

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 35/federal/media/ 2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 29.6.2015 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 Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: (ain.ha.mim.) the Governor of Aldiwania/ being in this post.

The defendant: (ain.ha.ha.) the Minister of health/ being in this post – his agents the legal officials (ra.ain.ain.)

The claim:

The agent of the plaintiff claimed that his client in the capacity of the Governor of Aldiwania under the article (31/8th) of the amended law of the governorates unassociated into a reign No.(21) for 2008 which stipulate that (taking administrative and legal procedures

about the state employees working in the governorate in accordance with their laws, and authorize the power of the competent minister) has taken administrative and legal procedure on the employee of the health ministry who work in Al-Diwaniyah educational hospital as a result of the recommendation of an investigative committee against them, under the governorate letter No.(1195) on 2/5/2015 due to their violation to the job tasks and harming the public interest of the governorate, but the health ministry didn't implemented the content of the mentioned governor' letter according to its letter No.(mim.waw./1/1007)on 12/2/2015 based in that on [the procedure of the mentioned committee in article (45/1st/1)] of the law of the governorates unassociated into a reign No.(21) for 2008 regard the transfer of competencies and jobs has not been completed and what the governorate has done is an exceeding on the powers of the ministry, the agent of the plaintiff added that this contradict what stipulated in article (31/8th) of law of the governorates unassociated into a reign No.(21) for 2008 (the amended), and the decision of the State Consultative council No.(95) for 2014, as article (130) of the constitution stipulated that ((existing laws shall remain in force, unless annulled or amended in accordance with the provisions of this Constitution)), for the aforementioned and in accordance with the provision of article (92/3rd) of the constitution the agent of the plaintiff requested to (obligate the defendant/ being in this post) to implement the provision of article (31/8th) of the law No.(21)for 2008 (the amended). The agent of the defendant/ being in this post respond to the case petition stating that there is an (supreme committee) to coordinate between the governorates headed by the Prime minister to conduct the tasks that are stipulated in article

(45/1st) of the mentioned law, to transfer the sub-department, bodies, jobs, services and the jurisdictions that are practiced by the included ministries, as paragraph (5) of the mentioned article has limited time-frame (two years) so that the mentioned committee would achieve its duties, accordingly, it is necessary to bind to the legal provisions in force until the expiration of the mentioned time frame. After the case was registered according to paragraph (3rd) of article (1) of the F.S.C. Bylaw, and completing the required procedures according to paragraph (2nd) of article (2) of the mentioned Bylaw, the date 29/6/2015 was scheduled for the argument, the court convened and the defendant agent has attended, the agent of the plaintiff and the plaintiff didn't attend despite the notification according to law, and decided to continue with the argument. The court scrutinizes the case petition and the answering draft and found that its decision is complete. 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 Governor of Al-Diwania/ being in this post in accordance with article (31/8th) of the law of the governorates un associated into a region No.(21) for 2008 has taken administrative and legal procedure against the employees who work in Al-Diwaniyah educational hospital as a result for the recommendation of an investigative committee against them, under the Governor letter No.(1195) on 2/5/2015 due to their violation to the job tasks and harming the public interest, but the health ministry didn't

implemented the content of the mentioned governorate' letter, according to its letter No.(mim.waw./1/1007) on 12/2/2015 basing in that on that the formed committee under article (45/1st/1) of the governorates law No.(21) for 2008 that was amended by the law No.(19) for 2013 didn't achieve its procedure of transferring the jurisdictions and jobs to the local governorates, what the Governor/ being in this post is an exceeding on the ministry powers, as what the health ministry has done -according to the plaintiff' agent claim- is violation to the provision of article (31/8th) of the law of the governorates un associated into a region No.(21) for 2008, whereas the in force legislations according to article (130) of the constitution remain in force unless annulled or amended in accordance with the provisions of this Constitution, therefore according to the provision of article (93) of the constitution, Al-Diwaniyah Governor/ being in this post has challenged the decision of the health ministry listed in it mentioned letter, and to oblige it to implement the provision of article (31/8th) of the law of the governorates un associated into a region No.(21) for 2008 (the amended). The F.S.C. found that the challenged decision that is listed in the letter of the health ministry No.(mim.waw./1/1007) on 12/2/2015 stating not to implement the administrative and legal procedure against the employees who work in Al-Diwaniyah educational hospital as a result for the recommendation of an investigative committee against them, under the Governor letter No.(1195) on 2/2/2015 is an administrative decision which the consideration of its authenticity is out of the F.S.C. jurisdictions, also the law of the governorates un associated into a region No.(21) for 2008 has stipulated the jurisdictions of the F.S.C. of the consideration regard the implementation of the

mentioned law in one point which is what listed in article (31/11h/3) of the mentioned law that authorize the governor to refer the decision of the governorate council by insisting on his decision or amend it without removing the violation that the governor has presented to the F.S.C. to decide the subject, what mention is limited to the law of the governorates un associated into a region No.(21) for 2008. By that the consideration of the plaintiff/ being in this post request is out of the F.S.C. jurisdictions; accordingly the plaintiff case has lost it constitutional substantiation. Accordingly the court decided to reject the case from the point of jurisdictions, and to burden the plaintiff Governor of Al-Diwaniyah the expenses and advocacy fees for the agent of the defendant (ra.ain.in.) amount of one hundred thousand Iraqi dinars. The decision has been issued decisively and unanimously according to article (94) of the constitution and article (5/2nd) of the F.S.C. bylaw No.(30) for 2005 on 29/6/2015.