

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.2 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 14/2/2017, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff: Governor of Wasit/ being in this capacity- his agent the legal official (Ghain.Kaf.Heh)

The defendant: head of Wasit governorate council/ being in this capacity

The Claim:

The plaintiff agent claimed that the defendant/ being in this capacity- on 24/12/2014 issued his decision No.(504) that taken in the regular session for Wasit governorate council No.(81) that was convened on 23/12/2014 included (opening the door of nomination for the post of a real Wasit governor who has the legal conditions, delivering (27) the CV. To the presidency commission in order to elect a governor during fifteen days from the date of nomination opening). the objection on the above decision had been registered according to the letter of the Governorate no.(27741) on 25/12/2014, and referring to the provisions of the article (2) from the law no.(15) for 2015, the law of the first amendment of the law of governorates which don't organize in province No.(21) for 2008 (amended) which annulled according to it the clauses (4 and 5) from the eighth item from the article (7) from the law, and what is included by the clause (5) from it (after the end of the peri-

od of challenging that mentioned in the clause (4) from the above article or the ratification on it by the competent court, the governorate council elects a new governor during a period, not more than fifteen days.) on 4/1/2015 the defendant issued the decision (519) which was taken on the emergency session No.(83) on 4/1/2015 which included (election of Mim. Kha. Waw. Ain.) for the post of Wasit governor after having the absolute majority for the number of the council's members (24) out of (25) members. The agent of Wasit governor/ being in this capacity- went to the judiciary (court of administrative judiciary) during the period of challenging (15) days which been stipulated in the law, and the case had not been decided yet so opening the door of nomination and electing a new governor is considered as a violation for the legal provisions. The defendant, the head of Wasit Council of governorate/ being in this capacity- burden all the legal consequences especially that the general authority of the judiciary period of care taken which been stipulated in the law has ended as listed in the above decision. We make clear that the above article didn't include that in case the (30) days ended, the care taken will be ended and the council will be allowed the authority to open the door of nomination and to elect a new governor. The clause (5) listed in the second article from law No.(15) for 2010 the law of the first amendment which stipulated (after the end of the period of challenging that mentioned in the clause (4) from the above article or the ratification on it by the competent court.) The period of challenge is (15) days which according to it we objected on the decision of resigning and the court of administrative judiciary didn't ratify yet to open the door of nomination and to end the care taken and to elect a new governor. The council doesn't have the right to elect a new governor unless the decision of the resigning had been ratified by the court of administrative judiciary according to the provisions of the law of the governorates that not organize in a province No.(21) for 2008 (amended) according to the Law No.(15) for 2010, but the defendant still insist for his decision No.(504), also he made the decision No.(519) in his emergency session No.(83) to elect a new governor despite our objection on the first decision according to the governorate's letter No.(27741) on 25/4/2014, for being violated the laws and the valid instruc-

tions. Also, we objected on the second decision No.(519) by the governor of Wasit. The agent of the plaintiff requested from the FSC after proceeding the required procedure to oblige the defendant/ being in this capacity- to annul the decision No.(504) and the decision No.(519) that been issued by the defendant and to burden him all the expenses and fees of the advocacy. Although the defendant had been notified by the case petition, he didn't answer on it by a written draft during the legal period. The court selected a day for the argument and on the determined date the legal official (Ghain.Kaf.Heh) attended as the agent of Wasit governor (Mim.Kha.Waw) according to the power of attorney issued by Wasit governor/ office of the governor No.(1/25/3454) on 28/10/2015, allowed according to it all the legal authorities and a copy of it had been attached in the case file, and the defendant didn't come although he had been notified by the day of the argument according to the asset. The argument had been started in absentia and publicly against him. The governor agent made clear that the one who initiated the case is the former governor (Mim.Ain.Ra) which had been fired by the governorate's council in majority of 24 out of 25 votes and a republican decree was issued to appoint his client (Mim.Kha.Waw) as the governor of Wasit so he requested to proceed the case then reject it because the litigation is not directed to the former governor and he repeated his previous sayings and requests and requested the judgment according to it. Based on this and whereas nothing left to say, the end of the argument had been understood and the decision was understood publicly.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the one who initiated the case is the former governor of Wasit (Mim.Ain.Ra) which had been fired by the council of governorate Wasit by majority 2 votes out of 25 votes and a republican decree had been issued to appoint (Mim.Kha) as a governor for Wast, whereas the governor of Wasit had initiated the case/ being in this capacity- although he had been fired by the council of the governorate so the litigation, in this case, is not directed to him. The article (4) from the law of civil arguments No.(83) for 1969

(amended) if the litigation is not directed the court shall decide by its self to reject the case without getting deep in its basic according to the article (80) from the law of civil arguments. The FSC decided to reject the case and to burden the plaintiff all the expenses of the case and the decision was issued decisive and unanimously according to the provisions of the article (94) from the constitution of the Republic of Iraq for 2005 and had been understood publicly on 14/2/2017.