

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 76/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 17/11/2015 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: (alif.ain.mim.nun.)- the Governor of Nynawa/ being in this post- his agent the attorney (ain.ra.mim.).

The Defendant: the Speaker of the council of representative/ being in this post -his agents the legal officials (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

The Claim:

The agent of the plaintiff claimed that the Iraqi council of representative (I.C.R.) has issued the law of the governorate unassociated into a reign no.(21) for 2008 which authorize the challenge against the decision of dismissing the Governor before the F.S.C., then he amended the law regarding the mentioned article with the law No.(15) for 2010 that authorize the challenge against the decision of dismissing the Governor before the Administrative

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Judicial court instead of the F.S.C., in light of that he challenged the constitutionality of paragraph (4) of clause (8th) article (7) of the law of the governorates unassociated into a reign No.(21) for 2008 that was amended by the law no.(15) for 2010 for many reasons including that such case as the decision of dismissing the Governor doesn't consider as administrative decisions that to be challenged before the Administrative Judicial court, according to article (93) of the constitution that authorize the F.S.C. to adjudicate in the cases raised from the implementation of the federal laws. On the other hand, the plaintiff see that the authorities of the Administrative Judicial court is to consider the authenticity of the orders, administrative, individual, and organizing decisions issued by the employees the committees unassociated into a ministry that the law didn't stipulate a party as challenges reference, finally the plaintiff add another reason is the concern of the legislator to the challenged text for being unconstitutional in the wrong place within the law of the governorates, as it was inserted in section one of chapter two of the Law which is specified for the jurisdictions of the governorates councils. after registering the case and scheduling a date for the argument, the F.S.C. listened to statement of the plaintiff' agent and the statement of the defendant agent who request to reject the case for the reasons listed in his answering draft, as the F.S.C. has completed its investigations the argument is closed and issued the following decision.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff has challenged the constitutionality of paragraph (4) of clause (8th) article (7) of the law of the governorates unassociated into a reign No.(21) for 2008, regarding authorize the challenge against the decision of dismissing the Governor issued by the I.C.R. to the Administrative Judicial court, under the consideration that the challenge against the mentioned decision is a jurisdiction of the F.S.C. according to some constitutional articles including article (47) the stated the principal of separation between powers, and article (61) that stated the monitoring of the I.C.R. upon the executive authority. By reviewing the case we find that the plaintiff filed his case before this court in capacity of Governor of Nynawa governorate/ being in this post, whereas the plaintiff was dismissed from this post by the I.C.R. in it session dated on 30/5/2015 therefore he has lost his post capacity and cannot be litigant in this case under the post he submitted the case with and listed it in the claim, as this case has lost it legal substantiation from the point of litigation therefore it must be rejected. Accordingly the court decided to reject the case from the point of litigation, and to burden him the expenses and advocacy fees for the agent of the plaintiff amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously on 17/11/2015.