



The Federal Supreme Court (F S C) has been convened on 9.26.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Rijab AL-Kubaisi, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff: Mayor of Karbala/ being in this capacity – his agent the legal official (ain.yeh.ain).

Defendant: Head of karbala governorate council/ being in this capacity – his agent the legal official (ha.kaf.ain)

Claim

The agent of the plaintiff claimed, that the defendant/ being in this capacity previously issued the decision No. (33) On 2.5.2017 and included calling of (ain altamer) district administrator to attend before him for interrogation, whereas the aforementioned decision violates incorporated governorates into a region law No. (21) For 2008, so, his client objected it, and because of insistence of the defendant on his aforementioned decision, he proposed to challenge it according to provisions of article (31/11th/3) of the aforementioned governorates law, requesting to cancel it because any order has a removal or relieving shall be preceded with an interrogation according to the provisions of article (51) of the aforementioned governorates law, and the administrator as the plaintiff claims is not one of the persons that the governorate council is allowed to interrogate them, because he is not a high position which determined by article (1/8th) of the abovementioned law who they are general director and not those who has the same position and article (8/3rd) of the same abovementioned law determined the specialized body to assign the administrator or relieving him which is the local council of

the district. Therefore, his interrogating and removing shall be done by the same body. Therefore, the governorate council has exceeded the specialty of the local council of (ain altamer) and because the administrator is administratively belongs to the Mayor and the Mayor assign him according to article (39 of governorates law) and this specialty is a public order and exceeding it makes the aforementioned decision nonexistent. The agent of the defendant/ being in this capacity answered the petition of the case that the challenged decision is not a specialty of the Mayor, whereas dismissal of the administrator is a specialty of the local council of the district and the Mayor according to article (31/2nd) of governorates law No. (21) For 2008 carries out executing the governorate's council decisions, in way that not conflicts with the constitution and the valid laws, and the aforementioned article (51) clarified that any firing or dismissal preceded with an interrogation but it did not determined the specialized body of interrogation. Therefore the governorate council has the power to interrogate the administrator, accordingly the agent of the defendant requested to reject the case. After registering this case at the court according to clause (3rd) of article (1) of its bylaw No. (1) For 2005, and after completing the required procedures according to clause (2nd) of article (2) of the aforementioned bylaw, the day 9.26.2017 was set as a date of the pleading, and on that day the court had been convened. The agent of the plaintiff and the defendants attended, the public in presence pleading proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it, the agent of the defendant answered and repeated what listed in the answering draft which attached to the case's file and requested to reject the case. Based on inquiry from the court, the agents of both parties answered that the objection was within the legal period. Whereas nothing left to be said, the end of the pleading and the decision were made clear.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff challenging the decision number (33) issued by holly Karbala governorate council dated on 2.5.2017 which included calling (ain altamer) district administrator to attend before him for interrogation, and the plaintiff/ being in this capacity requested to cancel the aforementioned decision for listed reasons in the petition of his case. The

FSC finds that article (51) of governorates incorporated onto a region No. (21) For 2008 stipulated on ((every removal or relieving of duties referred in this law shall be preceded by a hearing for the individual concerned)), and article (8/3rd/alif or 2) of the abovementioned law clarified the specialized body to elect the administrator or removing him which is the local council of the district, but it did not determine the specialized body to interrogate him, whereas the governorate council has the right of relieving high posts in the governorates from their posts according to provisions of article (7/9th/2) of governorates incorporated into a region law No. (21) For 2008 includes the general directors. Whereas the (general directors) are includes high position posts which determined by article (1/8th) of governorates incorporated into a region law No. (21) For 2008. Whereas the administrator assigned as a general director (article 39 of governorates law abovementioned). Based on that, the council has the right to interrogate him, but his interrogation never followed by removing or relieving by the aforementioned council, but in case of unsatisfying with his answers must be refers to the specialized body which is it the local council of the district to take a decision about him. Accordingly this case has lacked its legal support. The court decided to reject it and to burden the plaintiff/ being in this capacity the expenses and advocacy fees to the agent of the defendant the legal official (ha.kaf.ain) amount of (one hundred thousand) Iraqi dinars. The decision issued decisively and unanimously according to provisions of article (94) of the constitution and article (5/2nd) of FSC law No. (30) For 2005 and article (31/11th/1/alif and 3) of governorates incorporated into a region law and made clear on 9.26.2017.