

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 33/federal/media /2015



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29.6.2015 headed by 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 Q as Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Chairman of the Baghdad Provincial Council/ being in this capacity his general agent (sad. sad. ain.).

The Defendant: Prime / being in this capacity his deputy general manager, Dr. (ha. alif.).

The Claim:

The plaintiff Chairman of the Baghdad Provincial Council/ being in this capacity claimed that the Council of Ministers has already adopted decision (62) of 2015 with its fifth regular session held on 3/2/2015 under the chairmanship of the defendant, It is included in paragraph (2) to stop all measures taken by all provinces and their councils on Law No. (19) of 2013 until the approval of the proposed amendments of the ministerial committee mentioned in paragraph (1) of the decision mentioned above and attached with the petition, since the decision in question is contrary to the provisions of the Constitution, particularly article (80/3rd) and article(129) and (130) of it, the powers

of the Council of Ministers are to issue regulations, instructions and decisions with a view to implementing laws to stop their implementation, and all laws issued and published remain valid unless amended or repealed by law to stop the provisions of articles (129 and 130) of the Constitution. The plaintiff added that the paragraph (2) from the above decision is unconstitutional for the following reasons: 1- The Iraqi Constitution adopted a system based on the principle of "the distribution of powers and respect for each constitutional institution, the powers of other institutions, and the Constitution determent the powers of the Council of Ministers in article (80) of it in paragraphs (2nd and 3rd of it, which gave the Council of Ministers the right to propose bills and submit them to the Council of Ministers, which is a constitutional right that cannot be challenged and now exercised by the Council of Ministers, as well as has the power to issue regulations, instructions and decisions with a view to implementing laws, so the Council of Ministers does not have the power to make decisions. By suspending the laws valid in accordance with the Iraqi Constitution some of them are law No. 19 of 2013 and do not have the authority to stop the actions taken by the provinces and their councils in accordance with the laws valid, which is based on the suspension until the adoption of the proposed amendments of the ministerial committee formed for the purpose of preparing recommendations for a bill, in addition, the suspension referred to may be completed in a month, (6) months, a year or more. Therefore, the proposals even have been completed, they do not go beyond being recommendations and do not reach the stage of the bill until after the approval of the Council of Ministers (the bill is not considered a law, until it is submitted to the House of Representatives and read it first and second by the House of Representatives and vote on it and the approval of the President of the Republic and publish it in the Official Gazette. 2- The Iraqi Constitution referred to the publication of laws in the Official Gazette and is in force from the date of publication, unless otherwise stated, the law No. (19) of 2013 (The Second

Amendment Law of the Irregular Provinces Law in Territory No. (21) of 2008) was published in the Official Gazette (Iraqi Gazettes) No. (4284) on 5/8/2013 it is stated in its legal resources that the law has come into force from the date it is published in the Official Gazette in article (17) of it (it is enforced from the date it is published in the Official Gazette and does not apply to any text contrary to its provisions)". For all of the above, it is incumbent upon the federal ministries and local government in the irregular provinces in the territory in to abide by the law and apply its provisions. 3- The Iraqi Constitution in article (130) of it, this dispute has been addressed beyond doubt by indicating that the legislation valid will remain in force unless it is repealed or amended in accordance with the provisions of this Constitution, and we are facing a federal law issued by the Iraqi Parliament that can only be repealed or amended by a law enacted by the Iraqi Parliament. 4- The Iraqi Constitution under article (122/2nd) of it, granting irregular provinces in administrative, financial and broad powers to enable them to manage their affairs in accordance with the principle of administrative decentralization and regulated by law, the law of the non-regular provinces was passed in the province in the territory of No. (21) of 2013 and then Law No. (15) of 2010 and finally Law No. (19) of 2013 in accordance with this principle granted by the Constitution local governments are able to exercise their prescribed abbreviations in accordance with the Constitution and all applicable laws except the exclusive abbreviations of the federal authorities contained in article (110) of the Constitution and also to be able to administer the common jurisdictions stipulated in article (112, 113, 114) of the Constitution in coordination and cooperation between the federal government and local governments, giving priority to the law of irregular provinces in the territory in the event of disagreement between them based on the provisions of article (115) of the Constitution, and for the reasons given the plaintiff's request 1- Ruling that paragraph (2) of Cabinet decision (62) of 2015 is unconstitutional. 2- The defendant is

obliged to issue a decision that cancels the decision referred to. The agent of the defendant/ being in this capacity responded to the petition from formal and objective terms. Formally, the chairman of the Baghdad Provincial Council does not have the legal person and therefore does not have the right to litigate pursuant to article (48) of the Iraqi Civil Code No. (40) of 1951(amended). That legal person was granted by the Law of the Irregular Provinces in Territory of No. (21) of 2008 in article (12) of it to the administrative units and that the administrative units in accordance with the provisions of article (1) of the mentioned law are (province , sub-districted , district). Objectively, Cabinet's decision No. (62) of 2015 (challenge) it did not include a provision to suspend the implementation of Law No. (19) of 2013, the aim is to oblige the provinces to stop the actions taken by them and their councils on the transfer of powers in compliance with the provisions of article (45) of the Law of the irregular provinces in the territory of No. (21) of 2008 (amended), which required the establishment of a body called the (Higher Commission To Coordinate between the provinces) of the same people mentioned in them, it is responsible for transferring the sub-departments, organs, functions, services and specialties exercised by the ministries referred to in article (45) above, together with their allocations in the general budget, employees and staff to the provinces within the scope of their functions set out in the Constitution and specialized laws gradually, therefore, the decision of the Council of Ministers (subject of the case) was issued in accordance with the text of the above, as it is not the prerogative of the provinces and their councils to take the measures for the implementation of Law (19) of 2013 (amended) independently of the general body for coordination between the provinces. The Council of Ministers confirmed (as directed to it) on 24/3/2015, which was notified to the ministries and provinces to adhere to the policy of administrative decentralization and transfer of powers, which means its commitment to the implementation of Law (21) of 2008 and its amendments, contrary to what the plaintiff portrayed in his

petition. For the reasons given for, the defendant's agent's request to (reject the case) in formal and objective terms. The plaintiff replied to the defendant's answering draft as following: the Law on The Irregular Provinces in Territory (21) of 2008 has granted the councils (legal personality) in article (2/2nd) of it, which means councils in accordance with article (1/3rd) of the mentioned law, the provincial council, the sub-districted council and the district council, and consequently the Council of the Province of Baghdad (legal capacity) in the sense the right to litigate, the procedures taken by the provinces and their councils do not exceed making, readiness and preparation with regard to the application of article (45) of the Law of the Irregular Provinces in the Territory mentioned above until the duration fixed set by the executive in this law, which is two years from the entry into force of the law, which was considered effective from 5/8/2013 the rest of the articles and paragraphs of Law (19) of 2013 that are outside the scope of the Higher Commission To Coordinate between the provinces and are not covered by the above article (45/1st/1) after approximately one year and nine months of law enforcement (subject matter). As a result the plaintiff's agent repeated his claim in his petition. After the registration of the case in accordance with the paragraph (3rd), article (1) of the FSC system No. (1) of 2005 and the completion of the required procedures in accordance with paragraph (2nd) article (2), of the said system, a hearing was set on 29/6/2015 as a date for the argument in it, the court was formed, and Dr. (ra. ain.) claiming, and next to him is his agent, the legal counsel who was appointed by his agent, legal counsel Mr. (waw. mim.), under the general agency, was presented with a copy of the case file, and the defendant/ The Prime Minister, Dr. (ha. alif. jim.), was presented with the rank of General Manager of the General Secretariat of the Council of Ministers as acting client of the defendant, the general agency No. (1053) on 24/6/2015, a photo copy of it attached to the case file, argument commenced in immanence and public. The plaintiff's agent reiterated the petition and requested the ruled, under which the

defendant's agent replied, repeating what was contained in the answer list, adding that the contested decision is one of the administrative decisions that the law set the way to challenge before the competent authority, which is not the FSC after the plaintiff's agent requested the correction of the name to the human rights office (sad. sad. ain.) produced the agency No. (5047) on 8/6/2015 linked to the case file after the FSC is competent to hear this case and both parties repeated his statements and where there is nothing left to say, the end of argument has been made clearly, the decision had made clear public.

The Decision:

After scrutiny and deliberation by the FSC found that the Council of Ministers/ being in this capacity has already adopted decision (62) of 2015 headed by the defendant/ being in this capacity and is included in paragraph (2) of it ((stop all actions taken by all provinces and their councils on Law (19) of 2013 (First Amendment Law of the Irregular Provinces Law in Territory No. (21) of 2008)) until the adoption of the proposed amendments of the ministerial committee mentioned in paragraph 1 of the above resolution, the plaintiff claimed that the decision referred to violated the provisions of the Constitution, particularly article (80/3rd), article (129 and 130) of it. Where the powers granted to the Council of Ministers are to issue regulations, instructions and decisions with a view to implementing laws, not stopping their implementation. All laws issued and published remain valid unless amended or repealed by law in accordance with the provisions of articles (129 and 130) of the Constitution. When submitted and because of the failure of the plaintiff to claim the content of the above decision and for other reasons mentioned in the petition, he appealed the above-mentioned decision, requesting that paragraph (2) of the said decision be ruled unconstitutional (the decision of the Council of Ministers No. (62) of 2015). The defendant is obliged to issue a decision that annuls the contested decision. The FSC finds that the

provincial councils have the moral character of financial independence and are represented by their president or who authorizes him in accordance with the provisions of article (2) of Law No. (19) of 2013 (First Amendment Law of the Irregular Provinces Law in Territory No. (21) of 2008). Accordingly, the President of the Provincial Council has the legal capacity to file this case. The FSC finds that the actions of the Council of Ministers to stop all actions taken by all provinces and their councils on the provisions of article (45/1st) of the Law on The Irregular Provinces in the Territory No. (21) of 2008, It is the suspension of regulatory procedures and did not disrupt the law referred to, but the suspension of the procedures that must be suspended until the end of the high body for coordination between the provinces stipulated in article 45 of the law mentioned above, the contested decision is an administrative decision on the part of The challenge is outside the jurisdiction of the FSC for the other reason that the challenges based on the Law of The Irregular Provinces of Territory No. (21) of 2008 to the FSC are contained exclusively in article (31/11th/3) of it and not including the challenge in case. Thus, the consideration of the contested decision is outside the jurisdiction of the FSC on which decided to reject the case from the jurisdiction and to charge the defendant/ being in this capacity the fees and the fees of the defendant's agent (ha. alif.) on the amount of 100,000 dinars and the decision was decisively and unanimously based on the provisions of article (94) of the Constitution and article (5/2nd) of the FSC's Law and have made clear on 29/6/2015.