

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 124/federal/media /2014



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 21.4.2015 headed by 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:

The Plaintiff : Governor of Maysan / being in this capacity his legal Adviser (ain. ain. zin.)

The Defendant : Chairman of the Maysan Provincial Council / being in this capacity jurist (alif. heh. dal).

The Claim :

The Governor's attorney claimed that the defendant had already issued (Maysan Provincial Council) a decision No. (61) of 2014 the investment authority in the province is required to obtain approval and decision from the provincial council before issuing the investment license for national and foreign companies, this decision violated the provisions of the Investment Law No. (13) of 2006 and the Bylaw No. (3) of 2009, under which the authority to issue these permits was referred to the Board of Directors of the Authority. The ruling requested the cancellation of the above decision for violating the

provisions of federal laws and the Constitution and charging the defendant / being in this capacity the fees of lawyers and expenses. The agent of the defendant answered to the petition of the lawsuit with his draft dated 31/12/2014 that the Maysan Provincial Council did not insist on its decision No. (61) for the year 2014 and therefore the prosecution is contrary to the provisions of paragraph (3) of item (11) of article (31) of the Law of The Irregular Provinces in The Province No. (21) of 2008, as for the letter No. (6371) on 23/9/2014 issued by the Investment Committee of the Council above, it is a letter of clarification and not a decision and insisted upon by the defendant's agent's request to reject the case. After registering the case in accordance with article (1), paragraph (3) of the FSC's system No. (1) of 2005 and completing the required procedures in accordance with article (2) of the paragraph (2<sup>nd</sup>) of the mentioned system. On 21/4/2015, the date for the pleading was set, at which the court was formed, so the attorneys of the two parties attended, and the public hearing was started, the plaintiff's agent repeated the petition and requested the verdict under which the defendant's agent replied that he was repeating what was said in his answering draft and requesting that the case be rejected because of the letter referred to by the plaintiff's agent in his petition, does not express the opinion of the Maysan Provincial Council and that the publication of the letter of the Investment Committee in the Council of The Mnota and signed by the Vice President of the Council does not reflect the opinion of the Council and both parties repeated his previous statements and since there's nothing left to say, the conclusion of the case and the decision have been publicly understood.

## The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent/ being in this capacity claimed in his lawsuit that the Maysan Provincial Council has already issued a decision of (61) of 2014 requiring the investment agency in the province mentioned to obtain approval and decision from the Provincial Council before issuing the investment license for national and foreign companies. The decision was contrary to the provisions of the Investment Law No. (13) of 2006, and the bylaw No. (3) of 2009, under which it was authorized to issue these permits to the Board of Directors of the Authority and requested the ruling to cancel the decision mentioned above because it is contrary to the provisions of the federal laws and the Constitution. The FSC finds that one of the requirements for the establishment of this case and in accordance with the provisions of paragraph (3) of item (eleven) of article (31) of the Law of The Irregular Provinces in the province No. (21) of the year 2008 (amended) is the insistence of the council concerned on its decision (objected issued by the governor) or if it is amended without removing the violation explained by the governor, in this case the latter shall refer the matter to the FSC to rule on the matter. Whereas this court proved that the Maysan Provincial Council did not insist on resolution No. (61) of 2014, which was challenged by the governor, and this was confirmed by the defendant's attorney in his answering draft submitted on 31/12/2014 and before this court on 21/4/2015. Thus, the lawsuit filed by the Governor of Maysan was filed prematurely and without legal authority, which must be rejected by this body. The FSC decided to reject the case and charge the plaintiff/ being in this capacity the expenses and the defendant's attorney's fees / being in this capacity (alif. heh. dal.) a sum of one hundred thousand dinars, and the decision was issued decisively on the basis of the provisions of Article (94) of the Constitution and Article (5/2<sup>nd</sup>) of the FSC's Law No. (30) of 2005 and by agreement and understood publicly 21/4/2015.