



The Federal Supreme Court (F S C) has been convened on 10.7.2018 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, Hussein Abbas Abu AL-Temman and Mohammed Rajab Al-Kubaisi who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (ra. ain. mim.) her agent (feh. ain. qaf.).

First Defendant /Prime Minister/ being in this capacity his legal counsel (ha. sad.).

Second Defendant / Interior Minister/ being in this capacity his agents Colonel (mim. alif. ain.) and Captain Rights (ha. lam. ha.)

Third Defendant / Federal Supreme Court (The Disciplinary Body/ being in this capacity) Under-Secretary of State / being in this capacity human rights officer senior manager (nun. jim. ha.)

Claim:

The agent of the plaintiff claimed that the Minister of the Interior/ being in this capacity (the second defendant) issued the administrative order No. (77694) on 27/10/2015 to refer her client to retirement based on the decision of the General Secretariat of the Council of Ministers No (352) of 2015, that decision was violation to paragraphs (1st , 3rd) of the article

(132) of the constitution and to the paragraphs (1st , 4th) of the article (4th) and (10th) of the law of political dissidents No. (24) of 2005 (amended), the fact that the client is separated politically, as stated by the decision of the Committee of Verification of political dismissed No. (3033) on 23/2/2015, and the body (institution) political prisoners No. (8167/lam. kha./2008) on 27/8/2008 and the attachment with the offer so did not promote the treatment of retirement so far for the reasons above and the following reasons: **First:** The Law of the Interior (General and Continuing) and the Law of Political Detainees No. (24) of 2005 and its amendments (Special Law) addresses the problems of a fixed segment and a specific time and they are affected by the previous system, and that the private law restricts the general law and filed a case with the (Employee judicature Court) as its client (general manager) means (civil employee in the Ministry of the Interior). The court above ruled to canceling the decision to refer him to retirement and return to the job and in accordance with its decision No. (758/6) on 16/6/2016.

Second: The Legal Department of the General Secretariat of the Council of Ministers and the Legal Department of the Ministry of Interior to challenge the decision of the court by a pledging that does not have any legal basis and was contrary to the constitution of Iraq claiming that the plaintiff was an officer and became a policeman and applied to him all police laws knowing that the plaintiff was a general manager that proved (of the Employee judicature Court). In addition, article (First/first) of the Law of the Political Detainees No (24) of 2005 and its amendments covers all sectors of the state, including the internal security forces, and this is contrary to the constitution as well, it is a surplus and applies to paragraph (beh.) of article (19) of the Federal Budget Law for the year 2016 and the retirement was in 2015 and this document is contrary to article (19/6th & 9th) of the constitution. The Supreme Administrative Court, in its discriminatory capacity, has responded to the challenge for revoking a decision (Court of Civil Servants) and did not condone consideration of the decision to refer to retirement despite the contradictions and clear violations of the Constitution and the law so that the wording of the administrative order is contradictory between the

Ministry of Interior and the Secretariat General of the Council of Ministers. As the Council of Ministers referred the plaintiff to retire in accordance with article (36/beh) of the Civil Service and Retirement Law No. (18) of 2011. While the administrative order issued by the Ministry of Interior referred to retirement in accordance with article (14/1st) of the law of retirement No. (9) of 2014. And did not consider the Supreme Administrative Court of these contradictions has implemented the orders of the Secretariat of the Council of Ministers in violation of the constitution and the law.

Third : The plaintiff submitted the pleading dated 13/4/2017 to the (Employee judiciary Court) attached to the offer explaining all the constitutional and legal violations of the court for the purpose of retirement. The court did not discuss and thus, article (159) violated civil proceedings. The plaintiff requested the FSC to rule on the following: (To restore the constitutional and legal rights of its client and to cancel the decision to refer its client to retirement issued by the General Secretariat of the Council of Ministers No. (352) of 2015 Administrative Order of the Ministry of the Interior No. (77694) on 27/10/2015. And to cancel the recent decision of the Supreme Administrative Court date 3/12/2017, the fact that these decisions are violate to the constitution and the law as stated in the article (132/1st & 3rd) and article (19/6th & 9th) of the constitution and the article (4th/1st & 4th) and article (10th) of the law of political dissidents No. (24) of 2005 and its amendments and compensation for the physical, psychological and moral losses incurred by the claimant and his return to service as Director General and return all the salaries of the plaintiff from the date of retirement until now). The First Defendant Prime Minister/ being in this capacity replied to the petition that the jurisdiction of the FSC is set in article (93) of the constitution and that the decision of his client No. (352) of 2015 (challenged) is an administrative decision issued by his client under his powers stipulated in article (80/3rd) of the constitution. The challenge shall be considered outside the jurisdiction of the FSC, and this shall be settled in many of its decisions (65 & 63 & 38/federal/2017 & 59/federal/2018). And that the decision of the client subject to appeal

was issued on the basis of article (80/3rd) of the constitution, which gives him the right to issue decisions in order to implement the laws and the inadmissibility of interference with the constitutional powers applied (to the principle separation) provided for in article (47) of the constitution, as he did not guarantee any violation of the provisions of the request of the first defendant's agent to respond form of non-jurisdiction and the subject of lack of legal support. The second defendant's agents (Minister of Interior/ being in this capacity) responded to the petition with the following: The terms of reference of the FSC are provided for in article (93) of the constitution and not including the consideration of the merits of the case. This case has also been reviewed by (Employee Judgment Court) in the case No. (2245/mim/5/20) on 16/6/2016, the court decided to cancel the decision to refer the plaintiff to retire, but the decision was revoked by the Supreme Administrative Court on 10/11/2016 in the case No. (99/judicature employee - cassation) And the case was returned to the court to proceed and issue the appropriate decision, so the agents of the second defendant asked to reject the case in form and subject. The prosecutor's attorney (the Premier responded to the petition that the Supreme Administrative Court (the third defendant) does not own the character) in accordance with the provisions of article (1) of the State Council Law No. (11) of 2017 and therefore requested to reject the case for non-litigation based on the provisions of article (80) of the Code of Civil Procedure No. (83) of 1969 (amended). After registration of the case in accordance with the provisions of paragraph (3rd) of article (11), of the bylaw of the FSC No. (1) of 2005. After completion of the procedures required in accordance with paragraph (2nd), article (2), of the bylaw. Appointed on 10/7/2018 a date for the pleadings in which the court was formed lawyer (feh. ain. qaf.) attended the attorney for the plaintiff and attended by the first defendant the Prime Minister / being in this capacity and the Legal Counsel (he. sad.) and the second defendant the Minister of the Interior Col. (mim. alif. ain.), the third defendant, the Supreme Administrative Court, attended the civil servant (nun. jim.), the argument was open and public. The plaintiff's agent repeated the petition and asked for the ruling, adding that the second defendant had referred

her client to retire even though he had not reached the legal age and asked to cancel the order to refer her client to retirement and provided a pleading to what the defendants' agents showed on 10/7/2018, summarized what was stated in the list that the client was not over the personal item. The three defendants' agents replied that they repeat the rules of the pleading and ask the court to reject the case for the reasons stated in those pleadings. As the case has been updated for reasons of judgment.

The Decision :

For scrutiny and deliberated by FSC found that the plaintiff's agent claims that the Ministry of Interior (the second defendant) / being in this capacity issued administrative order No. (77694) on 27/10/2015 to refer her client to retire based on the decision of the Secretariat General of the Council of Ministers (352) of 2015 this was a clear violation of the two paragraphs (1st & 3rd) of the article (132) of constitution and the two paragraphs (1st & 4th) of the article (4) and the article (10th) The law of the dismissed political No. (24) of 2005 (amended). Accordingly, initiated the challenge against the administrative order and the above-mentioned decision, where I requested its cancellation, the restoration of the rights of its constitutional and legal client, Cancellation of challenge decision issued by the Supreme Administrative Court date 3/12/2017 and to compensate the client for the loss of material, psychological and moral and return to the service of the post of Director General and the return of all the salaries reserved from the date of retirement so far. The FSC finds that the administrative order No. (77694) issued by the Ministry of the Interior date 27/10/2015 and the decision of the General Secretariat of the Council of Ministers No. (352) of 2015 (challenged by the plaintiff) these are two administrative decisions that the law specifies as a way to challenge them other than the way of challenging them before the FSC, which determines its jurisdiction of article (93) of constitution and article (4) of its law No. (30) of 2005. The FSC also finds that the decisions of the Council of State are considered (through its judicial formations) are also outside the jurisdiction of the Federal

Court referred to above. The FSC decided to dismiss the case in a form of jurisdiction and to charge the plaintiff with expenses and legal fees the defendants' agents have a sum of one hundred thousand dinars and the judgment is binding on the basis of the provisions of the article (93) of the constitution and the article (5/2nd) of law of FSC No. (30) of 2005 by agreement and understood publicly on 10/7/2018.