court decided the unconstitutionality of the two republican decrees for violating the legal and Constitutional rules and decided for their client the validity of the republican decree No.(144) on 9/7/2015 of appointing him as the governor of the holy Najaf for the reasons listed above. The FSC finds that the two challenged republican decrees even if they issued before the issued decision of the competent court become final, but they are authentic from the resulting aspect and according to provisions of article (26/1st) from the law of governorates not related to region No.(21) of 2008 for becoming final later by been ratified from the competent court. the court decided to reject the case and to burden the plaintiff all the expenses and fees of the advocacy for the defendant agent the counselor (Feh.Jim), amount of hundred thousand Iraqi dinars. The decision had been issued decisive and unanimously according to provisions of the article (94) from the constitution of the Republic of Iraq of 2005 and the article (5/2nd) from the FSC's Law No.(30) of 2005. The decision was understood on 15/3/2016.