



The Federal Supreme Court (F S C) has been convened on 5.3.2019 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, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rijab AL-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff in the case 227/Federal/2018: the Governor of Al-Nbar/ being in this capacity – his agent the jurist (alif.mim.ain).

The Plaintiff in the case 232/Federal/2018: the Governor of Salah Al-Deen/ being in this capacity – his agent the legal advisor (dhad.mim.kha).

The Defendant: the Speaker of the ICR/ being in this capacity - his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

The Claim

The agent of the plaintiff claimed that the defendant had enacted the law of the ICR No. (13) For 2018, and article (27/11th) of it stipulated on the jurisdiction of the ICR in ((inquiring the Governor according to procedures related to the Ministers and their removal with absolute majority. This matter shall be achieved with proposal from the Prime Minister...)). As well as article (31) of it stipulated ((the Representative with approval of twenty-five members may direct an inquiry to the Prime Minister, Ministers, principals of independent commissions or the Governors in affairs that related to

their jurisdiction)), while these two texts are violating the Constitution and touches his client's rights. He proposed to challenge these two texts for the following reasons: 1. Article (61/7th/jim) and article (61/8th/heh) of the Republic of Iraq Constitution for 2005 had determined the principals whom subjects to interrogation in the ICR exclusively, and those principals are the Prime Minister, the Ministers and the Heads of independent commissions not anyone else. Therefore, adding the governor to the procedures of inquiring the Prime Minister, the Ministers and the Heads of independent commissions is violating the Constitution. The constitutional enactor had meant to restrict the interrogation in the Prime Minister, the Ministers and the Heads of independent commissions, not anyone else. 2. The article (1) of the Constitution had made the federal form of the State, and stipulated in article (122/2nd) of it (governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law). This matter means that the Constitution was very clear in approving the decentralization administration and to override the authorities of the governorates on the authorities of the center, especially in the governorates. Then, the Constitution confirmed this meaning when it stipulated in article (122/5th) on ((the Governorate Council shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry...)). While the governorate Council is the body that appoints the Governor by elections, and it has the power to account the aforementioned principal not anyone else, and as the Governor considered the higher executive Head in the governorate to exercise a powers he authorized by the Governorate Council according to article (122/2nd) of the Constitution. This matter means that subjecting the Governor to the interrogation by the members of the ICR is unjustified, and it's clearly represent an intervention from a Federal power in a private affair of the Governorate, and it has no substantiation in the Constitution. 3. The FSC decided previously in its decision No. (119/federal/2017) on (5.11.2017) that inquiring the members of the executive power (in addition to the Prime Minister, the Ministers and Heads of independent commissions)

shall be according to the laws which regulates their administrative affairs, and directing the interrogation to the Governor shall be according to the provisions of governorates incorporated into a region law No. (21) For 2008 (amended). Whereas the governorates law didn't stipulates on the jurisdiction of the ICR by directing the interrogation to the Governor as the decision of the FSC above-mentioned obliged. Therefore, the text of the two articles (challenge subject) had granted the ICR the jurisdictions which it doesn't has. Therefore, the two texts are violating the Constitution and the decision of the FSC, and it should be adjudge by unconstitutionality of these texts and for another reasons mentioned by the agent of the plaintiff. The agent of the plaintiff requested to judge by unconstitutionality of the articles (27/11th) and (31) of the ICR's law No. (13) For 2018 as much as it is related to the jurisdiction of the ICR in inquiring the Governor, he also requested to burden him all judicial fees. The agent of the defendant/ being in this capacity answered the petition of the case by an answering draft dated on (19.12.2018) and he requested to reject the case with burdening the plaintiff/ being in this capacity all the expenses and advocacy fees because the plaintiff admit in the petition of the case in clause (5) of it, that the FSC previously decided in (5.11.2017) according to its decision No. (119/federal/2017) that directing the interrogation to the Governor shall be according to the provisions of governorates incorporated into a region law No. (21) For 2008 (amended), and this matter will produce the following: 1. There is no need to discuss clauses (1-4) which listed in the case's draft, because skepticism of unconstitutionality were resolved by the honorable Court according to its decision aforementioned. 2. Whereas the honorable Court in its decision aforementioned didn't inhibit the direction of interrogation by the ICR for the Governor, but it stipulated only to be listed in the governorates law. Whereas the ICR law is in the same level of the law (case's subject) from the power of obligation because it had been issued by the same legislative authority whom enacted the governorates law. Therefore, it is not a defect that the text in the ICR law which based on a legal matter could be stipulated in the governorates' law, also it can't be imagined that the Court adjudge by unconstitutionality of a text listed in a

specific law because it wasn't listed in another law. The Court had set a date for argument, and on the set day the agent of the plaintiff (the Governor of Al-Nbar/ being in this capacity) attended in addition to the agent of the defendant. The public in presence argument proceeded, the agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it, as well as to burden the defendant all the case's expenses and the advocacy fees. The agents of the defendant also repeated what listed in the answering draft dated on (19.12.2018) and they requested to reject the case and to burden the plaintiff all the expenses and fees. The Court found that the Governor of Salah Al-Deen had challenged before the FSC according to the case which initiated by his agent on the same defendant/ being in this capacity which carries the No. (232/federal/2018) by unconstitutionality of article (27/11th) and article (31) of the ICR law and its formations No. (13) For 2018, and for the same reasons listed in the case initiated before this Court No. (227/federal/2018) by the Governor of Al-Anbar/ being in this capacity. He requests from the FSC to judge by unconstitutionality of articles (27/11th) and (31) of the ICR law No. (13) For 2018 as much as they related to the ICR jurisdiction of inquiring the Governor, and to burden the defendant all the expenses. The argument date was the same day of (5.3.2018), and on the set date the agent of the plaintiff and the agents of the defendant attended, and the public in presence argument proceeded. The Court noticed that the subject of this case (232/federal/2018) is the same subject of the case No. (227/federal/2018) and initiated against the same litigant (the Speaker of the ICR/ being in this capacity). In order to minimize the time and effort, and because there is a link between the two cases. The Court decided to unify it with the case No. (227/federal/2018) and regards the case No. (227/federal/2018) is the base because it had been initiated firstly. This unifying is based on the article (76) of civil procedure law (amended). The agent of the plaintiff repeated what listed in the petition of the case, and requested to judge according to what listed in the answering draft dated on (13.1.2019). He requested to reject the case with burdening the plaintiff its expenses and the advocacy fees for the reasons he mentioned in it, and the other parties in the case

repeated their sayings and requests. They requested to judge according to it, whereas nothing left to be said, the Court decided to make the end of the argument clear, and the decision was recited in the session publicly.

The Decision

During the scrutiny and deliberation by the FSC, the Court found that the agent of the plaintiff in the case No. (227/federal/2018) and the agent of the plaintiff in the case unified with it No. (232/federal/2018) had challenged in the petition of their case the unconstitutionality of article (27/11th) and article (31) of the ICR law and its formations No. (13) For 2018. Each one of them requested in his case from the FSC to judge by unconstitutionality of above-mentioned articles for the reasons listed in the petition of their cases, and the Court had found that article (27/11th) of the law stipulated on the ICR jurisdiction in (inquiring the Governor according to the procedures that related to Minister, and to remove him with absolute majority. This decision should be based on a proposal from the Prime Minister, if one of the following reasons were approved: 1. Non-integrity or exploiting the post. 2. Causing waste of public funds. 3. Lacking one of membership conditions which stipulated in the governorates Council law No. (21) For 2008 (amended). 4. Intended failure or negligence in doing the duty or responsibility. Article (31) of the aforementioned law also stipulated ((the member of the ICR, with the agreement of twenty-five members, may direct an inquiry to the Prime Minister, the Ministers, the Heads of independent commissions or Governors to call them to account on the issues within their specialty)). As well as, the Court found that article (61/7th/jim) off the Constitution had determined the titles of posts which the ICR is specialized to inquires them exclusively, each of the Prime Minister and the Ministers to call them to account on the issues within their specialty. But this article didn't mention the post of the Governor, and the article (61/8th/heh) of the Constitution stipulated ((the Council of Representatives may question independent commission Heads in accordance with the same procedures related to the Ministers)). Whereas articles (102-108) of the Constitution had

counted the independent commissions, and the Governor wasn't among the independent commissions, and he also wasn't mentioned within the ICR specialties in article (61) the authority of inquiring the Governor. Its specialty of overseeing the executive power had been listed definitely. The FSC finds that the Constitution in article (61/7th/jim) and in article (61/8th/heh) had listed the titles of posts which the ICR has the right to inquire them on the issues within their specialty exclusively, and the Governor wasn't among these titles. Whereas article (7/8th/alif) of the governorates incorporated into a region law No. (21) For 2008 (amended) had stipulated on inquiring the Governor the governorate Council itself. Therefore, the FSC finds that directing the inquiry to the Governor according to the governorates law aforementioned, and article (27/11th) and article (31) of the law No. (13) For 2018 the law of the ICR and its formations are violating the Constitution provisions for the aforementioned reasons which requires to judge by unconstitutionality of it. The FSC decided to judge by unconstitutionality of article (27/11th) and article (31) of the law No. (13) for 2018 as much as it's related to directing inquiry to the Governor by the ICR to account him on the issues within its specialty, and to burden the defendant the expenses of the original case No. (227/federal/2018) which unified with (232/federal/2018), as well as the advocacy fees for the agent of the defendant the official jurists (alif.mim.ain) and (dhad.mim.kha) amount of one hundred thousand Iraqi dinars, and to be divided between them equally. The decision has been issued unanimously and decisively according to article (94) of the Constitution and article (5/2nd) of the FSC's law No. (30) For 2005. The decision has been made clear on 5.3.2019.