



The Federal Supreme Court (F S C) has been convened on 1.29.2018 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 Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Representative (mim.ra.dhad.jim) – his agent the barrister (alif.sad.ha).

The Defendant: the Speaker of the ICR/ being in this capacity- his agents the official jurists' director (sin.ta.yeh) and the legal consultant assistant (heh.mim.sin).

The second Defendant: the Head of Salah AL-Deen governorate council – being in this capacity – his agent the official jurist (ain.sad.sin).

The Third Party: the Head of integrity committee – being in this capacity – his agent the official jurist (teh.mim.sad).

The Third Party: the Head of fund monitory divan – being in this capacity – his agents the official jurists (beh.ain.ain.ain) and (sad.feh.ha).

The Claim

The agent of the plaintiff claimed before the FSC in the case No. (109/federal/2017) that the court of penalties which specialized in integrity cases issued on (7.20.2017) a judgments against the convicted released (alif.ain.ain) the Governor of Salah AL-Deen with protective custody for one year in the penal case No. (2243qaf1/2015) about (expending the budget of the governorate

which is its amount of (130) billion Iraqi dinars on unreality projects) and protective custody for one year in the penal case No. (543/qaf1/2017) about (directing a letter to municipality of Tikrit to transfer the property of a plot to Ard AL-Sor AL-Qadeem company gratis) and protective custody for one year with suspending the sentence in the penal case No. (1283/qaf1/2015) about (granting a loan more than (50 %) of the projects) and he spent more than (70) days in the prison, and another case he paid according to it the wasted fund with more than five hundred million dinars which means a confession from him of the crime he attributed with. He was included by amnesty law No. (27) For 2016, and it is worthy to mention that the convicted previously referred to the specialized courts in many cases which related to corruption and public funds wasting. The convicted was included by amnesty law No. (19) For 2008. According to that Salah AL-Deen governorate council should take the required procedures to remove him and taking the authorities of his post because issued decision against him became final, and he was released of being included with amnesty and a candidate for a replacement was opened because of his lacking for membership conditions which stipulated on in the governorates incorporated into a region law No. (21) For 2008 (amended) and according to the text of article (25/1st) of the law which stipulated on (the candidates for the position of the governor shall meet the requirements stipulated for membership of the governorate council). Whereas article (5) item (3rd) of the aforementioned law had determined the membership conditions which stipulated on (the candidates for the council membership shall meet the following (3rd: Be of good moral reputation and conduct and have not been convicted of a crime involving moral turpitude). Whereas article (6) item (1st) clause (5) of the abovementioned law had determined the situations of ending the membership and judge with (if he ceases to possess any of the membership requirements) as well as article (7) item (8th) clause (1) had determined the method of questioning the governor and the request of his removal or recommending it according to one of exclusive following reasons: alif- lack of integrity or abuse of position. Beh-causing waste of public funds. Jim-loss of one of the membership requirements. And clause (3) of the same article stipulated on (the

governor shall be considered to be removed if he ceases to possess any of the requirements stipulated in Article 5 of this law) in spite of that the council did not perform its duty which stipulated on in governorates incorporated into a region law No. (21) For 2008, and it did not take the procedure stipulated on to deposit the governor, and this matter means that the convicted (alif.ain.ain) has a full control on the governorate council. Also the ICR did not perform its constitutional duties, and we think that what listed in fund monitory divan report Ref. (1/1/15/16116) on (9.27.2016) about what the governor did by delivering a part of amount which allocated for the security and civil foundations' needs in the governorate which estimated by six billion to a number of representatives and governorate council members which made the two councils does not performing their legal and constitutional duty, in spite that the released convicted was exist in the prison for (75) days, and the council did not do its duty to deposit him. Whereas (the plaintiff) is member of the ICR of Salah AL-Deen governorate and representing the people of the governorate, so he requested from the FSC and according to the text of article (93/3) of the constitution:1- to judge by unconstitutionality of whom named (alif.ain.ain) to continue as a governor of Salah AL-Deen because it is violates the provisions of the constitution and the law, and it is not allowed to whom was convicted by a corruption cases to carrying out a sovereign post or to be entrusted on the public fund even if he was included by amnesty law No. (27) For 2016 and No. (19) For 2008. 2- To call upon the Head of Salah AL-Deen governorate council/ being in this capacity for pleading, and to judge by obliging the governorate council to remove (the governor) and to open candidate for the governor's post, as well as prohibit him from assuming the general employments in the future because he lacks to a condition of membership conditions stipulated on according to law No. (21) For 2008 (amended), and according to the text of article (6) item (1st) clause (5) and article (7) item (8th) clause (1) and (3). 3- Issuing an urgent allegiance order form your honorable court to take off the governor of Salah AL-Deen hand (alif.ain.ain.jim) from the post till completing the legal procedures and take a decision in the cases viewed before the specialized court of integrity cases to maintain the public fund because he is still

wanted in a several cases, and till this case is solved according to the text of article (151) of civil procedure law No. (83) For 1969 (amended). The agents of the first defendant the Speaker of the ICR answered the petition of the case with and answering draft dated on (11.7.2017) that the agent of the plaintiff did not clarify in the petition of the case the constitutional text which he support his clients' case to. And the claim of his client is based on the continuity of Salah AL-Deen governor in his post, and impermissibility of that because he is convicted with corruption cases and who convicted with such cases haven't to assume this post. And because he was included by amnesty law (2016) and (2008) whereas the constitution and the governorates' councils law No. (21) For 2008 had drawn a mechanism of questioning and removing the governors. Therefore, the claim of the plaintiff is Non-adversarial as much it is related to the ICR. Whereas the plaintiff is one of the ICR members, so he could take the methods which drawn by the constitution and the law according to the monitory role of the ICR in right of exercising the executive power. All what abovementioned is applicable as well on clause (2,3) of the agent of the plaintiff requests in the petition of his case, and for what other reasons your honorable court sees, they requested to reject the case, and to burden the plaintiff its judicial expenses and advocacy fees. The agent of the second defendant answered the petition of the case by a written draft dated on (11.13.2017) and requested to reject the case, because the competencies of the FSC had been determined by article (93) of the constitution, whereas the case is initiated out of the honorable court competencies and article (4) of the FSC law No. (30) For 2005 had determined the competencies of the FSC and did not include what indicates to about what listed in the petition of the case that trying the subject of the case specialty and the competence of the FSC in what related in implementation of governorates No. (21) For 2008 (amended) is restricted in text of article (31/11th/3) only from the aforementioned law, so he requested to reject the case for this reason. Objectively, lacking of Salah AL-Deen governor for one of membership conditions which stipulated on in article (5) of governorates law No. (21) For 2008 (amended) and what other reasons listed in the petition of the case. We would like to clarify to the honorable court

that the Iraqi constitution had guaranteed the right of litigation for any Iraqi citizen according to legal procedures stipulated on in the valid laws, and the penalty law No. (111) for 1969 and criminal procedure law No. (23) For 1971 had guaranteed the right of challenge according to the legal processes which stipulated on in the abovementioned two laws, and it regarded the crime is not valid till it become final. Whereas article (300) of criminal procedure law (the case regarded closed by the death of the accused or a final decision is token by convicting or acquitting him. Also if a final decision issued with his irresponsibility of the crime he attributed with. If there was a final decision of releasing him or amnesty of the crime...Etc). The judgments indicated to in the petition of the case against Salah AL-Deen governor whom released according to amnesty law No. (27) For 2016 after it is became clear for the court that there is no damage or wasting in public fund. As well as article (153) of penalty law No. (111) for 1969 which stipulated on (the amnesty shall issues with a law, and it should based on the end of the case and the conviction judgment must be removed which issued about it, and all original, sequential, supplemental and protective penalties shall be abolition. The amnesty must not affect on what previously executed of penalties if the amnesty law stipulated on the contrary). Therefore, he would not lose a condition of membership conditions stipulated on in article (5) of governorates law No. (21) For 2008 indicated to in the petition of the case, and there was no official letter received by Salah AL-Deen council from commission of integrity or specialize courts about what related in convicting Salah AL-Deen governor. Accordingly, the agent of the second defendant requested from the FSC to judge by rejecting the case for incompetence and objectively, and to burden the plaintiff all the expenses. The court called upon both parties for pleading, and on the set of the pleading the court had been convened, and the agents of the first defendant attended and the agent of the second defendant. 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 with burdening the defendants the expenses and advocacy fees. As well as the gent of the second defendant repeated what listed in the answering draft and requested to reject the case

with burdening the plaintiff the expenses and advocacy fees, and the agent of the second defendant repeated what listed in the answering draft and requested to judge by rejecting the case, and to burden the plaintiff the expenses and advocacy fees. The court noticed that the plaintiff and through his agent had discussed in an answering draft the subject of court's validity in trying the case, regarding that the governor of Salah AL-Deen in exercising his tasks, and the court is concerned in trying. The court decided to proceed in the case and to expand in the subject of what attributed to governor of Salah AL-Deen if there is a defect or wasting in public fund, and is there a decision were taken about that by fund monitory divan and the commission of integrity according to the purports of the letters issued from fund monitory divan or commission of integrity which indicates to a defect or wasting in public fund, and does those these two establishments notified the ICR, and is there a decision were taken about it. The court decided and according to provisions of clause (4) of article (69) of civil procedure law to introduce the Head of integrity commission and the Head of fund monitory divan as a third party in the case to take their opinion about what requires taking a decision in the case objectively and subjectively. The agent of the third party the Head of integrity commission answered with an answering draft dated on (1.21.2017) that what fund monitory divan's report included in its letter Ref. (1/1/15/16116) on (9.27.2016) was about the investigation in integrity commission under a supervision of specialized investigation judge. The penalties that attributed it were perpetrated to whom called (alif.ain.ain.jim) are many and variable and the judicial decision were differed about it between including with amnesty law No. (27) For 2016, and the decisions were approved appealingly and between rejecting or repetition for the reasons mentioned in it and according to attached table. The commission of integrity had notified the specialized judicial bodies that big wasting of public fund was achieved in these penalties. This matter requires to be estimated by an investigation specialized neutral committee consist of integrity commission, fund monitory divan and the governorate council but not to be exclusive specialty of governorate council just to ensure investigation flawlessness. And many of these penalties are still in judicial investigation and

some of it were separated into a (200) penalty cases and according to the attached table which sent by Salah AL-Deen investigation office. The aforementioned committee had been annulled by a decision from integrity cases' investigation judge, and waiting for its works' results. The commission of integrity is approving not to let those whom included by amnesty law, especially corruption cases to assume any administrative or political post after he is included with aforementioned law, because that means an abortion of the state's efforts which exerted to struggle the corruption. Also it forms a true violation for the condition of good behavior and reputable, and the report of the divan (review subject) a copy of it was sent to the ICR and the commission of integrity had notified the ICR/ committee of territories and governorates incorporated into a region with the investigation token procedures against the mentioned person about the penalties which the divan's report aforementioned included. And after reviewing, it was attached to the file of the case. The agents of the third party the Head of fund monitory divan a draft dated on 1.29.2018 attached to the file of the case, and the court reviewed the reciprocal drafts between the case's parties. The court had made its investigations about the facts which the plaintiff attributed to the governor of Salah AL-Deen that related to override the public fund to protect it before it takes a decision in its specialty. Whereas the case completed its procedures completely and nothing left to be said about it. The end of the pleading made clear and the decision recited publicly in the session dated on 1.29.2018.

The decision:

After scrutiny and deliberation by the FSC, the court found that its competencies were determined in articles (52/2nd) and (93/3rd) of the Republic of Iraq constitution for 2005 and article (4) of its law No. (30) For 2005, in addition to the competencies stipulated on in some federal laws. Among these competencies what clause (3rd) of article (93) of the constitution stipulates on which texts the following ((settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority...)) and this text is what the defendant relied on to prove the competence of the FSC to try the

case which he initiated. By returning to this case, the court found it is equalize in challenging of not taking the first defendant the Speaker of the ICR/ being in this capacity according to the monitory tasks of the council any procedure against the governor of Salah AL-Deen about existence of a defect in condition which must be available in him. These conditions are stipulated on in a federal law which is it the governorates incorporated into a region law No. (21) for 2008, as well as for the second defendant the governor of Salah AL-Deen he also did not take any procedure against Salah AL-Deen governorate council spite of matters that exist which related to public fund, in addition to the defect of conditions to remain the governor in his post. By inducing the text of clause (3rd) of article (93) of the constitution which listed aforementioned. The court found that the competence of the FSC according to it is to review the challenges presented against the procedures token by the first defendant the Speaker of the ICR/ being in this capacity as he represent one of the federal powers which stipulated on in article (47) of the constitution against Salah AL-Deen's governor, and the plaintiff in the petition of his case and in its illustrations requesting from the FSC obliging it by take it for the reasons he listed in the petition of the case, as well as for the second defendant the governor of Salah AL-Deen of what attributed to him in the case that he did not take required procedure that the plaintiff requested against Salah AL-deen's governor, and he requests to oblige the plaintiff to take the necessary procedure. The FSC finds that its competence is restricted in this field by reviewing the challenge in procedure which token by the first defendant the Speaker of the ICR/ being in this capacity, and by procedure he did not token. Therefore, the claim of the plaintiff before the FSC against him is lacking to the substantiation as for the court competence of reviewing it. As well as for the second defendant the governor of Salah AL-Deen/ being in this capacity, firstly he is not from the federal power, and challenge the procedure he did not took, and if he took the required procedure in the case its reviewing will become out of the FSC competence and should be initiated before the body which legally determined to review it. Accordingly, the court decided to reject the case for incompetence, and to notify commission of integrity to follow up the facts that listed in its note

dated on 1.21.2018 in coordination with fund monitory divan to preserve the public fund, and to burden the plaintiff the expenses and advocacy fees for agents of the defendants amount of one hundred thousand Iraqi dinars divided according to the law. The decision issued decisively, unanimously and made clear.

, and for the reasons which affirmed next to each challenge of the challenges listed by the plaintiffs in the three clauses of the judgment: the court decided to reject the case of the plaintiffs in the sixth unified cases which mentioned in the forefront of this judgment, and to burden them the expenses and advocacy fees of the defendant/ being in this capacity agents amount of one hundred thousand Iraqi dinars. The decision issued decisively, unanimously and recited publicly in the session.