



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 / (meem.waw.faa') / his agents the two barristers (raa'.hah'.al) and (sheen.seen.al).

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

Claim

The agent of the plaintiff claimed before the FSC that the ICR issued the Code No. (48) For 2017 on 2.13.2017, accordingly the decision of Revolution Leadership Council (dissolved) No. (180) on 2.28.1977 had been cancelled, and the plaintiff sees that the challenged Code had been imperfect by many in form and subject defects and violation for the constitutional principles, as well as the basic Human rights, which affecting its constitutionality, because the issuance of the abovementioned Code, the plaintiff had been damaged and propose to challenge it, requesting to judge with its unconstitutionality, if that was not possible, to judge with unconstitutionality of clause (2nd) of it, the plaintiff rests of the formal reasons, so he sees the challenged Code had been formed as a suggestion, and that was carried out on the contrary of Legislation Mechanism, stipulated on in article (60/1st/2nd) of the Iraqi Constitution for 2005, which stipulates on (the bills shall be

presented by the President of the Republic or the Council of Ministers), as for suggestions shall presented by ten of the ICR Members or one of its committees, then the suggestions send to the Council of Ministers to make it as a bills, after studying it and harmonize it with the general contexts of the state, to not be conflicted with the constitutional provisions. As for objective reasons, the two agents of the plaintiff sees that the challenged Code touches the independency of the Judiciary, and justifying that, because the Judicial power has an active role to add legitimacy on what listed in the Code of advocacy No. (73) For 1965, as one of its missions is to superintend the Syndicate's elections, and announcing its result, as well as superintending the Penalties and procedures which took by the Council of the Syndicate and its Speaker. These decisions are subjected to be challenged before the cassation Court, the two agents of the plaintiff sees that there is another reason, worth to challenge it, which is it a financial suspicion, because the prolongation of validity duration of the Code with a retroaction, and that article goes to the date of 4.9.2003, whereas the Syndicate work established a lot of transactions and legal centers, which is not free of financial or economical sequences, and the subject of validity with a retroaction, as listed as a text in clause (2nd) of the Code, had a conflict with the text of article (129) of the Constitution which stipulated on (laws shall be published in the Official Gazette and shall take effect on the date of their Publication, unless stipulated otherwise). Accordingly to the aforementioned reasons, and for the existence of a benefit of the plaintiff, so he proposed to challenge the Code No. (48) For 2017, after registering the case and notifying the defendant with its petition, and his answer about it, according to the answering draft dated on 4.4.2017, which he requested in it, to reject the case for the reasons he listed in it. The day 4.11.2017 was appointed as a date for the pleading, on that day the court invited the two parties for the pleading, therefore their two agents has attended, and the agents of the plaintiff repeated their sayings, and requested to reject the case. After completing its procedures and scrutiny, the pleading was ended. The court issued its following decision.

Decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff in his claim (26/federal/2017), challenging the unconstitutionality of the Code No. (48) For 2017, which issued by the ICR and published in the Iraqi Gazette, its issue dated on 2.13.2017, which cancelled the decision of Revolution Leadership Council (dissolved) No. (180) dated on 2.28.1977, which stipulated on ((1- the decision of Revolution Leadership Council (dissolved) No. (180) dated on 2.28.1977 shall be cancelled. 2- This Code shall be executed from the date of its Publication in the Gazette, its provisions becomes valid since 4.9.2003.)). The decision of Revolution Leadership Council (dissolved) abovementioned had permit to reelect the Head of Bar Association more than a time consecutively, on the contrary of the provisions of article (84th) of the advocacy Code No. (173) for 1965 (amended), which was not allowing to elect the Head and the members more than twice consecutively. The plaintiff based his challenge with the unconstitutionality on formal and objective reasons, he listed in the petition of the case and in the illustration draft, and he listed the constitutional articles, which he claims that the challenged Code violates it. The FSC found after studying what the plaintiff listed, and the answers of the defendant/ being in this capacity on it, as a result, the court reached what follows: First- the Origin in electing the Head and the duration of his occupation to this post, is what listed in advocacy Code No. (173) for 1965 (amended) in article (84th) which amended of it, which enacted according to the constitutional contexts and in a natural circumstances, and the decision issued by the Revolution Leadership Council (dissolved), came as an exception of the aforementioned article of advocacy Code, for a circumstance and a necessity, which is not exist anymore, and the necessity estimated by its time. That needs to return these matters to its nature, and according to the provisions listed in advocacy Code aforementioned. Second- the challenged Code issued by the ICR, and came as an exercise for its Legislative role, which stipulated on in article (61/1st) of the Constitution, and was not included a Financial suspicion, and never intersect with the general policy of the State, and not forming any detriment to the

Independency of the Judiciary, to be presented as a bill, presented by the Executive Power, that is what the Judgment of this court settled on in many of its decisions, to determine the paths of enactments, one of it the Judgment issued in the case (21/federal/2015) dated on 4.14.2015. Third- the challenged Code, not conflicting with the Democratic principles, which the constitution stipulated on, rather it's regulated how to handing over the Power through the Democratic means, as implementation for provisions of article (6) of the Constitution. The Power handing over should be through a Democratic means, superintended by Judiciary to guarantees this process, with a vocational Neutrality, and that what obliges when electing the new Head of the Bar Association. Forth- the text listed by the challenged Code, with its validity on the past, starting on 4.9.2003, which is it a Legislative option, the Constitution authorizes in article (129) for the legislator of the challenged Code; therefore it is not forming any constitutional violation. Fifth- the court not finding a reason to stop executing the challenged Code, for the aforementioned reasons. Based on that, the FSC finds that the case not rests on a reason of the Constitution and the Law. Therefore the court decided to reject it, and the plaintiff shall borne the expenses and advocacy fees of the two agents of the plaintiff/ being in this capacity, which is it one hundred thousand Iraqi dinar. The decision issued decisively and unanimously on 4.11.2017 and made clear.