

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.94 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 7/3/2017, 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: minister of interior/ being in this capacity- his agent the jurist colonel (Mim.Alif.Ain).

The Defendants:

1. the governor of AL-Basra/ being in this capacity
- 2- the prime minister/ being in this capacity.

The claim:

The agent of the plaintiff claimed that the defendants/ being in their capacities- has directly assigned a director-manager for the Traffic Department of AL-Basra without returning to the ministry of interior, this is a violation for the exclusive competences of the ministry as it was formulated by the Constitution also it is a federal ministry, they violated the article (13) from the Constitution which listed that the Constitution is the preeminent and supreme law in Iraq, and violated the article (47) from the Constitution which relates to the principle of the separation between the powers, they violated the law of the governorates which didn't organize in province, the article (2) from the second amendment of the law which allowed for the local governments to practice its exclusive authorities that were decided in the Constitution and the federal law of the local affairs except the exclusive competenc-

es for the federal power that were stipulated in the article (110) from the constitution. For the above, the plaintiff requested from the Court to decide the unconstitutionality of the defendants' decision of the assignment a director-manager for AL-Basra. After the case had been registered according to the provisions of the article (1) the clause (3) from the bylaw of FSC, and the required procedures were completed according to the provisions of the clause (2nd) from the article (2) from the aforementioned system and selecting of a date for the argument, the court was convened so the two parties attended, the plaintiff/ being in this capacity- agent repeated his previous sayings and requests and requested from the court to decide according to the case petition. The agent of the first defendant the governor of AL-Basra/ being in this capacity- requested from the court to reject the case because her client didn't issue the challenged assignment order, he just sent a recommendation of the council of AL-Basra governorate to the ministry of interior in order to assign him and until now no assignment order is issued. The agent of the second defendant the head of AL-Basra governorate's council, I repeated what was listed in the answering draft and I support what was mentioned by the agent of the first defendant and he requested from the court to reject the case. After the court completed its scrutiny and reviewed all the sayings of the two parties and their pleas, the court found the case is able to be decided after the two parties repeated all their sayings and precious requests. Whereas nothing left to say the end of the argument had been understood and the following decision was understood publicly:

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff the minister of interior/being in this capacity- has listed in his case petition that the defendants the governor of AL-Basra and the head of AL-Basra governorate's council/ being in their capacities- has directly assigned a director-manager for the Traffic Department of AL-Basra without returning to the ministry of interior, this is a violation for the exclusive competences of the ministry of interior and this decision was issued contrary to the article (13, 47, 110) from the Constitution of the Republic of Iraq for 2005, and requests from the FSC to decide the unconstitutionality of this decision. The

FSC found the challenged is one of the administrative decisions which the trying is out of the FSC competencies that were stipulated in the article (93) from the Constitution of the Republic of Iraq and the article (4) from the law of the FSC No.(30) for 2005, as well as the law of the governorates that didn't organize in province No.(21) for 2008 had determined the authorities of the FSC in which relates to the appliance of the mentioned law in one field, and it is what listed in the article (31/11th/3) from the above law which allowed the governor to refer the decision of the governorate's council by insisting for his decision or amend it without removing the violation that the governor made it clear to the FSC to decide in this matter, and this is exclusively in the law of the governorate's that didn't organize in province No.(21) for 2008 for the competence of the FSC. So the trying in the plaintiff request is out of the FSC competence from this point. Based on this the case has no legal substantiation and the court decided to reject it from the competence point and to burden the plaintiff all the expenses and fees of the advocacy for the agents of the two defendants amount of hundred thousand dinars divided between them equally. The decision had been issued unanimously and decisive according to the provisions of the article (94) from the constitution and was understood publicly on 7/3/2017.