



The Federal Supreme Court (F S C) has been convened on 11.14.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi , Aboud Salih Al-temimi , Michael Shamshon Qas Georges, Mohammed Rijab AL-Kubaisi and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff: PhD. (Nun.ain.qaf) – his agent the barrister (ra.ain).

Defendant: Speaker of the ICR/ being in this capacity/ his agents the two legal official the manager (sin.ta.yeh) and legal assistant consultant (heh. mim.mim).

Claim

The agent of the plaintiff claimed that on 9.14.2017 the ICR issued in its ordinary session the 18th a decision to relieve his client from his post a governor of Kirkuk relying in that to article (61) of the constitution, and because he was not satisfied with the aforementioned decision as he claimed violated the constitution and the law, so, he proposed to challenge it for the following reasons: first: the relieve decision issued by the ICR issued from an office is legally incompetent, because article (61) of the valid constitution for 2005 had determined the specialties of the ICR and not includes these specialties to relieves the governor and this specialty is exclusive for the governorate council according to article (122/2nd & 4th) of the constitution. Whereas the governorates incorporated into a region granted a wide authority, therefore, issuing of the ICR for relieving decision has a violation for the principle of decentralization which stipulated on in the constitution. Second: the ICR issued the challenged decision according

to provisions of governorates incorporated into a region law No. (21) for 2008 (amended), whereas the aforementioned law is not applicable on governorate of Kirkuk, and this matter was confirmed after the election law of governorates, sub district and districts was issued No. (36) for 2008 (amended). The aforementioned law excepted including of Kirkuk governorate to the law of governorates incorporated into a region No. (21) for 2008 abovementioned in article (33/5th) of it (the current council of Kirkuk governorate continues exercising its tasks according to the laws in effect before the validity of governorates law abovementioned, which means the situation of Kirkuk governorates is correspond to coalition authority order No. (71) for 2004 which restricted the right of relieving the governor to the governorate council exclusively, and applying the governorates law restricted in clause (2nd) of article (55) of it and applying of governorates law on Kirkuk governorate violates the constitution, especially the governorates council law No. (36) For 2008 is a later law to the law No. (21) for 2008, therefore it is prior to be applied. The Speaker of the ICR indicated in one of his statements to inability of applying the law No. (21) For 2008 on Kirkuk governorate, this published in the official site of the ICR Speaker. Third: the general secretariat of the cabinet previously and clearly indicated in its letter No. (kaf/2/1/75/08418) on 3.20.2016 which directed to the ICR/ the representative office (alif.ra.sad) about transfer the authorities, as well as the letter of the Prime Minister office No. (mim.ra.waw/36/13789) on 5.29.2015 that the governorates law No. (21) For 2008 is inapplicable on Kirkuk governorate, because it is excepted according to article (23/5) of governorates council elections law and its constitutional description remains submit to order No. (71) For 2004 issued from the coalition authority. This opinion confirmed the principle approved by state shura'a council No. (97/2015) on 9.9.2015 which decided to ((it is not possible to apply the two articles (27 & 23) of the governorates law incorporated in a region No. (21) For 2008 on Kirkuk governorate)). In addition to many generalizations and correspondences issued from the general secretariat of the cabinet, which clarified clearly that Kirkuk governorate is not yielding to the law No. (21) for 2008 and the authorities cannot be transferred to it, and the valid laws are applicable on it before the validity of law No. (21) For 2008 abovementioned, therefore, when the Prime Minister demanded from the ICR to relieve his client contradicts with the generalizations abovementioned and violates the law and the

constitution. Fourth: the reasons which the ICR relied on in relieving decision were ambiguous and were not includes the reasons listed exclusively in the field of relieving the governor, there were not any violation to the constitution issued by his client and the decision of raising Kurdistan flag and processing of referendum are decisions issued by the governorate council not from his client, which has not the right of cancelling the decisions of the governorate council. Fifth: what indicated to in relieving decision about a financial violations and wasting of public funds, so, this accusation is not true and cannot be considered as an evidence but after a judicial final decision may be issued, because the judiciary is the body of specialty in investigation in these matters and it is not possible to rely on just allegations to create a legal traces. Sixth: the decision of the ICR of relieving his client violated the text of article (51) of the governorates incorporated into a region law No. (21) for 2008, which is it the same law were relied on in the relieving decision, whereas it is not possible to issue a relieving decision or punishment without processing an administrative investigation fulfill the legal conditions objectively and formally, and discuss the employee or the assigned in a general service to what he accused with, and this what article (51) abovementioned confirmed on clearly. Whereas this article stipulated on (every removal or relieving of duties referred in this Law shall be preceded by a hearing for the individual concerned). Accordingly, the agent of the plaintiff requested to (judge with cancelling the relieving decision of Kirkuk governor of his post, because it is violates the constitution and the law). The agent of the defendant/ being in this capacity answered the petition of the case as following: 1. Article (7/8th/4) of the governorates incorporated into a region law No. (21) For 2008 had gave the right to the administrative judicial court to review the complaint of relieving decision not to the FSC, so, he requested to reject the case formally for Non-competence. 2. The decision of the ICR of relieving the governor of Kirkuk had relied on provisions of article (59/2nd) of the constitution not article (61) of it as it is shown in the margin of referral decision. The specialties of the ICR are not mentioned exclusively in article (61) of the constitution, but it is mentioned many constitutional texts to its specialties, and among these articles (59/5th & 51 & 52 & 55 & 59 & 60/2nd & 62/2nd & 70/1st & 79 & 80/5th & 83 & 110 & 118) and many else. The specialties of the council is not only in the constitution, but it also the legislations included a specialties authorized to the council includes article

(7/8th/2) on governorates incorporated into a region law abovementioned which related to the challenge subject which stipulates on (the Council of Representatives may remove the governor by the absolute majority of its members upon the proposal of the prime minister). Claiming that the ICR exercising the specialty of relieving the governor takes the right of the governorate council is not true claim, and there is no obstacle between exercising the specialty by the ICR and taking this specialty of the governorate council. And about the constitution which granted a wide authorities to the governorates, so, there is no conflict in that and between not exercising another authorities except the governorate council, the constitutional and legal specialty about the governorate, its governor and the governorate council whereas the text of article (122/2nd/4th) of the constitution has a total text detailed in the governorates law, which organized the authorities and determined the offices which exercising each a specialty without mentioning that by the agent of the plaintiff that it is unconstitutional. 3. The FSC is not concerned in researching the validity of governorates law on Kirkuk, and may be the administrative judiciary is specialized in such cases. And it is illegal to rely on declarations of the ICR principals in claiming a right or proving a defend, and it is necessary to limit the pleas and defends on the texts of the constitution and laws and another types of legislation. The governorates incorporated into a region law did not stipulate on not validity of its provisions on Kirkuk governorate, as the governorates council, sub districts and districts election law No. (36) For 2008 in article (23/5th) of it but on continuing of Kirkuk governorate current council in exercising its tasks according to the law, and the situation of the governorate still as it is till the elections is carried on, and in this matter there is not a decisive evidence or inclusive that the governorates incorporated into a region law validity on the governorate, and in the contrary the legislator should make that clear in the governorates law. As well as, the governmental correspondences are not worth to be an evidence to prove a legal true right, because these correspondences should harmonize with the law if it were violates it, and does not create a title or legal post for its permanent needs for a legal support. The two decisions of state shuraa council abovementioned do not indicates to invalidity of two articles (27 & 23) on governorates incorporated into a region law and this is a plea against the agent of the plaintiff not to him. If the whole law invalid for Kirkuk governorate, the state shuraa council would make that clear, because it not

possible to indicate validity of a text or two according to invalidity of the law overall. As well as invalidity of the two articles (27 & 23) on Kirkuk governorate, and this matter regarded normal because they related to the governor's two deputies and assistants which are a matter refers to the governorate council, which article (23/5th) of governorates, sub districts and districts elections law decided No. (36) For 2008 on continuity of him to exercising his tasks according to previous legislations in the governorates law No. (21) For 2008, which means the state shuraa council two decisions are limited with invalidity of two articles only of governorates law articles on Kirkuk governorate. The concept of violation is decisive in its evidence on validity of except them on the governorate. The agent of the plaintiff indicates to clauses (4th & 5th & 6th) to unsoundness of ICR decision of relieving his client, relying on that the reasons of his client's relieving are ambiguous and existence of a financial violations and wasting of public funds cannot be relied on without a judicial final decision, and the relieving decision cannot be issued without preceded with an administrative investigation, and the answer on that is the FSC is not specialized to review the decisions and the governorates incorporated into a region law No. (21) For 2008 had granted reviewing of challenge in relieving decision to the governor to the administrative judiciary court, relying on provisions of article (7/8th/4) of it. Accordingly, the agent of the defendant requested to reject the case. After registering the case according to provisions of article (1/3rd) of the FSC bylaw No. (1) For 2005, and after completing the required procedures according to clause (2nd) of article (2) of the aforementioned bylaw. The day 11.14.2017 was set as a date for pleading, and on that day the agent of the plaintiff attended as well as the agents of the defendant the Speaker of the ICR/being in this capacity attended, and the public in presence pleading proceeded. The agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it. The agents of the defendant answered that they repeat what listed in the answering draft and requesting to reject the case for Non-specialty, the agent of the plaintiff commented (nun.ain.qaf) that the decision of the ICR was not right, whereas it did not follow the mechanism stipulated on in the governorates law when relieving the governor, and both parties repeated their sayings. Whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff claims that on 9.14.2017 the ICR issued in its regular 18th session a decision to relieve his client as a governor of Kirkuk, relying on article (61) of the constitution and because he was not satisfied to aforementioned decision – as he pretend – violated the constitution and the law, he proposed to challenge it and requesting to cancel it, because the aforementioned relieving decision issued from incompetent office, whereas this matter is out of ICR specialties which stipulated on in article (61) of the constitution, and the challenged decision issued according to governorates incorporated into a region law No. (21) For 2008. Worth to be mention that the aforementioned law is inapplicable on Kirkuk governorate, and the general secretariat of the cabinet, as well as the Prime Minister in their aforementioned letters in the petition of the case confirmed that Kirkuk governorate is excepted from the governorates incorporated into a region law No. (21) For 2008 abovementioned. The reasons were the ICR relied on in taking relieving decision were ambiguous and does includes a violation to the constitution and the decision of raising Kurdistan flag in the building of Kirkuk governorate issued from the governorate council not from the plaintiff. Also it is not possible to depend on accusations directed to his client but after a judicial decision is issued – with final decision – as well as the decision of the ICR of relieving his client violated article (51) of the governorates incorporated into a region law No. (21) for 2008 whereas it is not possible to issue a decision of relieving or punishment without an administrative investigation fulfill the legal conditions, whereas each decision of removal or relieving and according to article (51) abovementioned should be preceded by an inquiry session for the referred individual. The agent of the defendant/ being in this capacity answered the petition of the case disproving its reasons which supported by the agent of the plaintiff to challenge the relieving decision – the challenge subject-. The FSC finds that its specialties are limited according to article (93) of the Republic of Iraq constitution for (2005) and in article (4) of its law No. (30) For 2005 and in article (31/11th/3) of the governorates incorporated into a region law No. (21) for (2008) not among it reviewing the challenges presented to it about the ICR decisions which includes relieving governors which has another reference to challenge it. Accordingly, the FSC decided to reject the case formally for Non-competence and to burden the plaintiff

the expenses and advocacy fees for the agents of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars. The decision issued decisively and unanimously, according to provisions of article (94) of the constitution and article (5/2nd) of the FSC law No. (30) for 2005, the decision made clear on 11.14.2017.