

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 106/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 26.1.2016 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: (alif.ain.nun.) his agents the attorneys (ta.qaf.ha.), (shin.sin.feh.) and (feh.ain.nun.).

The defendant: The Speaker of the council of representative (I.C.R.)/ being in this post - his agents the legal officials (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

The claim:

The agents of the plaintiff claimed that on (28/5/2015) in the session No.(42) the Iraqi council of representatives (I.C.R.) issued decision to dismiss their client the Governor of Ninawa (alif.ain.nun.), that

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decision was issued under the provisions of article (7/2nd/2) of the amended law of governorates that are not incorporated in a region No.(21) for 2008, as this article was flawed by unconstitutionality because it contradict with the provision of the constitution and violated its rules which leads to its nullity according to article (13) of the constitution, the agents of the plaintiff requested to rule that this article is unconstitutional and illegitimacy and to revoke its results because that article consider nulled so what resulted from it require to be revoked, according to the following constitutional bases: the text of the mentioned article contradict with the provisions of article (110) of the constitution and violate the content of this article which stipulated the exclusive jurisdictions of the federal authorities including the I.C.R. , the provision of the mentioned article (7/8th/2) has granted the I.C.R. jurisdiction and power not granted in article (110) of the constitution for the federal authority. Also the text of the mentioned article violates the provision of article (115) of the constitution and contradicts it, were this article has stipulated that everything is not listed in the exclusive jurisdictions of the federal authorities the priority in it is for the governorate law, and the governorate of Ninawa didn't issue a law that grant the I.C.R. the jurisdiction to dismiss the Governor therefore the text of article (7/8th/2) of the amended law of governorates that are not incorporated in a region No.(21) for 2008 which is federal law that is not a law issued by governorate, so it considered nulled. The text of the mentioned article contradicts and violates article (122) of the constitution regard governorates that are not incorporated in a region as Ninawa governorate were this article of the constitution has authorized the governorates broad

administrative and financial authorities, and make the Governor incorporated with the governorate council as the council authorized him the powers therefore it shall practice the monitoring on the governor and not another party. The text of the mentioned article violates the provision of article (116) of the constitution which stipulate that the federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, the rules of the decentralized administration obliged that the legislation authority in the governorate (the governorate council) is the one that have monitoring authority on the governor and his dismissal and not the federal authorities (the I.C.R.) as stipulated in the law of governorates councils. The text of the challenged articles for being unconstitutional contradicts and violates the provisions of articles (126, 142) of the constitution which stipulated the constitutional amendment procedures, whereas the constitution has set the path to amend it when amending the jurisdictions and powers of the I.C.R., by adding new jurisdictions for this council regard the governor dismissal which didn't happened, as no amendment was issued to grant the I.C.R. the power to dismiss the governor especially that the I.C.R. power to dismiss as stipulated in article (61) of the constitution was regard the ministers and the officials of independent bodies, the governor that was dismissed is at the level of acting minister as decided by the law of the governorates and not level of minister or official of independent bodies. According to that the agents of the plaintiff has requested in addition to their previous request of ruling the unconstitutionality and illegitimacy of article (7/8th/2) of the law of governorates that are not incorporated in a region No.(21) for 2008, and to notify the I.C.R. to revoke the

dismissal decision of Ninawa governorate Mr.(alif.ain.nun.) because the dismissal decision has based on legal text that is unled constitutionally, the void remain void and does not benefit in making the rule originally, they also requested the F.S.C. to issue letter directed to the republic presidency including their presentation of this case. The agent of the defendant/ being in this post responds to the case petition with the answering draft dated on 10/11/2015 stating that: the plaintiff indicated that the jurisdictions of the federal authorities are stipulated exclusively in article (110) of the constitution therefore granting the I.C.R. other jurisdictions under the article (7/8th/2) of the amended law of governorates that are not incorporated in a region No.(21) for 2008 is unconstitutional, the answer to that is article (110) of the constitution has stipulated part of the jurisdictions that must not be practiced except throw the federal authorities, but it didn't stipulate that these authorities shall not practice anything other than what listed in article (110) of the constitution, as the constitution has included dozens of the jurisdictions within it texts granted to the legislative, executive, judicial authorities and the independent committees in articles other than (110), accordingly the plaintiff case is contradict with the constitution explicitly, also the constitution didn't prevent the regular legislator from granting legal jurisdictions to the public powers in the state, as the Iraqi legislation history include countless examples of tasks and jurisdictions that the laws and sub-legislations grant for the public powers of the state without being stipulated in the constitution directly, as it not hidden the constitution doesn't stipulated the general principles that establish the public powers in the state and set the relations between them

without mentioning all the jurisdictions and powers exclusively and limited as its impassible and it leave the exercised jurisdictions of the public powers to the lower legislations, also the jurisdictions should not be exclusively based on the constitution to be lawful, the ordinary law is a known way of legitimizing the identification and exercise of jurisdiction, therefore, the assignment of the task referred to in the law of the governorates, which is the subject of challenge is legitimate assign, does not defect its legitimacy that the constitution did not stipulated it frankly, and it shouldn't, the agent of the defendant also added in his draft that the plaintiff' agents has referred in the case petition that the challenged article contradict with the provision of article (115) of the constitution under the claim that it content listed a jurisdictions that are not within the exclusive jurisdictions of the federal authorities, which require to be organized by a law issued from the governorate, the agent of the defendant stated that the challenged jurisdiction wasn't set without organization by the constitution as it assigned the I.C.R. to organize the jurisdictions granted to the governorate council under article (122/4th) of it, it's known that the challenged paragraph is in article (7) of the law of governorates that are not incorporated in a region No.(21) for 2008 regard the jurisdictions of the governorate council therefore what was listed in the mentioned article of legal provisions are based on article (122/4th) of the constitution, which means that the coordination of the governorate council' jurisdictions including the governor dismissal is an exclusive jurisdiction of the I.C.R. only. The challenged article according to the plaintiff' claim violate the provisions of article (122) of the constitution on the base that the governorates has granted broad administrative and financial

authorities and that the governor is incorporated with the governorate council which monitor the governor when excusing his jurisdiction, this claim consider as plea against the plaintiff and not for him as article (122/2nd) of the constitution has stipulated the broad administrative and financial authorities shall be regulated by law which decisively indicate that the constitution has authorized the legislator (I.C.R.) to regulate the administrative jurisdictions of the governorate and the related provisions, as for the incorporation of the governor with the governorate council and its monitoring, it can not be consider as proof to not monitor the governor by other authorities in the state, as the governorate council monitor on the governor the same as council of ministers monitor on the minister doesn't prevent the monitoring of the I.C.R. on the work of the executive authority over all, because it substantiation is general constitutional text doesn't affected with the provisions of the regular legislations otherwise the constitutional texts would be suspected to violate the constitution. The plaintiff also refer that the challenged article violate the provision of article (116) of the constitution, the principle of decentralized administration require the assignment of the legislation authority in the council (the governorate council) to monitor the governor and to dismiss him and not the federal I.C.R., this statement is rejected also as the general jurisdiction of the I.C.R. in monitoring the work of the executive authority under article (61/2nd) of the constitution, the article (116) of the constitution describe the federal system in the Republic of Iraq and its regional formations without arranging any other provision on that. As for the plaintiff claim that the governor shall subjected to the governorate council and not the I.C.R. it has no substantiation

except the plaintiff jurisprudence, we have already mentioned that the constitution has authorized the I.C.R. to regulate by federal law the administrative and financial powers enjoyed by the governorates, this allow the law to interpretation the article (116) of the constitution, and not baseless jurisprudence, the plaintiff also refer that the challenged article consider as amendment for the constitutional jurisdictions of the I.C.R. and contradict with article (61) of the constitution which allow the council to dismiss the ministers and the official of independent committee, the governor is at level of acting minister and not minister, this claim is rejected also as what the challenged article has contained consider as regulation to the governorates affairs by a law according to the provision of article (122) of the constitution, as it doesn't bind that the constitution stipulate exclusive jurisdiction so that it won't be constitutional unless it was stipulated in the constitution, it is enough to be legal so that it become legitimate, as for the content of the challenged text it found it substantiation within what the constitution has grant to the I.C.R. of jurisdiction to organize the governorates affairs by a law, and by what it granted the I.C.R. of jurisdiction to monitor the work of the executive authority according to article (61/2nd) of it, there is no need to amend the constitution especially that it authorize the I.C.R. to organize the mentioned matter by ordinary law. As for what the plaintiff' agent has mentioned that the I.C.R. dismiss the officials to be limited on the minister and the official of independent committees, its wrong, because the provision of the constitution in a particular position does not need to invalidate the provisions concerning other conditions, for example, the constitution did not stipulate that the

dismissal can only be for the minister and the head of the independent body, but it ruled that the council can dismiss the mentioned addresses without limitation to them. As for the degree of acting minister does not change anything, because the origin in the provision what stipulated in the law or the constitutional base is the possibility of dismiss the governor under proposal from the prime minister without any effect to the post level. The agents of the plaintiff submitted an answering draft to the statement of the defendant agent on 30/11/2015 it didn't include anything new just repeating their case petition. The defendant agent also submitted another answering draft on 14/12/2015 and it didn't contain anything new ether just repeating his defenses. After the case was registered according to paragraph (3rd) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedures according to paragraph (2nd) of article (2) of the mentioned Bylaw, the date 26/1/2016 was scheduled for the argument, the court convened the attorneys (ta.qaf.ha.), (shin.sin.feh.) and (feh.ain.nun.) attended for the plaintiff, the attorney (ain.ra.mim.) has attended beside them as general agent for the plaintiff by the power of attorney linked to the case petition and decided to accept him, the defendant agent has attended, and continue with the argument in presence and public, the plaintiff agents repeated the case petition and requested to judge according to it, the defendant agent repeated the answering draft and requested to reject the case, the plaintiff agents commented that the case subject differ from the subject of the two cases referred to by the defendant agent, and commented that (what the I.C.R. has done contradict the constitution according

to what we listed in the case petition). Whereas nothing left to be said the argument is closed and the decision is issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff' agents claimed that on the date (28/5/2015) on the session No.(42) the I.C.R. issued decision to dismiss their client the governor of Ninawa (alif.ain.nun.), this decision was issued under the provision of article (7/8th/2) of amended law of governorates that are not incorporated in a region No.(21) for 2008 therefore they challenged that the mentioned article is unconstitutional and illegitimate as it violate the provisions of articles (13, 110, 115, 122, 116, 126, 142) of the constitution, for the mentioned reasons in their case petition and notifying the I.C.R. to repeal the dismissal decision subject of the case because it was issued basing on repealed legislative text (according to their claim), the void remain void and does not benefit in making the rule originally. The F.S.C. found that the Iraqi constitution for 2005 didn't stipulate the jurisdiction of I.C.R. to dismiss the governor as the plaintiff has claimed, but the constitution didn't prevent it to do so under his jurisdiction to monitor the executive authority (article 61/2nd of the constitution) and the governor is part of the executive authority, the I.C.R. according to article (61/8th/alif) is authorized to dismiss a minister so from the top priorities it also can dismiss acting minister, as the governor is the superior executive president in the governorate and his post is on the level of acting minister regarding the rights and the post service according to article (24) of the

amended law of governorates that are not incorporated in a region No.(21) for 2008 because the one who has the most shall own the least, as the I.C.R. is authorize to dissolve the governorates councils under article (20/2nd/beh) of amended law of governorates that are not incorporated in a region No.(21) for 2008 which have the right to dismiss the governor according to article (7/8th/1) of the mentioned governorates' law, therefore it is regular that the I.C.R. shall have the right to dismiss the governor also. As the request of dismissing the former governor of Ninawa (the plaintiff alif.ain.nun.) was submitted from the Prime minister which is the president of one of the executive authority branch and the direct executive officer of the general policy of the state and have the right to dismiss the ministers under the approval of the I.C.R. according to article (78) of the constitution whereas the governor is part of the executive authority (article 24 of the amended law of governorates that are not incorporated in a region No.(21) for 2008) so he is authorized to submit the mentioned request. The F.S.C. fund that the decision issued by the I.C.R. on (28/5/2015) on the session No.(42) which include the dismissal of the plaintiff (alif.ain.nun.) the former governor of Ninawa was issued according to the provisions of article (7/8th/2) of the amended law of governorates that are not incorporated in a region No.(21) for 2008, the mentioned article was legislated by the I.C.R. according to its stipulated jurisdictions in article (61/1st) of the constitution therefore its constitutional article and doesn't violate the provisions of the listed constitutional articles by the plaintiff, the challenged decision which was issued under that article is authentic decision and doesn't violate the constitution or the law, accordingly the court decided to reject the plaintiff' case

and to burden him the expenses and advocacy fees for the agent of the defendant amount of (amount of one hundred thousand Iraqi dinars) divided on them equally. The decision has been issued unanimously and decisively according to article (94) of the constitution and article (5/2nd) of the F.S.C. bylaw No.(30) for 2005 on 26/1/2016.