



---

The Federal Supreme Court (F S C) has been convened on 16.12.2015 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-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:

The Plaintiff: the Governor of Alnajaf Alashraf/ being in this capacity – his

agent the official jurist (fa.sin).

The Defendant: the Head of Alnajaf Alashraf governorate Council/ being in this capacity – his agent the official jurist (kha.yeh).

### The Claim

The agent of the plaintiff claimed before the FSC in the case No. (97/federal/2015) that Alnajaf Alashraf governorate Council had issued its decision No. (31 for 2015) which included, first – to annul the investment license No. (209) which authorized for the investor (ain.jim.sin) and related to the project of (the airport residential complex). Second- to keep the plot No. (1/2192) of the county (3 southern of Jazeerat Alnajaf) as green area, the rational were that the concerned offices didn't approve it. For this illegal decision, the plaintiff proposed to challenge it according to the letter of Alnajaf Alashraf governorate Council letter, the governor's office No. (5011) on (5.5.2015) and for the reasons listed in it. The Council had informed the governorate about its insistence on the decision No. (31 for 2015) according to the letter of the Council (governorate Council of Alnajaf Alashraf) No. (21/16471) on (5.7.2015). the plaintiff was unsatisfied by the decision above-mentioned, he proposed to present the challenge before the FSC. He requested to annul the decision of Alnajaf Alashraf governorate

Council No. (31) For 2015, and for the following reasons: first – the clause (3<sup>rd</sup>) of article (7) of the governorates unassociated into a region law No. (21 for 2008) (Amended) adjudge that the local enactments, regulations and instructions issued by the governorate Council according to the principle of administrative decentralization aren't contradicts with the Constitution and the federal laws, and the above-mentioned decision contradicts with the investment law No. (13 for 2006) (Amended). This law had determined the mechanism and a specific procedure to withdraw the investment license, and the decision (challenge subject) had violated this mechanism and these procedures. Second – the decision of annulling the investment license weren't listed within the jurisdictions of the governorate Council which listed in the second chapter from the first part of the governorates unassociated into a region law No. 21 for 2008 which listed exclusively. Third – the governorate Council previously corresponded the Ministry of Municipalities and public labors/ the Minister's office according to its letter No. (14/10930) on 21.8.2014 to get the approval to change the usage of the plot (research subject) from a green land to a residential complex for building a residential investment project. The Minister had approved in 8.9.2014 on the content above-mentioned, later on, the investment commission/ governorate of Alnajaf Alashraf gained all approvals from the offices related, and according to these approvals the investment license had been granted according to the procedures stipulated in the law. Fourth- the project started its first steps by (deliver the plot, and the investor in co-operation with the offices that related had evacuated the plot from trespassers, removing their buildings as well. These procedures were token to prepare the ground works). Accordingly, and for the reasons that your honorable Court may see. The agent of the plaintiff requested from the FSC to judge by annulling the decision of Alnajaf Alashraf governorate Council No. (31 for 2015), and to burden the defendant all the fees and the expenses. The agent of the defendant answered the petition of the case according to his written draft dated on (24.8.2015) that the decision of the governorate Council was corresponding to the law, and the Council's authorities which listed in article (7/3<sup>rd</sup>) of the governorates unassociated into a region No. (21) For 2008 (amended) because the Council is the highest legislative and oversight power in the governorate. The Council also has the power of issuing the local enactments that enables it from administrating its affairs according to the principle of administrative decentralization, and it also

responsible of what the unit's administration requires according to the authorities it enjoys. The Council has the power of scheduling the public policy of the governorate, determining its priorities in all fields in co-ordination with the Ministries and concerned offices. The project of the airport residential complex was aggrieving lot of the interests of many people, they proposed to demonstrate in front of the Council, as well as they presented a private requests. They clarified in these requests that the project is locating nearby their living source places, and it will contribute in disruption of livelihood for more than (5000) thousand families. A committee has been formed to try these requests, the committee recommended to cancel the project and move it to another place, as well as keeping the area as a green land. The Council received a number of official letters issued by a specialized authorities which expressed the objection of these authorities for the project, such as the decision of the local Council of Alnajaf Alashraf district No. 2 for 2014, and the letter of Alnajaf Alashraf sewage directorate No. 7534 in 7.12.2014. Moreover, the letter of Alnajaf Alshraf electricity distribution network directorate No. 944 in 12.3.2015, and the letter of Alnajaf Alashraf municipalities' directorate No. (4530) in 21.3.2015. For the other reasons listed in the draft, the agent of the defendant requested from the FSC to reject the case and to burden the plaintiff all its expenses and the advocacy fees. Each party repeated his previous sayings and requests, and requested to judge according to it. Whereas nothing left to be said, the end of the argument has been made clear and the decision was recited publicly.

### The decision

During scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff/ being in this capacity is challenging in the petition of his case the decision issued by Alnajaf Alashraf governorate Council No. (31) For 2015. The decision adjudged with annulling the investment license No. (209) which authorized to the investor (ain.sin.jim) and related to the project of (the airport residential complex) and to keep the plot No. (1/2192) county (3/ southern of Jazeerat Alnajaf) as a green land. While the aforementioned decision violates the law, the agent of the plaintiff requested from the FSC to annul the above-mentioned decision and to burden the defendant/ being in this capacity the case's expenses and the advocacy fees. After studying the case's subject, the Court found the

Alnajaf Alashraf governor had objected the decision issued by Alnajaf Alashraf governorate Council No. (31) For 2015 above-mentioned according to the letter issued by the governorate No. (5011) on (25.5.2015), he requested to annul it according to his authorities stipulated in the article (31/11<sup>th</sup>/1) of the law No. (21) For 2008 (amended). Alnajaf Alashraf governorate Council insisted on its decision according to the letter (21/16417) on (5.7.2015). Therefore, the plaintiff/ being in this capacity and according to the authority granted to him in the article (31/11<sup>th</sup>/3) of the law aforementioned, he requested from the FSC to annul the above-mentioned decision because it violates the law. Accordingly, in spite of that the issued decision by Alnajaf Alashraf governorate Council has the administrative nature, but the article (31/11<sup>th</sup>/3) of the law No. (21) For 2008 (amended) (the governorates incorporated into a region law) had commissioned the FSC to try its authenticity. According to this matter and by scrutinizing the decision issued by Alnajaf Alashraf governorate Council No. (31) For 2015, the Court found that this decision adjudged by annulling the investment license and to withdraw it from the investor ruled by the procedures stipulated in a private law which is it the investment law No. (13) For 2006 (amended). The article (7/3<sup>rd</sup>) of the governorates incorporated into a region law No. (21) For 2008 (amended) had granted the governorate Council the authority of issuing the local enactments, regulations and the instructions which regulates the financial and administrative affairs, these authorities enables the governorate to administrates its affairs according to the principle of administrative decentralization. This principle shouldn't contradicts with the Constitution and the federal laws, whereas the investment law No. (13) For 2006 (amended) had provide in article (13) of it a guarantees for the investor, as well as article (20) of it. The other articles had stipulated on the mechanism of granting the investment license for the investor, and how to withdraw it, the office that tries the quarrel and disputes may emerge between the parties. Moreover, the law of governorates incorporated into a region law No. (21) For 2008 didn't grant the governorate Council within the jurisdictions of the governorate Council listed in article (7) exclusively, including the jurisdiction of annulling the investment licenses. Accordingly, the decision issued by Alnajaf Alashraf governorate Council No. (31) For 2015 is incorrect and violates the law of governorates incorporated into a region No. (21) For 2008 (amended), especially the article (7) and the investment law No. (13) For 2006 (amended) which requires to annul it.

Therefore, the FSC decided to judge by annulling the decision No. (31) for 2015 issued by Alnajaf Alashraf governorate Council because it violates the law, and to burden the defendant/ being in this capacity the case's expenses and the advocacy fees for the agent of the plaintiff the legal advisor (feh.sin) amount of one-hundred thousand Iraqi dinars. The decision has been issued in presence of all parties, unanimously and decisively on 16.12.2015.