



The Federal Supreme Court (F S C) has been convened on 12.4.2017 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-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff: Governor of Wasit/ being in this capacity – his agents the legal consultant (ghain.kaf.heh) and the jurist (ain. shin.nun).

Defendant: Minister of reconstruction and housing and general municipalities/ being in this capacity.

Claim

The agents of the plaintiff claimed that according to article (45) of governorates incorporated into a region law No. (21) For 2008, a committee shall be established called (the higher committee of coordinating between governorates headed by the Prime Minister and the membership of Ministers municipalities and public labors, reconstruction and housing, labor and social affairs, education, health, planning, agriculture, youth and athlete) and the Minister of the state for governorates affairs. This committee shall carry out what follows: 1. Transferring the branch offices, bodies, occupations, services and specialties which exercised by the Ministry of municipalities and public labors, reconstruction and housing and Ministries... its allocated approbations in the general budget, employees and workers in it to the governorates, according to the range of its occupations shown in the constitution and specialized laws, gradually, and the role of these Ministries remains in planning of general policy. 2. According to clause (5) of article (45) of governorates incorporated into a region law, the aforementioned committee shall ends its works within two years effective

from the governorates incorporated into a region law is taking effect, contrariwise these occupations considered transferred by law. Accordingly, the job of granting approvals for municipalities establishment tracts to invest it is a specialty of the governors according to the law of investment No. (13) For 2006. The Ministerial order issued by the Ministry of reconstruction and housing and general municipalities No. (79) on 9.22.2015 about executing what listed in article (45) abovementioned, had excepted in clause (24) of it ((the subject of approval of assessment minutes, which assessed by the formed committees and related to assessing leasing allowances for immoveable funds)), is one of the tasks assigned to the governors, as the plaintiff claims regards a violation to article (45) of the governorates law abovementioned. Whereas the approval of the assessment minutes by the Ministry leads to obstacle and delay these minutes, as well as causing unjustified confusion for the included offices of the Ministerial order abovementioned. Therefore, the agents of the plaintiff/ being in this capacity requested to: ((issuing a decision that the authority of approving the assessments minutes which concern selling and purchasing contracts. The premier and eventual authorities of the investments projects should be for the governors, corresponds to the target which article (45) of governorates incorporated into a region law abovementioned enacted for. The agent of the defendant/ being in this capacity answered the petition of the case according to the letter numbered (mim.kha/6038) on 11.26.2017, and requested to reject the case: alif. Formally for incompetence, because what listed in the petition of the case did not indicates to a violation of the Ministry for a valid constitutional text. Beh: rejecting the case objectively, because clause (1st) of article (45) of governorates incorporated into a region law No. (21) for 2008 when indicated to remains the role of the Ministries in planning the general policy does not meaning depriving it from all authorities and occupations, and the proof is what clause (5th) of article (2) of the abovementioned law indicated to. Whereas indicated to existence of an exclusive specialties for the executive power, and the defendant clarified that he attach this photocopy in his draft of the Ministry of finance letter (number 20553) on 2.16.2017, which confirms that there is not a legal substantiation of disengagement the formations of the defendant's Ministry, because the turnover of the employees of these formations were not received. Therefore, exercising the occupation enquired about is related to transferring the personnel and disengages it of the abovementioned

Ministry. After the Ministry of finance completed its procedures, and the personnel of the branch offices were not transferred till now, and the letter of Ministry of finance confirms that No. (4583) on 6.11.2016 which a photocopy of it enclosed. As well as the defendant attached a photocopy of the Prime Minister Office letter No. (mim.ra.waw/17/13971) on 10.18.2017 which confirms on ineligibility of the governors to exercising the process of selling or leasing of the properties which belongs to establishments of the municipality, but with a legislative intervention. Accordingly, the defendant requested to eject the case formally and objectively, and to burden the plaintiff all the fees and case expenses. After registering the case at this court according to clause (3rd) of article (1) of the FSC bylaw No. (1) for 2005, and after completing its procedures according to clause (2nd) of article (2) of the aforementioned bylaw, the day 12.4.2017 was set as a date for pleading, and on that day the court was convened and the agent of the plaintiff the jurist consultant Mr. (ghian.kaf.heh) attended and the agent of the defendant did not attend spite of he was notified according to the law. The pleading proceeded in his absentia, and the agent of the defendant repeated what listed in the petition of the case and requested to judge according to it, and he recapitulated the case of his client with a request of approving on sessions' minutes of the specialized committees of assessing selling and leasing the state's real estate's is authority of the governor not the defendant Minister of reconstruction and housing, and on premier investment projects, and he presented an illustrative draft about what listed in the petition of the case, which attached to the file of the case. He repeated his sayings, whereas the case is ready to take decision about it, the court decided to end the pleading and issued the decision publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the defendant claims in the petition of his case it is according to article (45) of governorates incorporated into a region law No. (21) For 2008 a committee shall be established called the higher committee of coordinating between governorates headed by the Prime Minister and the membership of municipalities and housing and reconstruction Minister and a number of other Ministers, and carries out the branch offices moving and bodies, occupations, services and other specialties which exercised by the Ministries aforementioned in article (45) abovementioned to the

governorates in the range of its occupations clarified in the constitution and the specialized laws gradually, and the role of the Ministries remains in planning of general policy. Whereas the Ministerial order issued by Ministry of reconstruction and housing and general municipalities No. (79) On 9.22.2015 about executing what listed in article (45) aforementioned had excluded in clause (24) of it the subject of approval on assessments' minutes which assessed by the formed committees and related to leasing allowances for immovable funds of the tasks which assigned to the governors. Because of discontent of the plaintiff with that, he proposed to challenge the abovementioned Ministerial order abovementioned for the reasons listed in his case petition and requested to judge that the authority of approving the assessment minutes which related to selling and purchasing, as well as the elementary and final authority of investment projects is an authority of governors corresponding with the target which article (45) of governorates incorporated into a region law No. (21) For 2008 aforementioned enacted for. The FSC finds that its specialties are determined in article (93) of the constitution and article (4) of its law No. (30) For 2005 and article (31/11th/3) of governorates incorporated into a region law No. (21) For 2008, and not among these specialties ((to judge with making the authority of approving the assessment minutes of selling and purchasing, as well as the elementary and final authorities of investment projects is an authority of governors, because the decision (challenge subject) is one the administrative decisions which the law determined a way for it to be challenged, but not to challenge it before the FSC)). Therefore, the FSC decided to reject the case formally for incompetence, and to burden the plaintiff/ being in this capacity the expenses and advocacy fees for the agent of the defendant amount of (one hundred thousand Iraqi dinars). The decision issued unanimously according to article (94) of the constitution and article (5/2nd) of the FSC law No. (30) For 2005, and made clear on 12.4.2017.