



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 / the head of the higher judicial council / his agent the legal official (aen. Faa' .hah).

Defendant / speaker of the Iraqi council of representative council/ being in this capacity/ his agents the two legal officials (seen.tah.yaa') and (haa'.meem.seen)

Claim

The agent of the plaintiff claimed before the Federal Supreme Court in the case No. (19/Federal/2017) that the defendant / being in this capacity, issued the Higher judicial Council law No. (45) for 2017 for violation of certain articles of the law to the Constitution in form and substance, as follows: first: article (3/2nd) ((proposed draft annual budget for the Federal judicial power and presented to the ICR for approval)) as the higher Judicial Council law No. (45) for 2017 separated between the Federal Supreme Court and the higher Judicial Council according to the article (1) and therefore the higher judicial council should not put budget pertaining to the Federal Supreme Court but must be competent to put this budget the Court itself in that article (92/1st) of the Constitution, stipulated on, that the Federal Supreme Court is an independent judicial committee, financially and administratively, so the Higher judicial Council may not intervene in

putting the budget of the Federal Supreme Court. Second: article (3/3rd) of the higher judicial council law No. (45) for 2017, which stipulated on ((the nomination of members of the Federal Supreme Court of justices)) as long as the text of the Higher judicial Council in article (1) separated between the Federal Supreme Court and the higher judicial council, as the Supreme Federal Court law determines to nomination and designation of the Chairman and members of the Court, so there is no need for the text of this paragraph in the higher judicial council law. Third: article (3/5th) of the law No. (45) for 2017, which stipulated on (nomination) of eligible for assignment to the post of Deputy head of cassation Court and Federal Court of appeal head and his deputy of the judicial superintendence committee and send nominations to the council of representatives for approval) that this article in its clause fifth aforementioned, violates article (61/5th) of the Constitution, which restricted the ICR approval to assign the head and members of the Federal cassation Court and the head of public Prosecutor and head of the judicial superintendence committee. Forth: article (5/2nd) of the aforementioned law which stipulates the creation of the post of the higher judicial council reporter, so that the missions which stipulated in this clause are office of judges and members of public prosecution stipulated in article (6/1st) of this law, so there is no need to introduce a new post is the same missions. Fifth: article (6/3rd) of the aforementioned law, which stipulated of (office of judicial investigators and the legal Assistant), here we clarify that there is no need to introduce an office is headed by Director General, because of another is exist in aforementioned law in the (second clause of the same article) and the finance and Administration office is the Department of Administration for all employees of the higher Judicial Council, including investigators and legal assistants and introducing it arranges the Executive and financial commitments not included in the plans or in the general budget and without consultation or consulting The higher Judicial Council as well as, being touches its missions, and this text is not what settled it spend the Federal Supreme Court in the numbered decision (21/federal/2015) of the 14/4/2015 text on the functions of the council of representatives to enact federal laws. As stipulated in the decision, that the council of representative missions (legislation federal laws dictated by the public interest and in accordance with

constitutional contexts and the exercise of this jurisdiction and competence necessary to be sensitive to the principle of separation of powers and should not be among the laws that go into her house directly affects this principle of laws affecting that principle which resulted in financial obligations on the Executive was not included in the financial plans or without consultation with the budget and took approval as well as laws that conflict With the Ministerial curriculum Ministry gained confidence on the basis of House and not be a diamond without judicial authority consulted because it opposes the principle of judicial independence) and that conflicts with the principle of (separation between the powers) , which stipulated on in article (47) of the Constitution, and the independency of the judiciary which stipulated on in article (19/1st) and (88) and (91/1st) of the Constitution, and each power of the three legislative, executive and judicial powers has a missions and specialties, drew by the constitution and strictly for these reasons, and for another ones. The agent of the plaintiff requested from the FSC to judge with unconstitutionality of articles (3/2nd) and (3/3rd) and (3/5th) and (5/2nd) and (6/3rd) of higher judicial council law for 2017. The agents of the defendant answered the petition of the case with an answering draft dated on (3.29.2017, that the plaintiff challenging article (3/2nd) of the challenged law, and as an implementation for the provision of article (91/3rd) of the constitution, one of higher judicial council missions is to suggest the annual budget project for the federal judicial power, so the FSC is one on the federal judicial power formations, here we find no choice but to commit to the provision of the constitution, as for article (3/3rd) of the challenged law, we also clarify, it is an implementation for provision of article (3) of the FSC law No. (30) for 2005, and both pointing to nominate the members of the FSC by the higher judicial council, and no conflict in that, according to what listed by the agent of the plaintiff, as for article (3/5th) of the challenged law, the aforementioned article is not conflicting with the provision of the constitutional text, which is it not exclusively, so that means, that the law never prohibiting to enact a text to get the approval of the ICR to nominate eligible for assignment, whose listed in article (3/5th) of higher judicial council law, so who possesses the approval to assign the authorities mentioned in the text of the article (61/5th) of the constitution, possesses the approval according

to the legislative option on whom listed in the challenged clause. As for article (5/2nd) of the higher judicial council law, the agent of the plaintiff claims that there is no necessity for it, because the agent of the plaintiff did not clarify the constitutional text that aforementioned article violates, as well as it is regards a legislative option in naming a reporter for the council by the head of the higher judicial council, as for the claim of the agent of the plaintiff, that there is no necessity for the text of article (6/3rd) of the challenged law, and it is add a financial burdens on the executive power, without returning to it, as it touches its missions, as well as the agent of the plaintiff did not clarify the constitutional text that the challenged article violates, and the aforementioned text expresses a legislative will, and the quotation of the FSC decisions establishes a constitutional principles, but the Iraqi judiciary never work with the judgmental precedents, especially that the aforementioned text regarded a legislative option to support the foundations of the judicial power, for the aforementioned reasons, they requested form the FSC to reject the case, and to burden the plaintiff its expenses and advocacy fees. After answering the petition of the case, and according to the provisions of article (2/2nd) of the FSC bylaw No. (1) for 2005, a date for the pleading was appointed, the agent of the plaintiff attended, according to the power of attorney, which a copy of it attached to the file of the case, the agents of the defendant attended, according to the their private power of attorney, which a copy of it 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 defendant the expenses of the case and advocacy fees. As well as the agents of the defendant repeated what listed in the answering draft which presented to the court as an answer on the petition of the case, and they requested to reject the case, and to burden the plaintiff its expenses and advocacy fees. Therefore, and whereas nothing left to be said, as nothing left to be said, the end of the plea made clear, the decision issued in public.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff (the head of the higher judicial council/ being in this capacity)

had challenged the unconstitutionality of clauses (2nd) and (3rd) and (5th) of article (3) and (2nd) of article (5) and (3rd) of article (6) of the higher judicial council law No. (45) For 2017. And after scrutinizing the challenged legal articles, and studying the reasons of the challenge, which listed in the petition of the case, and its clarifications, and viewing the replies of the defendant, the FSC reached to what follows: first- as for the article (3/2nd) which stipulated on the specialty of the higher judicial council to suggest the project of the annual budget, and presenting it to the ICR to approve it. The meaning is, that the higher judicial council is responsible of setting the annual budget for all of the federal higher judicial council formations, which stipulated in article (89) of the constitution, one of it the FSC, and the text on that, also the defend of defendant relied of article (91/3rd) of the constitution, and the court finds, that this text inspired of the Iraqi state administration law for the transitional period, which stipulated on (the head of the higher judicial council also heads the federal supreme court), and it was not about carrying out the mission of setting the annual budget for the federal judicial power to the higher judicial council, and there was no a constitutional problematic, as long as the head of the federal supreme court is the head of the higher judicial council also, but the matter became different, after the issuance of the higher judicial council law No. (45) for 2017, which stipulated on (that the presidency of the higher judicial council must be for the president of the cassation court), and the FSC finds that article (92/1st) of the constitution stipulated on, that the federal supreme court is a financially and administratively independent judicial committee, therefore the conflict had been emerged clearly between the financial independency of the court and between the higher judicial council by setting the annual budget for it, which is it not representing it legally, as it was before the issuance of higher judicial council law aforementioned, also the FSC finds that the constitutional judgment listed in article (92/1st), obliges to put an independent budget for the federal supreme court, as an implementation for the provision of article (92/2nd) of the constitution, and implementing of the legislative rules provision in the text of article (92/2nd) which came as an annex to the text of article (91/3rd) of the constitution, which is it a private text specializes in the financial and administrative independency for the federal supreme court, which should be implemented, the subsequent

text restrict the previous one, and the private restrict the general. Based on that, the court decided with the unconstitutionality of article (3/2nd) of the higher judicial council law No. (45) for 2017, and the necessity of putting a text to the bill of the federal supreme court, which submitted in the ICR, judge to let the federal supreme court setting its annual budget, and presenting it to the ICR to approve it, according to the provisions of article (92/1st) of the constitution. Second- as for the article (3/3rd) of the council law, this granted the power to the higher judicial council to nominate the members of the FSC of the justices. The FSC finds that this article conflicts with the provisions of clauses (1st) and (2nd) of article (92) of the constitution, which stipulated on, that the FSC is financially and administratively independent, and the way on selecting its members shall be regulated with its law. And grant the option of selecting the members of the FSC to the higher judicial council violates the provision of clauses (1st) and (2nd) of article (92) of the constitution, in addition to their violation to the provisions of article (91) of it, whereas it did not stipulated on that the higher judicial council is responsible of nominating the members of the FSC, based on that, the court decided with the unconstitutionality of clause (3rd) of article (3) of higher judicial council law, and necessity to list a text in the bill of the federal supreme court, judge to, how to nominate the members of the federal supreme court, and notifying the ICR which viewing the bill of the federal supreme court, to consider that as an implementation of article (92/2nd) of the constitution. Third- as for clause (5th) of article (3) of challenged law of the council, which stipulated on a new specialty for the ICR occurs out of its specialties, which stipulated on in the constitution, which is it the approval of assigning the nominees to the post of cassation court head's deputy, and the post of the head of the cassation court, and the post of judicial superintendence committee head's deputy, therefore the FSC finds that the provision of clause (5th) of article (3) of the higher judicial council law violated for the provisions of articles (61/5th/aleef) and (91/2nd) of the constitution, because the subordination of assigning the persons in the judicial posts, which listed in the clause abovementioned, forms a new specialty for the ICR, the article (61/5th/aleef) of the constitution did not stipulated on, which is it came originally as an exception of provisions of article (47) of the constitution, which admitted the

principle of (separation between powers), which listed in, the legislative , executive and judicial, and the new specialty for the ICR, which listed in clause (5th) of article (3) of the higher judicial council law, the necessity of the ICR approval to assign the aforementioned job titles in this clause, which is it a judicial titles, whom specialized in assigning them is the higher judicial council, and issuing a decree of that, and not including the exception which listed in article (61/5th/aleef) of the constitution, and this exception should not be expanded, and forming a violation for the provisions of the constitution, and interference to the affairs of the federal judicial power, the articles (19/1st) and (47) and (87) of the constitution did not admitted it. Based on that, the court decided to judge with the unconstitutionality of clause (5th) of article (3) of the higher judicial council law. Forth- as for the challenge of the unconstitutionality of article (5/2nd) of the higher judicial council law, which stipulated on the specialty of the head of the council to naming a reporter to the council, who handles notifying the dates of the session and its schedule, and writing its minutes and editing its corresponds and notifying them to the related authorities, and follow up the execution of council decisions. The FSC finds, that mentioning that text is a legislative option, and not regards a new updating with a financial suspicion to let it conflict with the provisions of the constitution and the constitutional precedents, so the head of the council is authorized to naming that title of justices affairs department, which stipulated on in article (6/1st) of the council law, or whom it sees. Based on that, the FSC decided to reject the aforementioned challenge. Fifth- as for the challenge the unconstitutionality of article (6/3rd) of the council law, which included updating a new office in the administrative structure of the higher judicial council with title (office of investigators and legal assistants) which was not mentioned in the bill which prepared by higher judicial council, and the opinion of the council was not considered in updating it, and the opinion of the council of ministers was not considered in that to, in spite of it is forming a financial suspicion, and the result of forming it, cause a financial commitments and new job titles, as well as its introducing creating an inference between its works and the works of financial and administrative office, which stipulated on if article (6/2nd) of the council law, and a confusion for its works, in addition to that, the mission of the new office, is one of

the missions of financial and administrative office which pointed to, and introducing it create egress of the constitutional precedents, one of it the judgment issued in case 21/federal/2015 on 4.14.2015, which obliges to returns to the federal judicial power in the private that related to it, if there was in idea to amend the bills that presented, also obliges to returns to the council of ministers, if the needed amendment included a financial commitments on the state. Based on that, the court decided to judge with unconstitutionality of clause (3rd) of article (3) of higher judicial council and cancelling it. According to what aforementioned, for the challenged clauses with its unconstitutionality, the FSC decided to judge with unconstitutionality of clauses (2nd) and (3rd) and (5th) of article (3) of higher judicial council law, and clause (3rd) of article (6) of it, and to judge by rejecting the challenging of clause (2nd) of article (5) of it , and to burden the defendant/ being in this capacity the proportional expenses of the case and the advocacy fees of the agent of the plaintiff/ being in this capacity, amount of one hundred thousand Iraqi dinars. The decision issued decisively according to the provision of article (94) of the constitution, and unanimously, and made clear publicly on 4.11.2017.