

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

Republic of Iraq  
Federal Supreme Court  
Ref. 26/federal/media/2015



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 4/5/2015 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 Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

**The Plaintiff:** (ha.lam.sad.) first deputy of Dhi Qar' Governor, his agent the attorney (ha.mim.mim.).

**The Defendant:** president of Dhi Qar' governorate council/ being in this post- his agent the jurist (nun.nun.kha.).

**The Claim:**

The agent of the plaintiff claimed before the F.S.C. in the case No.(26/federal/2015) that the defendant/ being in this post has issued the order No.(3091) on (5/3/2015) that include the attendance of his client for interrogation and to schedule the date (11/3/2015) for it under the request of the two members of the governorate council (ain.ain.sin.) and (zin.kha.nun.), as the interrogation is unconstitutional and violating the law for the following reasons:

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1. The current president of the governorate council Mr.(ha.kha.) doesn't have the authorities or the legal position that authorize him to issue an interrogation order or issuing important decisions according to the law No.(21) for 2008, because there is a challenge submitted by the formal president of the governorate council (yeh.mim.) before the court of the administrative judiciary regarding invalidity of dismissal, and the legal principal is that the presidency of the current governorate council consider as presidency to caretaking the daily work that include the normal daily matters, security, mail and other without taking decisions regarding the change of positions until the issuance of a final decision by the administrative judiciary court.
2. Article (7/8<sup>th</sup>) of the law No.(21) for 2008 that pointed out the interrogation and dismissal and it conditions was mentioned in specification and they are poor integrity, abusing, causing waste of public funds, losing one of the membership condition, intentional neglect and default in duty performing, these reasons must be determine in accordance with legal or administrative procedure which didn't occur by the governorate council before directing the interrogation questions, and also didn't schedule specific dates for the elections of the council president, and didn't specified a mechanism to challenge the decision of dismissal as it was explained regard the Governor' dismissal, that make this paragraph unclear about the procedures that he do.
3. The questions in the interrogation are unclear, general, and unlimited by matter that can be answered; the interrogation must not be for political reasons and position haring sharing.

4. The interrogation request was submitted under the request of two council members and not under the request of third of the council members as the law No.(21) for 2008 has required, and that violate the law.
5. The defendant/ being in this post has held a session under the presidency of one of the members, were a president of the council was elected although the formal president (yeh.mim.) is still the president of the council as he is the one who manage the council until a decision is issued in the submitted challenge by him before the administrative judiciary court, similar to what is decided to the Governor in the law of governorates unassociated into a reign No.(21) for 2008 article (7) paragraph (8<sup>th</sup>) (5,4) of it according to what is stated traditionally, because the mentioned law didn't included mechanism and procedures to follow in case of dismissing the Governor.

For the aforementioned reasons the agent of the plaintiff requested the F.S.C. to rule that his client interrogation is unconstitutional, and to burden the defendant the expenses and the advocacy fees, after the case was registered before this court 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, a date was scheduled for the argument, attended for the plaintiff his agent the attorney (ha.mim.mim.) by the power of attorney linked to the case files, attended for the defendant/ being in this post his agent the legal official (nun.nun.kha.),and continue with the argument in presence and public, the agent of the plaintiff repeated the case petition and requested to judge according to what listed in it, the agent of the defendant repeated the answering draft

and requested to reject the case, and repeated his statements and requests. Whereas nothing left to be said 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' agent has challenged the constitutionality of the decision of Dhi Qar' governorate council to interrogate his client (the plaintiff) first deputy of Dhi Qar' Governor under the interrogation letter directed to him No.(3091) on (5/3/2015), he requested the F.S.C. to rule by its unconstitutionality, after to observe the case the court found that considering the plaintiff case is out of the F.S.C. jurisdictions that are stipulated in article (93) of the Iraqi republic constitution for 2005, and article (4) of the F.S.C. law No.(30) for 2005, in addition to that the F.S.C. jurisdictions was listed exclusively in the amended law of the governorates unassociated into a reign No.(21) for 2008 in articles (20/3<sup>rd</sup>/2) an (31/11<sup>th</sup>/3) and it didn't include the jurisdiction to consider the authenticity of the governorate council decisions of interrogating the Governor deputy, therefore the case is binding to be rejected from the point of lacking the jurisdiction. Therefore the court decided to reject the case of the plaintiff from the point of jurisdiction, and to burden him the expenses and advocacy fees for the agent of the defendant/ being in this post the jurist (nun.nun.kha.) amount of one hundred thousand Iraqi dinars. The decision has been issued decisively and unanimously and issued publicly on 4/5/2015.