



The Federal Supreme Court (F S C) has been convened on 4.11.2017 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-nagshabandi , Aboud Salih Al-temimi , Michael Shamshon Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / President of the Republic of Iraq/ being in this capacity/ his agent the legal Consultant (faa'. abd. raa' .al).

Defendant /1- Speaker of the ICR/ being in this capacity/ his agents the two legal official (seen.taa'.yaa') and (haa'. meem.seen).

2- The Prime Minister/ being in this capacity/ his agent the legal official (haa'.al)

Claim

The agent of the plaintiff claimed before the FSC in case No. 22/federal/2017 that the Higher Judicial Council, had prepared a Bill of (Higher Judicial Council), and sent it to the General Secretariat of Council of Ministers, to take what needs for enactment procedures, the Council of Ministers sent the Bill to the ICR after applying the substantial amendments on it, then the ICR applied an amendments regards substantial on the Bill, and admitted it, in spite of the objections of the Higher Judicial Council on the amendment of the Bill, for issuance of Higher Judicial Council Law No. (45) for 2017, which carries between its texts, what violates with the provisions of the Constitution, as it is published in the Gazette on 1.23.2017, because of the substantial amendments achieved by defendants, in items (second ,third, fifth, tenth and eleventh) of article (3) of the Law, which violates

the provisions of the Constitution, in spite of objection on it, so it is challenge it before the FSC for the following reasons: 1- what listed in item /2nd/ of article (3) of the Law, which stipulates on (suggest the project of the annual budget of the Federal Judicial Power and display it on the ICR for approval), this text violates clause 1st of article (92) of the Constitution, its text (the Federal Supreme Court is an independent Judicial Committee, financially and administratively), so the implying of Higher Judicial Council by suggesting the project of the annual budget, for all the formations of the Judicial Power, which means deactivating of the Constitutional text aforementioned. 2- what listed in clause / 3rd / of article (3) of it , which stipulates on (nominating the members of the FSC of Justices) , that text violates clause / 2nd / of article (92) of the Constitution , which stipulates on (the FSC consist of a number of Justices and experts in Islamic Jurisprudence and law Jurisprudents , their number and the way of their selection and the work of the court shall be determined with a law enacted with a majority of one third of ICR members) , and giving the authority to the Higher Judicial Council to nominate the members of the FSC , has a deactivate to the Constitutional text , which determined how to select the members of the court , where that should be achieved with a Law enacted with one third of ICR members , as long as that Law was not enacted yet , that means in addition to the deactivation of the aforementioned Constitutional text, it is also violates it, adding to that , the Higher Judicial Council is one of Federal Judicial Powers formations, so is it possible to give one of the Federal Judicial Power the right to impose its domain on another formation like it?. As well as, this subject basically was not one of the Powers of the Higher Judicial Council, which determined in article (91) of the constitution and this is another Constitutional violation. 3- What listed in clause (5th) of article (3) of it, which stipulates on (nominating the Eligible for assignment to the post of Deputy of the Federal Cassation Court and Speaker of appeal Court and Deputy of Judicial superintendence Committee Speaker, and sending these nominations to the ICR for approval), this text violate the provision of clause (a) of item (5th) of article (61) of the Constitution, which stipulates on ((approving to assign each of : A- the speaker of Cassation Court , the Speaker of general Prosecution, and the Speaker of Judicial superintendence Committee...)). The posts mentioned in

item (5th) of article (3) of the Law were not among them. The answer was that these posts are among the special grades, so that text violates the constitution as well from this side, according to the clause (b) of item (5th) of article (61) of the Constitution, the nomination for special grades posts should be achieved with a suggestion by the Council of Ministers. In addition to that, this text may lead to touch the Independency of the Judiciary, on the contrary of principle (separation between powers), also it may subject it to the principle of quota, especially if we knew that each Governorate represent an appeal region, and Baghdad consist of two appeal regions. 4- What listed in item (10th) of article (3) of it, which stipulated on (suggesting of the Bills which related to Federal Judicial Power affairs). That text violates article (60) of the Constitution, which determined the authorities that has the right to presents the Bills, who they are, the President of the Republic and the Council of Ministers. As for the suggestion of the Laws, they shall be presented by ten members of the ICR, or one of its specialized Committees, therefore the Higher Judicial Council have no power to present (Bills suggestion). 5- What listed in item /eleventh/ of article (3) of it, which stipulates on ((concluding Judicial agreements that related to the Federal Judicial Power affairs)), in that text there is a violation for the provision of item /sixth/ of article (80) of the Constitution, which included ((negotiating about the International Treaties and agreements and signing them)) is an exclusive power of the Council of Ministers, as well as to the provisions of agreement concluding Law No. (35) For 2015. Therefore the agent of the plaintiff requested, after doing what required, to judge with unconstitutionality of items (second, third, fifth, tenth, eleventh) of article (3) of the Law No. (45) For 2017, and to borne the defendants the expenses and advocacy fees. The agents of the defendant the Speaker of the ICR/ being in this capacity , according to their answering draft dated on 4.2.2017, as an answer to the petition of the case, that the agent of the plaintiff challenging the unconstitutionality of article (3/2nd) of the challenged Law, here we clarify that this article came as an implementation for provision of article (91/3rd) of the Constitution, among missions of the Higher Judicial Council is to suggest annual budget project for the Judicial Power, here we found no way but to commit to provision of the Constitution. As for the request in article (3/3rd) of the Law, we make

clear it is an implementation of the provision of article (3) of the FSC Law No. (30) For 2005, both are pointing to nominate the FSC members from the Higher Judicial Council, and there is no conflict, according to agent of the plaintiff listed, as well as challenging the article (3/5th) of the Law, we clarify that the Honorable Court Dignity, the aforementioned article never conflict with the provision of the Constitutional text of article (61/5th), whereas what listed was not exclusively, because does not prohibit the Law to stipulate on the approval of the ICR to nominate Eligible for assignment whom mentioned in article (3/5th) of Higher Judicial Council Law, so who has the approval to assign the Heads of the authorities as listed in the text of article (61/5th) of the Constitution, has the approval according to the Legislative option on who were listed in the challenged item. As well as in article (3/10th) of the challenged Law, we also clarifying to the Dignity of the Court that the text of the challenged article had been listed in the Bill which sent by the government, and approved by the ICR, as well as the challenging of article (3/11th) of the challenged Law, we clarify for the Dignity of the Court that the text of the challenged article was listed in the sent Bill by the government, and a phrase was added which is it (in coordination with the Ministry of Justice), and was approved by the ICR for the aforementioned reasons and another ones. The agents of the defendant requested to reject the case and to burden the plaintiff all the judicial expenses. The agent of the defendant, the Prime Minister answered according to his answering draft to the petition of the case dated on 3.28.2017, that the article (80) of the Constitution had determined the Powers of his agent and specialties, and not among these powers and missions is enacting Laws, and the role of his agent restricted in text of article (60/1st) of the Constitution, to prepare the Bills and send it to the ICR to take procedure of enactment according to its specialty. Therefore preparing Bills is another subject, differ of the enacting subject, and his client, even if he prepared the Bill, the challenging subject, but specialty that article (61/1st) of the Constitution granted it to the ICR makes the specialty of my client serves as a suggestion to the content of the Bill, and the Original specialty in enactment for the ICR, therefore the litigation against his client makes it losing its legal support from the Constitution, in confrontation of his client for non-specialty and enacting the

challenged Law, according to the article (4) of civil procedure Law No. (38) For 1969 (amended), (the defendant should be litigant, based on his admission a judgment to confirm his admission, and should be judged or obliged with a matter in case of confirming the lawsuit), whereas his client, and according to what he listed in his shown defend in clause (1) of the draft, is not specialized in enacting Laws, and not including his Constitutional Powers, therefore the litigation is not established in this challenge, therefore he requested to reject the case against his client for adversarial. According to provisions of article (2/2nd) of the FSC Bylaw No.(1) for 2005, an appointment for pleading was set, the agent of the plaintiff attended according to his power of attorney, which a copy of it attached to the file of the case, the agents of the first defendant, according to their power of attorney, which attached to the file of the case, and the agent of the second defendant, according to his power of attorney, which attached to the file of the case. The public in presence pleading proceeded, the agent of the plaintiff repeated what listed in the petition of the case, and requested to judge according to it, and to burden the two defendants all the expenses and fees, as well as the agents of the defendant and the second defendant repeated what listed in their answering draft, and they requested to reject the case, and to burden the plaintiff all the expenses and fess, as nothing left to be said, the end of the pleading made clear, the decision issued publicly.

The decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff/ being in this capacity challenging the unconstitutionality of clauses (second) and (third) and (fifth) and (tenth) and (eleventh) of article (3) of the Higher Judicial Council Law No. (45) For 2017, for the reasons he listed in the petition of the case, and to burden the two defendants/ being in this capacity the expenses and advocacy fees. After viewing and scrutinizing what listed of challenges in the abovementioned clauses, the Court found, it is had viewed a challenge with the unconstitutionality of clause (fifth) of article (3) of the Higher Judicial Council Law, in the case No. 19/federal/2017, the Court decided in that case on 4.11.2017 with unconstitutionality of this clause for the listed reasons in Judgment issued in the aforementioned case, therefore the

plaintiff/ being in this capacity won his case in this position, but, as long as the Judgment issued in case in the case which litigated before this case in term of time, so, there is no necessity to issue the Judgment again about the unconstitutionality of clause (fifth) of article (3) of Higher Judicial Council Law in this case, for previously adjudicated. As well as for the challenging listed on the clauses (second) and (third) of article (3) of Higher Judicial Council Law, the FSC decided in its Judgment issued in case No. 19/federal/2017 dated on 4.11.2017 with their unconstitutionality of the aforementioned clauses in this case, for previously adjudicated. As for the challenging the unconstitutionality of clause (tenth) of article (3) of Higher Judicial Council Law, which gave the right to the Higher Judicial Council to(suggest the Bills that related in Federal Judicial Power affairs), therefore the FSC finds that this not violating the Constitution, and correspond to the principle of (separation between Powers), which stipulated on in article (47) of the Constitution, as well as with article (87) of it, like the legislative Power, which exercise this right in ((article (60/2nd) of the Constitution)). Based on that, the Court decided to reject the challenge listed on clause (tenth) of article (3) of Higher Judicial Council Law aforementioned. As for the challenge listed on clause (eleventh) of article (3) of Higher Judicial Council Law, which included, authorizing the Judiciary to concluding the Judicial agreements, and following up its execution, in coordination with the Ministry of Justice. The FSC finds that matter not conflicting with the Constitution, and correspond to the principle of (separation between Powers), which stipulated on in article (47) of the Constitution, as well as correspond with article (87) of it, because the concluding of these judicial agreements which made by Iraqi judiciary and the other Judicial Power is aims to Judicial cooperation and achieve the complete justice, and to develop the efficiency of its formations in this field, in addition to that the Judiciary is the Power which carries out this duty, unlikely, we will be in front of a case of intervention cases in Judiciary affairs and its duties, when the other powers carrying out its duties, and that unbalancing the principle of Judiciary Independence, and the principle of (separation between Powers), which stipulated on in articles (19/1st) and (47) and (87) of the Constitution. Especially that the challenged text with its unconstitutionality, stipulated on that the exercising of the Judiciary for this authority shall be in coordination with the executive Power,

represented by the Ministry of Justice, to guarantee the sides that related to the International and financial commitments. Based on that, the FSC decided to reject the challenge listed on clause (eleventh) of article (3) of Higher Judicial Council Law. As for the litigation of the plaintiff/ being in this capacity to the second defendant the Prime Minister/ being in this capacity, the FSC finds that this litigation has no pillar in the Law, because the enacting of challenged unconstitutionality of some articles of that Law, was achieved by the first defendant/ being in this capacity, and according to the provisions of article (61) of the constitution. Based on that, and by resting on the provisions of article (4) of procedure Law No. (83) For 1969, the FSC decided to reject the plaintiff/being in this capacity case against the second defendant the Prime Minister/ being in this capacity for adversarial. According to what aforementioned, the FSC decided to judge according to what it went to during the discussion of each clause of challenging clauses that listed, which is it, to reject the case of the plaintiff/ being in this capacity as for the challenging of unconstitutionality of clauses (second) and (third) and (fifth) of article (3) of Higher Judicial Council Law No. (45) For 2017, for previously adjudicated with the unconstitutionality in case No. 19/federal/2017, which litigated before this case in time, and to not burdening him with expenses, because he regarded a winner of the challenge as for these clauses. And to reject the case on the plaintiff/ being in this capacity as for the unconstitutionality of clauses (tenth) and (eleventh) of article (3) of Higher Judicial Council Law, because it was not rests on a constitutional support, for the narrated reasons when these two clauses were discussed. And to burden him the proportional expenses and advocacy fees of the agents for the first and the second defendants, a sum of one hundred Iraqi dinars divided between them equally, according to the Law. The decision issued decisively, according to the provisions of article (94) of the Constitution and unanimously, the decision made clear on 4.11.2017.