

Republic of Iraq
Federal supreme court
Ref. 233/federal/ 2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14.5.2019 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 : Governor of Muthanna / being in this capacity- his agent
Hussain Kazem Mohammed Samawi.

Defendant: Chairman of Muthanna Governorate Council / being in this
capacity his agent his agent Zaid Yahya Hadi Mousa Shobra.

Claim

The plaintiff claimed that the Muthanna Governorate Council issued its decision No. (52) of 2017 under which the item was amended (4th/dal) of paragraph (6th) of article (31) from the bylaw of the Muthanna Governorate Council No. (1) of 2009 for the exemption of high-level and district directors in the governorate from their positions as under the decision No. (52) 2017 that mentioned before, annul of the decision of the Muthanna Governorate Council No. (47) of 2013. The above-mentioned decision No. (52) of 2017 was submitted to the Committee for the implementation of the decisions of the Muthanna Governorate Council for violation of article (51) of the

Law on irregular governorates of the Territory No. (21) of 2008 (amendment). The Muthanna Provincial council insisted on its decision to insist by resolution No. (33) of 2018 which was communicated to the province by its letter No. (2/4/1776) on 28/6/2018. Decision No. (33) of 2018 was submitted to the ((the Committee for the implementation of the decisions of the Muthanna Governorate Council), which was brought before the FSC. Whereas, the decision of the Muthanna Provincial Council No. (52) of 2017 (the challenged) violate the provision of article (51) of the Law on irregular governorates of the Territory No. (21) of 2008, because the FSC is responsible for overseeing the constitutionality of the laws and regulations effective as well as the text of article (31/11/2) of the Provincial law (21) of 2008 that mentioned before ((If the council concerned insists on its decision or if it is amended without removing the violation that the governor has explained, he transmission to the FSC to judge the matter)). For the foregoing the plaintiff's agent request for (annul of the decision No. (33) of 2018 to violate the article (51) of the Law on irregular governorates of the Territory No. (21) of 2008 and obligate the defendant to enact the necessary legislation for that). The defendant replied to the petition and requested that it be rejected in a form and for the following reasons :

- 1- In the absence of objection by the Governor to the decision of the Governorate Council No. (33) of 2018 of the FSC to judge it, starting before entering into a dispute in accordance with the provisions of article (31/11th/3) of the Law on irregular governorates of the Territory No. (21) of 2008. The decision No. (52) of 2017 it is an organizational decision regulating the situation of interrogation of high-ranking persons in accordance with the powers of the governorate council set out in article (7/14th) of the Governorates law referred to above. Since the above-mentioned decision had set out a way of challenging to those who had suffered harm before the employee court judiciary, and this decision is not violate with any state of the constitution. The

defendant's agent request to reject the case. After registering the case on the basis of the provisions of paragraph (3rd) of the article (1) of bylaw of the FSC No. (1) of 2005, After completing the required procedures based on the provisions of paragraph (2nd) of the article (2) of the mentioned law. The day 14/5/2018 was set for the hearing and the court was formed so the prosecutor attended the Governor of Muthanna / being in this capacity and the lawyer Zaid Yahya as agent of the defendant chairman of the provincial Council of Muthanna and was directly pleading in his presence and publicly. The plaintiff's agent repeated the petition and request to judgment under it. The defendant's agent replied that he had repeated the answering draft and requested that the case be rejected for the reasons stated therein, each of the agents of the parties replied that they had nothing to add to their previous statements, upon scrutiny, that the case had been completed for reasons of judgment . Decided the end of argument has been made clearly , the decision had made clear public in session.

The Decision:

When scrutiny and deliberation by FSC found that the Muthanna Provincial Council issued its session on 26/2/2017 its decision No. (52) of 2017, under which the item was amended (4th/dal) of paragraph (6th) of the bylaw for the mentioned Council No. (1) of 2009 to exempt high-level and district directors in Muthanna Governorate from their positions in the two cases contained therein. Because the plaintiff was not satisfied with the above-mentioned decision No. (52) of 2017, he challenged to the FSC on the basis of the provisions of article (31/11th/3) of the Law on irregular governorates in the Territory No. (21) of 2008. The challenged decision No. (52) of 2017 (annulled the stat of item (4th/dal), paragraph (6th), article (31), of the bylaw b of the Muthanna Governorate Council No. (1) of 2009 and replaced by the following :

If the members of the Governorate Council are not satisfied with the answers provided by the interrogator or his failure to attend, the vote shall be taken at a later session of the interrogation session and the vote shall be by secret ballot unless the council considers , by the majority of attendees other than that..). The FSC found that the decision No. (52) of 2017 (challenged) did not annul (The principle of interrogation) Prior to the dismissal of the employee, but in the event that the interrogation is directed to the job titles mentioned in it by the provincial council and that they do not attend the interrogation session after they have been notified and without providing a legitimate excuse, this is a matter of acknowledgement of what was attributed to them in interrogation questions and a waiver of the right of reply. As submitted, the decision No. (52) of 2017 issued by the Governorate Council of Muthanna is consistent with the provisions of article (51) of the Law on non-regular governorates in the Territory No. 21 of 2008 and in accordance with the direction of the FSC in its judgment of 18/4/2017 No. (37/federal/2017). The FSC decided to reject the case and to charge the plaintiff/ being in this capacity with the fees and attorneys ' fee to the defendant's agent, amounting to (one hundred thousand) dinars. The decision issued decisively on the basis of the provisions of article (94) of the Constitution, article (5/2nd) of the FSC's law and by unanimously decision had made clear and public 14/5/2019.