



The Federal Supreme Court (F S C) has been convened on 3.5.2018 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 Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the barrister (jim.nun.sad.ta').

The Defendants: 1. Speaker of the ICR/ being in this capacity – his agents the jurists as a director (sin.ta'.yeh) and legal assistant consultant (heh.mim.sin).
2. the Prime Minister/ being in this capacity – his agent the legal assistant consultant (ha.sad).

The Claim

The plaintiff claimed before the FSC that the ICR enacted supreme commission of human rights law No. (53 for 2008) implementing to text of article (102) of the Constitution, and abovementioned law had violated the Republic of Iraq Constitution for 2005. Whereas it listed under title (third chapter – commissioners' Council – article 7 – the ICR forms a commission of experts not more than fifteen members involves a representatives from the ICR, the Cabinet, the Higher Judicial Council, civil community organizations and united nations bureau for human rights which assume selecting of nominees with a national announcement). This text violates the Constitution in many places including article (47), and according to this article the Federal powers shall be formed. These powers are legislative, executive and Judicial which exercises its competences and tasks on the

principle of separation between powers. As well as it violates article (61/5th/beh) which the ICR according to it may approve assignment of some grades including special grades based on a proposal from the Cabinet. It also violates article (80/5th) which determined the Cabinet's authorities including recommendation to the ICR to approve assigning undersecretaries, Ambassadors and special grades. The plaintiff sees that abovementioned text had restricted the competence of candidates special grades by a proposal from the Cabinet. Accordingly, the plaintiff requested to judge by unconstitutionality of article (7) of supreme commission of human rights law No. (53 for 2008) and annulling all implications. After registering this case, and notifying the defendants by a copy of its draft. The first defendant presented an answering draft within the limitation which included his defends and among these defends that the plaintiff did not clarify the direct and effective interest in his case, also there was a contradiction between the case's content and the plaintiff's requests. As for the second defendant, he presented a draft dated on (1.7.2018) and requested to reject the case for many reasons, including that litigation is not exist against his client. On the day which set for pleading, the Court had been convened and the plaintiff attended again personally according to his identification card issued from bar association till 12.31.2018. The agents of the first defendant attended and the second defendant agent attended as well. The public in presence pleading proceeded, and both parties repeated their sayings and previous requests and the plaintiff requested to judge according to the petition of the case. The agents of the defendants requested to reject the case for the reasons they listed in their drafts. Whereas nothing left to be said, the end of pleading and the decision were made clear publicly.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff in his case's petition had requested to judge by unconstitutionality of article (7) of supreme commission of human rights law (53) for 2008, and annulling all implications as it violates text of article (47) of the Constitution which involved Federal powers' components which is it legislative, executive and

Judicial powers. These powers exercising its competences based on the principle of separation between powers. As well as article (61/5th/beh) of the Constitution which concern the ICR competence in what related to approving on special grades and Ambassador assignment with proposal from the Cabinet. Unconstitutional challenged text wasn't restricted on the ICR tasks of approving commissioners' Council assignment, and it also exceeded this matter to form a committee carry out their nominating which may lead to adding a new competence which is not stipulated on in the Constitution. This matter considered a violation to executive power competence which restricted in article (80/5th) of the Constitution which stipulated on (to recommend to the Council of Representatives that it approve the appointment of undersecretaries, ambassadors, state senior officials...). The plaintiff sees that the text of clause abovementioned clarifies unequivocally that competence of nominating special grades is a task of the Cabinet. By returning to clause (3rd) of article (16) of supreme commission of human rights law No. (53) for 2008, the FSC finds that the commissioners' Council members are with a general Directors' grade, whereas aforementioned clause stipulated on (the Council's members shall enjoy general Director grade) and they are not from special grades as the plaintiff described in his case. As for what related to assigning a Head for the commission with a grade of a Minister, and a deputy with a grade of undersecretary. This matter comes later, and by elections takes place inside the commissioners' Council, and it must not taking place in the ICR and this what article (8/3rd) of supreme commission of human rights law stipulated on. The FSC finds that challenging unconstitutionality of article (challenge subject) is lacking to substantiation from the Constitution, beside that directing litigation to the second defendant the Prime Minister/ being in this capacity is lacking to substantiation from the law because litigant in the case shall have admission from him and must be suited or obliged with something to approve the case according to article (4) of civil procedure law No. (83) for 1969. Accordingly, the Court decided to reject the case against the first defendant the Speaker of the ICR/ being in this capacity objectively, and to reject the case against the second defendant the

Prime Minister/ being in this capacity for litigation and to burden the plaintiff the expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued according to provisions of article (94) of the Constitution and article (4) of the FSC law No. (30) for 2005, and it was made clear in the session convened on 3.5.2018.