



The Federal Supreme Court (F S C) has been convened on 3.11.2018 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 and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

- The Plaintiffs: 1. Governor of Nineveh/ being in this capacity- his agent the legal consultant (kha.ain.beh).
2. Governor of Salah AL-Deen/ being in this capacity- his agent the legal consultant (sin.mim.shin).

The Defendant: the Prime Minister/ being in this capacity – his agent the legal consultant assistant (ha.sad).

The Claim

The agents of the Plaintiff claimed that the Cabinet previously issued its decision No. (437) for 2017 in its ordinary session (Fifteen) on 12.26.2017 which included preparation of higher commission of coordination between governorates for a gradual plan to move authorities to liberated governorates during 2018. This shall be achieved according to a stipulations determined by this decision. Whereas the decision was violating provisions of article (45/1st/5) of the law No. 19 for 2013 the second amended law of governorates incorporated into a region law No. 21 for 2008 (amended) which stipulates on (a commission shall be established called (higher commission of coordination between governorates, headed by the Prime Minister, and membership of the Ministers of municipalities and public labor, reconstruction and housing, labor and social insurance, education, health, planning, agriculture, finance, youth and sport, Minister of the state for governorates affairs, governors and Heads of

governorates' councils which shall carrying out the following: 1- (moving of branch offices, bodies, employments, services and competences which exercised by the Ministries (municipalities and public labor, reconstruction and housing, labor and social insurance, education, health, agriculture, finance and youth and sport) with the funds which allocated for it in the budget and the employees working in it to the governorates in the range of its employments which detailed in the Constitution, and specialized laws gradually. The Ministry role shall remains in planning general policy. 2- As for article (54/1st/5) which stipulates on (the commission shall accomplish its works which indicated to in clause (1) abovementioned within (two years) starting from the date of this law validity. In case that works weren't accomplished, these employments considered moved according to the law). It is clear from what mentioned above that article (45/1st/5) of governorates incorporated into a region law had set a time fence for two years, whereas the law No. 19 for 2013 (the second amendment for governorates incorporated into a region law) was published in the Iraqi gazette in the edition 4284 on 8.5.2013. This matter indicates to that the time fence which determined in the law by (two years) is over. Whereas this decision was unfair for their two governorates, they requested to issue a decision by annulling the Cabinet decision No. (437 for 2017 and to obliges the defendant/ being in this capacity by moving the competences which determined by the law No. (19 for 2013 the second amendment of governorates incorporated into a region law No. 21 for 2008 (amended)) to their governorates. They also requested to burden the defendant all fees and expenses. After registering this case at this Court according to clause (3rd) of article (1) of the FSC bylaw No. (1) For 2005, and after receiving the answer of the defendant/ being in this capacity agent by his draft dated on 2.27.2018. He requested to reject the case for incompetence as well as the subject. Whereas the two governorates divans, its councils and offices didn't reach the stage of completing all settlement requirements, and the ability to exercising the authorities which will be transferred to them from the other Ministries. This mean that his client had used his authorities according to article (80/3rd) of the Constitution (issuing decisions in purpose to implementing the law). After completing required procedures according to (clause 2nd) of article (2) of the same bylaw, the day 3.11.2018 was set as a date for argument. The Court also noticed that it decided to

void calling of the case according to the request of the first defendant the governor of Nineveh/ being in this capacity without burdening him the advocacy fees, because the case in its first stages. On the day of argument, the Court had been convened. The agent of the first defendant governor of Salah AL-Deen/ being in this capacity attended, as well as the legal consultant assistant (ha.sad) as an agent of the second defendant the Prime Minister/ being in this capacity. The public in presence argument proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it. The agent of defendant answered by repeating what listed in the answering draft, and he requests to reject the case for the reasons listed in it. Both parties repeated their sayings, and the Court completed its investigations. Whereas nothing left to be said, the end of the argument made clear and the decision was recited publicly on 3.11.2018.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the agents of the plaintiffs requested in the petition of the case (to issuing a decision to annul the cabinet's decision number 437 for 2017) as long as it is violates the provisions of article (45/1st/5) of the law number 19 for 2013 (the law of second amendment of governorates incorporated into a region law number 21 for 2008), and to obliges the defendant/ being in this capacity to transfer the authorities which determined by the law aforementioned to their governorates. This law obliged to form a commission called (the higher commission of coordination) between the governorates headed by the headed by the Prime Minister, and membership of a number of Ministers, its task is to (move branch offices, bodies, employments, services and competences which exercised by the Ministries with its dedicated allocations by the budget. The employees whom working in these offices shall be moved to governorates in the range of its employment which shown in the Constitution and the laws gradually). The role of the Ministries remains in planning the general policy and the time ceiling of aforementioned law (two years) was over. Therefore, the decision of the cabinet violates article (45/1st/5) of the law numbered 19 for 2013. The FSC finds that the case's subject is out of its competence which stipulated in article (4) of its law, and article 93 of the Republic of Iraq

Constitution, because it is an administrative subject. Besides, the governorates incorporated into a region law had determined the FSC's competences of trying what related to implementing its provisions in only one article which is it (31/11th/3) of it. This article allowed the governor to refer the Governorate's council decisions by insisting on its decisions or amending it without removing the violation which the governor showed to the FSC to take a decision in this point exclusively. As long as the agent of the first defendant had voided this case for his client, and the case is lacking to its legal substantiation because it is out of the FSC competence. Therefore, the Court decided to reject the case, and to burden the second defendant/ being in this capacity the case's expenses and advocacy fees for the defendant's agent the legal consultant assistant (ha.sad) amount of (one hundred thousand Iraqi dinars). The decision issued in presence of both parties, unanimously and decisively according to article (94) of the Constitution and made clear on 3.11.2018.