

**IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL**

Republic of Iraq  
Federal Supreme Court  
Ref. 13/federal/ 201<sup>q</sup>



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 23.9.2019 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: Governor of Ninawa/ being in this post – his agent the legal adviser Fatehy Ahmad Faraj.

The Defendant: the Prime Minister/ being in this post –his agent the legal adviser Haider Alsoffi.

**The Claim:**

The defendant has issued the Devan order No.(47) for 2017 regard the assignment of the surgeon Dr.(Mzahim Qasim Alkayat) the president of Ninawa university to supervise the government effort to reconstruct the services in Ninawa governorate, as the aforementioned Divan order is not consistent with the constitutional

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articles provisions, and consider as a pillage of the will and powers of the local government in both its executive and legislative branches, Ninawa governorate council has issued its decision No.(210) for 2018 (attached to the case petition) by the absolute majority and it include the following:

1. Rejecting the Divan order No.(47) for 2017 that include the assignment of Dr.(Mzahim Alkayat) the management of services and restore stability issues, and requesting the party that issued the order to repeal it because this issues are the authorities of the executive power which is the Ninawa governorate and its departments.
2. The determine the assignment of the engineer (Salim Yahya Omran) from the management of reconstruction fund according to the mentioned Divan order, and to nominate three characters according to the governorate' controls, to select and assign one of them by the governorate council to manage the reconstruction fund in Ninawa governorate.
3. Approach the general secretariat of the Council of Ministers, the Council of Representatives, the Presidency of the council of ministers, and all ministries to not issue any Divan or ministerial order to assign the manager of any department or institution in Ninawa governorate by them, or the order will be rejected by the governorate council according to its stipulated authorities, and to initiate a case before the F.S.C. in case of dispute.

The defendant insist and hold to the mentioned Divan order which consider exceeding and clear violation to the constitutional jurisdictions granted to the local governorate in Ninawa as article (122) of the constitution clause (2<sup>nd</sup>) of it has granted the

governorate unassociated into a region extensive administrative and financial powers in order to manage its affairs according to the principal of (administrative decentralization) and also clause (3<sup>rd</sup>) of the mentioned article which consider the Governor who is elected by the governorate council as the supreme executive chief in the governorate to practice its granted authorities by the council. The Iraqi constitution provisions in article (110) of it stipulate the concurrent jurisdictions between the powers in articles (112, 113, 114) of the constitution, and didn't mentioned the jurisdictions of the governorate unassociated into a region after granting it the constitutional power in article (115) of it shall have priority in that and also granted it the legal power. The defendant' insistence to not repeal the mentioned Divan order No.(47) for 2017 is consolidation for the principal of (administrative centralization) and power monopoly and limiting it to the federal government to administer it centrally, throw the assignment of individual not subjected to the local government without its approval or stating its opinion in that assignment, to supervise and track and implement the projects in the governorate, and that consider as clear violation to the aforementioned constitutional provisions, and also the provisions of article (2/1<sup>st</sup>/beh) of the constitution, which stated that no law may be enacted that contradicts the principles of democracy, so how the defendant issue a Divan order that contradict what the constitution has stipulated?, the clues of the Iraqi constitution and the legal articles the govern the work of the local governorate clear that there is no text nether clearly nor inclusively that authorize the assignment of individual from outside the local government to ease the burden on an elected local government, or there should be a

custody on it, in addition, the supervisor on the governmental effort (Dr. Mzahim Alkayat) claimed the works carried out by Ninawa governorate and its departments, to himself, this claim is deception for public opinion and stealing those efforts that carried out these projects, the assignment of Dr. (Mzahim Alkayat) for this task doesn't consistent with his scientific specialization as he is surgeon doctor and the president of Ninawa university. Other violation is for the provisions of article (3/17) of the high education ministry' law No.(40) for 1988(the amended) that clearly indicate and authorized the assignment of the university president to occupy similar posts in another university or committee within the jurisdictions listed in article (18) of the same law, so what is specialized scientific relation between general surgery public works. For all that and according to the provision of article (93) of the constitution, article (4) of the F.S.C. law No.(30) for 2005 and article (2) of the F.S.C. bylaw, the agent of the plaintiff requested to repeal the challenged Divan order No.(47) for 2017.

The agent of the defendant the Prime minister/ being in this post respond to the case petition stating that:

1- the Divan order No.(47) for 2017 was issued by his client to lessening the burden on the local government in the governorates, and to be associated with the general secretariat of the Council of Ministers (the president of civil crisis management unit) as implementing to the decision of the council of ministers No.(97) for 2017 that was issued in its fourteenth session on (4/4/2017) which include the approval of the ministers council on the following:

- a) International stability support program related to executing (202) project to rehabilitate the basic services.
  - b) Authorizing the general secretariat of the council of ministers the power to sign on determining the projects to be implemented by the donor parties under the supervising of the Iraqi governorate.
- 2- The Divan order (the challenge subject) was issued by the defendant according to the decision of the council of ministers implementing to its constitutional jurisdictions stipulated in articles (78, 80/1<sup>st</sup> and 3<sup>rd</sup>) of the constitution and included executive issues and tasks, therefore the plaintiff challenge don't based on constitutional substantiation.
  - 3- The challenged decision was issued under the mentioned constitutional jurisdictions of the defendant, the interference of any party in these tasks is violation to the principal of (separation of powers) stipulated in article (47) of the constitution.
  - 4- The Ninawa governorate objection on the Divan order (the challenge subject), and the act of the Divan order committee No.(47) for 2017 by it letter No.(128 sin) dated on 3/5/2018 that is directed to the defendant and the objection of the governorate council consider as disruption to the work of the international team of restoring service on the governorate.
  - 5- The defendant notify the governorate of Ninawa and its governorate council according to his stipulated jurisdictions in articles (87, 80/1<sup>st</sup> and 2<sup>nd</sup>) of the constitution, that there is no logical or legal reason for their objection, as it contradict with the interest of the country it disrupts the development progress in the governorate, and affirm on the implement of the Divan order

(challenge subject) and not to adopt any instructions issued from the governorate of Ninawa and its council that include lack of cooperation with Dr. Mzahim Alkayat the president of the Divan order committee –in the future. For all that the agent of the defendant requested to reject the case.

After the case was registered according to paragraph (3<sup>rd</sup>) of article (1) of the F.S.C. Bylaw, and completing the required procedures according to paragraph (2<sup>nd</sup>) of article (2) of the mentioned Bylaw, the date 23/9/2019 was scheduled for the argument, the court convened and the defendant agent has attended, the agent of the plaintiff and the plaintiff didn't attend despite the notification according to law, and decided to continue with the argument according to the provision of the F.S.C. bylaw No. (1) for 2005. The court scrutinize the case petition and the answering draft and sked the defendant agent if he have comment on the draft, he replied that the plaintiff has lost his post capacity therefore the litigation is no longer present in the case. 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 has initiated his lawsuit as the Governor of Ninawa governorate challenging the order issued from the Prime minister/ being in this post No.(47) for 2017, which include the assignment of Dr. Mzahim Qasim Alkayat the president of Ninawa university to manage the agenda of restoring stability and services, the plaintiff/ being in this post requested to repeal this decision for the reasons he listed in his case petition. The F.S.C. found that this case is binding

to be rejected for two points first regard the litigation authenticity of the plaintiff whereas he initiated it as the Governor of Ninawa governorate and he lost this capacity when he was dismissed by the I.C.R. under the decision No.(30) for 2019, the other point the challenged decision validity was over after the appointment of the new Governor for Ninawa and issuance of republic decree about it, therefore the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued decisively and unanimously according to article (94) of the constitution and article (5) of the F.S.C. law No. (30) for 2005 on 23/9/2019.