

The In the name of god most gracious most merciful

Republic of Iraq  
Federal supreme court  
Ref. 229/federal/media/2018



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 11.3.2019 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, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiffs : 1- (alif. ain. alif. ain. ghain.) Governor of Basra / being in this capacity- his juristic (ha. yeh. ha.)

Defendant: Chairman of Basra Provincial council/ being in this capacity his juristic (kha. heh. ghain.)

### Claim

The plaintiff / being in this capacity claimed before the FSC that the Basra Provincial council issued a letter (alif/15241) on 9/12/2018 , containing the opening of the nomination for the post of Governor of Basra based on the text of article (49/6<sup>th</sup>) of the Constitution and articles (6, 14, 19/1<sup>st</sup> & 2<sup>nd</sup>) of bylaw of the House of Representation. The plaintiff / being in this capacity requested the intervention of the FSC to make an appropriate decision on the constitutional violation committed by the provincial council by the above decision. For several reasons, the plaintiff was not sworn in under article (50) of the Constitution and was not a member of the House of Representation ,

He remains governor of Basra and the challenged letter is signed by the President of the provincial Council/ agency and is not passed by the law or the decision of the provincial council to vote on it by the members Contrary to the provisions of the law on irregular governorates in the territory No. (21) of 2008, where legislation and decisions are issued by the Council after voting by members and not individually Contrary to the provisions of the law on irregular governorates in the territory, where legislation and decisions are generated by the Council after voting by members and not individually. In addition, the letter did not mention the dismissal of the governor and was not informed by an official letter, a warning, a directive or a copy of the announcement of the opening of the nomination. This caused confusion in the administrative process, after the case was received and recorded, and the defendant was notified of a copy of it, which responded with the answer plea dated 28/1/2019, including its Positive defense to reject the case, the plaintiff's challenge is violate to the provisions of article (31/11<sup>th</sup>/1) of the Law of irregular governorates in the Territory. The challenged letter did not contain a dismissal of the governor but focused on the nomination of the candidate and finally, the letter, though issued, was not worked out and there was no effect, and after the appointment a date for the argument, the court was formed and the parties were called to attend their agents and argument immanence and public. The two agents of the two Parties reiterated their previous statements and requests and after the completion of the court's scrutiny the argument has been understood and the decision was publicly understood .

### The Decision:

When scrutiny and deliberation by FSC fond that the plaintiff/ being in this capacity was challenged the letter of Basra Provincial Council No. (alif/15241) on 9/12/2018 and referred it to the FSC To be judged, which includes opening the nomination for the post of

Governor of Basra based on that the plaintiff became a member of the House of Representatives. Whereas, according to his claim, the plaintiff was not constitutional oath of office and did not work in the House of Representatives and still holds the post of Governor of Basra. He requests the Federal Court to make the appropriate decision on the constitutional offence committed by the Provincial Council on the basis of article (31/11<sup>th</sup>) of the Law on irregular governorates in the Territory No. (21) of 2008 after the letter of the provincial council was sent back to him asking for reconsideration and cancellation for the reasons stated in the letter of return returning to the text of article (31/11<sup>th</sup>) of the Law on irregular governorates in the Territory No. (21) of 2008 , the text of paragraph (3) as follows (If the council concerned insists on its decision or if it is amended without removing the violation clarified by the governor, he referred to the FSC to judge on it.) . As the requirement of insistence by the Provincial council or to amend it without removing the violation clarified by the Governor under the letter of return was not achieved and it is a necessary condition for consideration of the case by the FSC in accordance with its competence under article (31/11<sup>th</sup>) law on governorates judge in it, The consideration of the case and the situation is outside the jurisdiction of the FSC, which should be rejected by the competent authority. The judge decided to reject the plaintiff's claim from the competent authority and to charge the fees and the lawyer's attorney's fee of (100,000 dinars) and issued the decision in the presence of parties and decisively by agreement had made clear and public on 11/3/2019