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The Federal Supreme Court (F S C) has been convened on 2/5/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Adobo Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyer Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Maan Noori Abdul Hussein Shallal.

The defendant: the Speaker of the ICR/ being in this capacity-his

Agents the legal advisor Haytham Majid Salim and

The official jurist Saman Muhsin Ibrahim with the post  
Of Director.

### The Claim

The plaintiff the Barrister with the carte blanche Maan Noori Abdul Hussein Shallal claimed that the Iraqi Constitution draft for 2005 which offered to the People by the National Assembly before the referendum which took place on 15/October/2005 according to the articles (60) and (61/Beh) of the State Administration Law for the transitional period, but the current Constitution which published in the gazette is consist of 144 articles. Therefore, the articles from 140 to 144 were not offered for a referendum, and adding it by the National Assembly is violating the Constitution and should be considered void. For this reason, he called upon the defendant/ being in this capacity for argument and to judge by unconstitutionality, in addition, to annul the articles 140 to 144 of the Constitution and consider the results came out of it void. After registering the case, notifying both parties and requesting from them to answer it scripturally according to the provisions of the article (2/1<sup>st</sup>) of the

FSC Bylaw No. (1) For 2005. The agent of the defendant/ being in this capacity answered by his written draft on 2/December/2019 that the Federal Supreme Court is incompetent of trying the case subject and challenging constitutional articles considered a legislative intervention and procedures drawn by the Constitution of the Republic of Iraq for 2005. The committee of writing the Constitution had presented the Constitution with all its articles the 144 according to the official minutes to offer it for a referendum by the People, no authenticity of what was listed in the claim of the plaintiff. Therefore, he requested to reject the case. The plaintiff answered by his answering draft on 12/December/2019 that adding the articles 140 to 144 to the Constitution by the defendant/ being in this capacity without offering it to the People was violating the text of the article (61/Beh) of the State Administration Law for the transitional period, and according to the article (44/Beh/2) of which, as well the article (4/2<sup>nd</sup>) of the Federal Supreme Court Law and what offered for the referendum were (139) articles only. He attached two pamphlets to his draft, the first title is (the summary of the Iraqi Constitution draft) and the other one title (the draft of the Republic of Iraq Constitution), both are containing 139 articles. He added to his draft that the official minutes presented by the Constitution writing committee were containing 139 articles only. After completing the case's procedures according to the provisions of the article (2/2<sup>nd</sup>) of the FSC Bylaw No. (1) For 2005, the day 2/May/2021 has been scheduled as a date for the argument, both parties were notified. On the scheduled date, the plaintiff attended by himself, as well the agent of the defendant/being in this capacity the legal representative with the post of Director Saman Muhsin Ibrahim attended too. The Court proceeded to try the case publicly. The plaintiff repeated what was listed in the petition of his case and the illustrative draft, he requested to judge according to what was listed in it. The agent of the defendant/ being in this capacity also repeated what was listed in his answering draft. Whereas nothing is left to be said, the end of the argument has been made clear. While the Court was ready to issue the judgment, it has recited publicly.

## The Decision

During scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff had claimed that the Constitution writing committee of the Republic of Iraq for 2005 had shown 139 articles of it only for the public referendum which decided to take place according to the article (61/Beh) of the Iraqi State Administration Law for the transitional period, while the Constitution in effect which published in the gazette consisted of (144) articles. This means that the articles (140 to 144) of the current Constitution had been added by the National Assembly and not offered for the public referendum, therefore, it must be considered void according to the provisions of the article (61/Jim) if the Iraqi State Administration Law for the transitional period. He requested to judge by unconstitutionality of the added articles to the Constitution, these articles from 140 to 144, annulling it and to consider all results produced by it are void. The FSC finds that the plaintiff is challenging the unconstitutionality of the articles 140 to 144 of the Republic of Iraq Constitution for 2005 in effect. Whereas one of the indisputable principles is the superiority of the Constitution, its rules are the highest and it is at the top of all other legal rules. This matter returns to that the Constitution is representing the will of the Nation, it produces the public powers in the Nation and determines its jurisdictions. Therefore, all powers are obliged to follow its texts and provisions of works achieved by it, contrariwise these works will be considered illegitimate. Whereas the Republic of Iraq Constitution for 2005 became in effect and binding for all powers with all its articles the (144) after its publishing in the gazette. All powers are obliged to follow its provisions, including the Judicial Power which the Federal Supreme Court considered one of its components according to the article (89) of the Constitution which the Constitution had determined its jurisdictions, clearly and accurately in the article (93) of it, not among these jurisdictions is trying the constitutionality of the Constitution articles. Therefore, the Court should follow these jurisdictions, not exceed them. Moreover, what listed by the plaintiff of what the Constitution writing committee did, and the National Assembly regarded a violation of the provisions of the articles (60 and 61/Jim) of the State Administration Law for the transitional period, this objection is rejected because the aforementioned Law had been annulled according to the article (143)

of the Constitution. The constitutional jurisprudence rules are corresponding with the superiority of the Constitution in effect which is texted by annulling the previous Constitution. Therefore, it is not permissible to rely on the articles of the annulled Constitution and what was listed by the plaintiff that the case's subject which is challenging the constitutionality of some articles of the Constitution is within the jurisdictions of the Federal Supreme Court according to the provisions of the article (4/2<sup>nd</sup>) of the FSC's Law No. (30) for 2005, and this matter is not corresponding with the FSC's Law because the aforementioned paragraph and before the amendment made on it was stipulated on the jurisdiction of the Court by settling matters of disputes that related to the legitimacy of the laws, decisions, regulations, instructions, and orders issued by any office which has the power of issuing it, in addition to the jurisdiction of annulling any of which that may contradict with the provisions of the State Administration for the transitional period. The aforementioned text did not include the settling of the constitutionality of some articles in the Constitution or annulling it in the case they were not meeting the State Administration Law. Whereas the text of paragraph (2<sup>nd</sup>) of the article (4) (amended) became included the jurisdiction of the FSC by interpreting the texts of the Constitution, not trying its constitutionality. Accordingly, the FSC finds that settling the constitutionality of articles 140 to 144 of the Republic of Iraq Constitution for 2005 is out of its jurisdiction. Therefore, it decided to reject the case of the plaintiff Maan Noori Abdul Hasan and to burden him the fees, expenses, and advocacy fees for the agents of the defendant/ being in this capacity the jurists Haytham Majid Salim and Saman Muhsin Ibrahim amount of one-hundred thousand Iraqi dinars to be divided according to the proportions stipulated in the Law. The decision has been issued unanimously, final, and binding for all powers according to the provisions of articles (93) and (94) of the Republic of Iraq Constitution for 2005 and the articles (4 and 5) of the FSC Law No. 30 for 2005 (amended). The decision has been made clear on 2/May/ 2021 coinciding with 20/Ramadan/1442 Hegira.