



The Federal Supreme Court (F S C) has been convened on 8.21.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Qasim AL-Janabi, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff: the Prime Minister- being in this capacity- his agent the assistant legal consultant (ha.sad).

Defendant: 1- The Speaker of the ICR- being in this capacity-his agents the legal officials (heh.mim) and (sin.ta).

Third party: the representative (mim.ra.ha) - the Head of the financial committee in the ICR.

Third party: the Minister of finance – being in this capacity- his agent the legal official (kha.ha.ain).

Third party - beside the defendant - independent high electoral commission- its agent the legal official (ra.nun.ain).

Claim

The agent of the plaintiff claimed before the FSC in case No. (17/federal/2017) that the defendant – being in this capacity- had adopted the general federal budget law of the Republic of Iraq for 2017, which included listing a number of articles were not exist in the bill which presented by the Government or amendment on the articles presented by the Government, and adding of these articles or amending it folding a formal and objective constitutional violations, and by that it is violating what the Iraqi judicial constitution settled on, as shown below. The

cabinet decided to impeach some of provisions and articles listed in the aforementioned law for the following reasons:

First: article (62/2nd) of the constitution allowed to the ICR to transact between the exchange item and the chapters of the general budget and reduce its total amounts, and the ICR in necessity has the right to suggest on the Cabinet to increase the total amounts of the expenses, but that does not meaning in any case to exceed the role of the executive power, especially the Cabinet as it has the responsibility of planning and executing the general policy of the state according to provisions of item (1st) of article (80) of the constitution, especially if it was related to a fundamental amendments on the bill presented by the government, and if it want to keep it, must change and fundamentally the targets it worried of from putting this text or that. The Iraqi judiciary settled on that in many of its judgments, one of it, the decision of the FSC No. (25/federal/2012) on (10.22.2012), when it judged with the following (the ICR is not allowed to make a fundamental amendments on the budget bill which presented by the government). As well as the decision No. (21/federal/2015) unified with (29/federal/media/2015) when it judged (the ICR members' replacements law No. (6) for 2006 is not among the laws that touches the principle of separation between authorities, because it did not arise any financial traces added on the executive power and never forms a quarrel with the general policy of the state, and never touches the tasks of the judicial power or its independency, and its enactment came as a direct exercise of its true specialty stipulated on in article (61) of the constitution, and executing to provision of article (49/5th) of it, according to the concept of violation, the ICR is not allowed to legislate laws without returning to the government or amending the texts which suggested by the cabinet, if a financial traces arises or conflicted with the general policy of the state.

Second: the ICR violated the constitutional texts aforementioned, and what the constitutional judiciary settled on, by adding a new texts or amending the texts suggested by the cabinet without rely on its opinion from the government, so, it added or amended on the following articles:

- 1- Article (2/1st/waw) which obliges the government to issues a treasury bonds to refund as accruals of the producer governorates will not be purchasable, as well as returning to the mentioned percentage in the governorates is not possible because of oil prices collapsing in comparison of what it was before, from this respect, per contra the federal

finance monitory divan did not make the necessary auditing to know what the governorates deserves of the amounts to enables the Ministry of finance to issues the treasury bonds to refund it.

- 2- Article (11/3rd) which included to add the Ministries (MOMD , MOELC) to the exempted bodies from stopping the appointments on the personnel movement, because that matter conflicts with the general policy of the state by stopping the appointments except some bodies that the government needs, because of its significance and to expand the activities inside it, as well as, and what arises from the aforementioned amendment an expanding in general expenses which conflict with provisions of article (62/2nd) of the constitution.
- 3- Article (8/5th) and according to it, the phrase (what ensures beshmargah salaries) was added with prepared tables in the governmental bill in article (9/5th) which stipulates on (allocate a percentage of the land forces allocations of the Iraqi federal army to the beshmargah forces according to the population percentage as it is a part of the Iraqi security system), as well as the phrase of (according to the population percentage) was deleted, whereas the beshmargah forces is a part of the Iraqi security system, so, we finds the aforementioned text conflicts with the text of item (1st) of article (9) which according to it, the Iraqi armed forces and the security bodies forms from the components of the Iraqi people, which takes in account its balance and similarity without distinguishing or elimination and it submit to the civil authority leadership, and the aforementioned article did not list any close or far reference to the Ministry of beshmargah.
- 4- Article (11/5th/jim/dal) which according to it, the appointments in the job posts that allocated to the Ministry of interior for the governorates and liberated regions from terrorism from the sons of these governorates exclusively, and oblige the Ministries to delete the vacant posts including the personnel movement and recycling the vacant posts including the budget of 2016, while that conflicts with the principle of opportunities equality which approved by the constitution in article (16) of it, and article (23) which guaranteed the right of work for all Iraqis, as well as the allowance to recycling the vacant posts including the personnel movement which arises from it a financial traces makes the government unable to burden, according to the financial crisis which the state passing through.

- 5- Deficiency of article (11/6th) which allows to account the contractive service for promotion, allowance and pension, to what a financial traces based on it, and confliction with article (62/2nd) of the constitution which granted the right to the ICR to transact between the general budget chapters and reduce its total amounts, and in necessity it has the right to suggest on the cabinet to increase the total of expenses amounts, whereas the ICR did not care the aforementioned order, so it (the item) conflict with the constitution.
- 6- Article (12/1st), which according to it, the governorate is authorized to execute the project that returns to the Ministries (health, reconstruction and housing, municipalities, trade, agriculture, labor and social affairs, culture, youth and athlete), whereas we find that some governorates still unable to execute the strategic projects because its lacking to elements and cadres which it can ask for its assistance to execute such projects, and the governmental text confirmed this order when it determined the competence of the Mayor in executing the projects which are not more than (10) billion dinars.
- 7- Article (14/5th), which included, obliging the Ministries and the bodies unattached to a Ministry to oblige to the decision of the cabinet No. (347) for 2015, because the text on the decision of the cabinet in the core of the law will restrict the council, which make it unable to amend it, while the council should has the flexibility which enables it to work.
- 8- Article (18/jim , dal , heh , waw).
 - a- Article (18/jim), which included the possibility of contracting with the employees of registration centers and the employees of the parties and political organizations, because the government is unable to afford the financial burdens resulted from the contracts the commission will carries out, take in consideration the settling of all contractors of the previous years, which means the commission has no need to new contracts overburden the exchequer, especially that the commission is able to move what it needs of employees or assigning to it.
 - b- (18/dal), which included to oblige the Ministry of finance to move the employment posts and the financial allocation to whom wish to move from the Ministry of interior to the other Ministries from those who has the university certificates, whereas we find that the aforementioned text will affect the security system procedure, which may cause emptying the security establishment of the university

certificate, because the hard security circumstances which the state passing through, our security forces need an efficient personnel supporting it in its work, especially the moving matter is a discretionary refers to the specialized Ministers.

- c- (18/heh), which included, stopping the moving or assignment to the three presidencies and moving back the assigned employees to their offices, and if in stopping moving or assignment a sound reason, then moving back the assigned to their original offices in the three presidencies will emptying the presidential establishment of the efficient cadres, which it needs strongly to carry out its tasks, takes in interest the continuity of their assigning will never cause any additional financial burdens, as it was not changed since 2016.
- d- (18/waw), which allowed to those were pensioned from the auto-financing companies to continue receiving their pension salary, and the Ministry of finance shall burden to pay their pension promotions variance to the state's employees pension box, where the Ministry of finance confirmed that it does not have the financial allocations to pay the variance of pension salary to the pension box.
- 9- Article (24/jim), which according to it a percentage of (50%) must be allocated to the administrative units, which collected the fees, and we think keeping this text might deprive the exchequer from important amounts it needs to finance the projects of the Ministries and unattached to a Ministry.
- 10- deficiency of article (26) which included ((every issuance shall be reviewed on the ICR to approve it)), whereas the aforementioned order is a pure executive work, and we find that forcing the legislative power in this matter conflicts with the principle of (separation between powers) which article (47) of the constitution confirmed on.
- 11- The vocabulary (the domestic product) listed in article (27), whereas we finds by preferring non-governmental product with (10 %) percentage in comparison with its imported similar, representing a high percentage in accordance with the financial situation that the state passing through.
- 12- Article (32/5th/waw, zin), accordingly, the Ministry of the state and the bodies unattached to a Ministry to refund its foreign commitments in the Arabic and International organizations, including the allocated amounts, with condition that Iraq must get its entitlement of employments and administrative posts, as well as it obliged the

Ministry of finance to study the advantage of contributions in the Arabic box for foreign development, and to present its report to the cabinet to review how to settle the share of Iraq in these companies or not, and we finds there is no relation between what Iraq must refund as an international commitments and between getting its entitlement of employment and administrative posts. As for obliging the Ministry of finance to study the advantage of investing in contribution of the Arabic box for foreign development, we think that matter conflicts with policy of the government in strengthen the Arabic cooperation bonds and the Arabic joint work, and this matter is a specialty of the executive power, represented by the government which has the right to study each case individually.

- 13 – Deficiency of item (1st) of article (33), which includes distribution of deductions (3.8 %) from the total salary and allowances of the state's employees, private sectors and pensioners, because the determined deductions in the aforementioned article were approved including the budget's allocations and including multi programs, not among it the emergency reserve, which requires to judge with unconstitutionality.
- 14 – Article (35/alif/beh) which according to it, the raw materials are exempted from fees and the imported components from the productive general sector companies which the goods imported by its names and to be used in production processes exclusively, all materials, items and components of any electrical, mechanical, solar energy and wind are exempted from fees. Whereas the aforementioned article is differ from the governmental text which submits all goods to fees, except the signed contracts before 1.1.2017 which was targets to enhance the state's revenues, as the companies are obliged to send a percentage of its profits to the state's treasury.
- 15 - Article (47) which digested transaction of the operational budget for the syndicates, unions and societies except (the international contributions and conferences) to the Ministry of labor and social affairs to prepare children rehabilitation programs in the liberated regions , orphans and widows, in spite of significance of orphans, divorced and children group, but the valid laws treated that matter by organized establishments according to these laws which represented by the social protection commission. Therefore, this article conflicts with the constitution, pointing to the provisions of article (22/3rd) of the constitution.

16- Article (48).

a- (48/1st) which obliged the federal government and the Ministry of oil to review the oil license contracts sessions to amend the contracts' items to maintain the Iraqi economical benefit...etc, whereas we are in front of an obligatory contracts for both parties the Iraqi party and the contracted company, as long as the matter is like this, so, the reviewing of license sessions is related to the approval of the contracted as it is the second party in the contract.

b- Article (48/2nd), which obliged the Ministry of finance to settle between what in debit of the oil products distribution company of its profit with the debts produced as a debit of the Ministries and bodies unattached to a Ministry, because it is inapplicable and it is not possible that a debit could be produced to the oil products distribution company as cleared profits with the debts in the debit of the Ministries and unattached bodies to a Ministry, and it means that the process of clearing between the produced debts of the company's accruals to these companies.

17- Article (49), which according to it a (10) billion dinar will be transacted from the allocations of the Ministry of migration and displaced to the Ministry of finance to cover the fees and interests for the real estate's debts from the real estate bank which granted to the citizens of governorates of (AL-Anbar, Nineveh and Salah ALdeen) and because the hugeness of the liberated regions from governorates of (Diyala, Kirkuk, north of Baghdad, frontier of Baghdad), and because the hugeness of the financial crisis in the state makes the treasury unable to fulfill these commitments, takes in consideration the displacement wave in those regions, which needs to enhance the capabilities of the migration and displaced Ministry, to rising its legal approved commitments, not by deduct its allocations.

18- Article (53), amending the ruling expenses table (dal) continuum (4) to be the drugs and medical appliances and its requirements instead of the governmental text which was limited to drugs, and that may affect the health fact in Iraq.

19- Article (56), which included dedicating a percentage of revenues allocated from borders that determined with a law of governorates, and shall be used to develop and rehabilitate the infrastructure of the borders and the regions surrounding it, and this matter shall be

initiated in the year 2017, because the aforementioned allocations are really listed includes the total allocations which determined in the budget law.

20- Article (57), which according to it, the deducted interest from the farmers to the agricultural bank for the first year according to the approved percentages between the two parties, and in the following years it will be similar to the interest percentage in AL-Rasheed and AL-Rafidain banks, whereas the contract is obligatory to the contractors, so the approved interest must be paid by the farmers.

21- Article (59), which included transacting amounts from bodies to other ones, and by executing aforementioned article may affect on AL-Basrah gas accruals.

Third- according to what were clarified above, and while the articles added by the ICR or amendments it made on the governmental bill contains an exceeding on the executive role of the government and violating the legislative mechanism which set by the constitution in item (1st) of article (60) of the constitution and violates the principle of separating between powers, which confirmed by article (47) of the constitution and confiscates the means and requirements which enables it from doing the tasks that assigned to it, according to article (80) of the constitution and violates what the constitutional judiciary settled on, therefore, the agent of the plaintiff requested from the FSC the following:

1. To judge with unconstitutionality of articles (2/1st/waw, & 8/5th, 11/5th/jim,dal) & (12/1st & 14/5th & (18/jim, dal, waw) & (24/jim) & (23/5th/waw) & (35) & (47) & (48) & (49) & (56) & (57) & (59) and cancelling it, because it is violating the provisions of the constitution and what the Iraqi constitutional settled on.
2. To judge with lifting the phrases (migrants and displaced , Ministry of electricity) which listed in item (3rd) of article (11) and (regarding the contract service for promotion, allowances and pension purposes) which listed in article (11/6th) and (to restore the assigned from the three presidencies to their original offices) which listed in article (18/heh) and (any issuance must be reviewed on the ICR to approve it) which listed in article (26) and (the domestic product) which listed in article (27) and (deficiency of item (1st) of article (33) of the aforementioned law and the phrase

(the medical devices and requirements) which listed in item (2nd) of article (53) for the aforementioned reasons.

3. To burden the defendant the case's expenses and all advocacy fees.
4. To maintain the right of his client to present any other defends if any facts renovated in the case.

The agent of the defendant/ being in this capacity answered the petition of the case by an answering draft dated on 4.11.2017 clarifying that the challenge presented by the Prime Minister according to the petition of the case No. (17/federal/2017) about the unconstitutionality of the articles listed in the federal general budget law No. (44) For 2017, which voted on by the ICR, and this voting was issued in compliance with the constitution and the valid laws and adequate to the demands of the current economical circumstance and the needs of the Iraqi people and the exceptional circumstances that Iraq is passing through, clarifying that the Iraqi constitution has guaranteed in many of its articles the rights of the Iraqis and maintain it, which ensures a dignified and protected life for them, and from this aspect, the ICR is concern to provide all the required means to ensure their living requirements, and providing the adequate circumstances from all sides and for other considerations which listed in the answering draft, the ICR proceeded to discuss the general budget law for 2017, takes in consideration all the critical circumstances the state's passing through, especially the challenges of supporting the military effort of the army, the popular mobilization forces, the tribes' sons and the beshmargah, as well as confronting the increasing of displaced numbers and to provide the living means for them and takes them back to their governorates, and to reconstruct the liberated regions in addition to provide the necessary services for the other sectors in educational and health fields, while the ICR did not find a real treatments includes the bill of the general budget law which presented by the government. And to avoid these challenges, the ICR went to use its constitutional powers by making the necessary transactions according to the priorities and necessities, and to correct some routs in general budget items, and adopting some governmental policies by the ICR which comprehend with the financial reforming plans representing in non-oily revenues organizing and enhancing decentralization and achieving the social

fair which announced by the government, aims to support the budget's situation and supplementing the government's efforts which lead to accomplish its targets and ensure its economical, social and humanitarian dimensions, and the financial committee in the ICR which the concerned committee in studying and discussing the general budget law, had worked keenly and effectively and under the shade of the constitution and the valid laws, and committed to not adding any amendments may lead to a financial sequences and it was in a continuous contact with the executive bodies, and show the suggested amendments made by the financial committee on the Prime Minister, according to the convened meetings with it, with attendance of the head personnel in the Ministry of finance in three meetings dated on 11.27.2016 & 12.1.2016 & 12.5.2016, and the suggested amendments were digested and approved by the Prime Minister, but the cabinet challenging the budget law after three months from the budget coming-into-force, where the ICR is afraid that this action may affect on the presented services to the citizens, especially the Ministry of finance pointing in its correspondences with the Ministries to stop executing the budget's clauses, in pretence that there a case will be presented to the FSC, worthy to be mentioned that there is a decision for the FSC numbered 75/federal/2015 which stipulated on (no authority cannot abstention of executing the laws or some of its texts or postponing its execution or temporizing in that, in pretence that the budget is challenged before the FSC, and the ICR finds that the challenged clauses never forms a violation to the constitution or the laws and inequity to the citizens, and we clarify to the honorable court the answers of the ICR on the presented challenges as following:

First- the claiming of the plaintiff's agent in his draft, that the ICR has no right to legislate laws without returning to the government or amending the texts suggested by the cabinet while this constitutional right which granted the ICR to legislate the laws according to article (60/2nd) and article (61/1st) of the constitution which is it a true powers, and the agent of the plaintiff has the right to interpret the concept of violation where is no jurisprudence in text's source, and the amendments made by the ICR were not

substantial may lead to a financial traces, and never make any increasing on the total ceiling of the budget.

Second- 1- the agent of the plaintiff claims in clause (2nd/1) of his draft, that the ICR added on article (2/1st/waw) and it is obliged to issue an annual treasury bonds to settle the oil producers governorates' dues, while the ICR had confirmed according to this article to oblige to take in consideration the governorates incorporated into a region law No. (21 for 2008 (amended)), because it forms a debts on the government and it is completing clause (heh) which preceded it from the same article which listed in the governmental text, as well as the ICR did not determine that during the current financial year, but when the government was capable in the next years on the contrary of what the plaintiff went to, that the clause (waw) stipulated on (or any other mechanism approved by the government). Therefore the article gave the government the space of choosing the adequate mechanism to pay the dues to guarantees the governorates' rights.

2- The plaintiff claims in clause (2nd/2) of his draft, that the ICR added to article (11/3rd) the Ministries of (migrants and displaced, electricity) to the excepted bodies of stopping assignments, as mentioned in the governmental text, and we would like to clarify that observation on implementing of article (22) of the constitution, because laboring is a right guaranteed by the constitution for all Iraqis and adding these two Ministries is a result for needing the services of pensioners in these two Ministries, and according to the demands and appeal of the Ministries because of significance of services presented from these two Ministries to displaced persons and citizens, also it never forms any financial burdens because the assigning will based on the vacant posts includes the Ministry personnel which the allocation is available for it already, separating the substitution of the employees in the budget of this Ministry similar to the utilities establishments mentioned in the governmental text.

3- The agent of the plaintiff claims in clause (2nd/3) of his draft, that the ICR added the phrase to article (8/5th) (what ensures the beshmargah salaries with a prepared tables in coordination between the general leadership of the armed forces and the Ministry of beshmargah), and we would like to clarify that the beshmargah forces regards a part of the Iraqi army system and the ICR is keen to

implement article (121) of the constitution, as well as adding the phrase to ensures the beshmargah will gets their salaries according to the third clause of second article of beshmragah Ministry law, so the duty of (Kurdistan territory guards) forces is to defend the territory and supporting the Iraqi forces to defend the sovereignty and security of Iraq, and pointing to the significance of tables to be existed for this purpose regards a basic part of the monitory powers of the Council according to what article (61/2nd) of the constitution stipulated on.

4- The agent of the plaintiff claims in clause (2nd/4) of his draft, that the ICR added (11/5th/ha, dal) which allows the Ministries and the bodies unattached to a Ministry includes the approved personnel till 12.31.2016, we would like to make clear that this text does not having the obligation capacity as the agent of plaintiff claims but it is related to the financial year 2016 not the financial year 2017 (the subject of the case) and never burdening any financial burdens, because the financial allocations of the salaries are apportioned already including the budget of these bodies, as for clause (dal) of the aforementioned article which related to assignment on the employment posts allocated to the Ministry of interior and the possibility of submitting on these vacancies by the governorates sons and the liberated regions form terrorism and this phrase came to ensures execution of article (16) of the constitution from the principle of equal opportunities. The article was not exclusive as the agent of the plaintiff claimed, whereas the article stipulated on ((submitting like the similar of applicants and according to the instructions...)). Whereas these instructions will be assessed by the executive authority and the sons of these regions has the right to submit for assigning to contribute protecting their regions. The article (23) of the constitution which the agent of the plaintiff pointed to is irrelevant to guarantee the laboring for Iraqis but it is talk about the private property.

5- The agent of the plaintiff claims in clause (2nd/5) of his draft that the ICR added to article (11/6th) which allowed calculating the contracting service for promotion and pension purposes. Here we clarify that the ICR did not do a new in this clause, whereas it is lists from the cabinet in the general budget law annually and the instructions of executing the annual budget and this text guarantees

the rights of the employees as they are equal in rights and duties and the text pointed clearly that there is no financial burdens based on it.

6- The agent of the plaintiff claimed in clause (2nd/6) of his draft, that the ICR added to article (12/1st) which authorize the Governor to execute the projects that refers to the Ministries and claims that the governorates still unable to execute the strategic projects because its lacking for elements. The ICR has listed this text and determined these powers according to what listed in the budget law for the previous financial year (2016) which approved by government and this clause comply with governorates law and the law of second amendment for governorates law No. (9) For 2013 and enhancing the principle of decentralization of administration in moving the powers to the governorates.

7- The agent of the plaintiff claims in clause (2nd/7) of his draft that the ICR added to article (14/5th) which included obliging the Ministries and unattached bodies to a Ministry to the decision of cabinet No. (347) for 2015 that the aforementioned still valid and the ICR mentioned that decision includes the budget law to facilitate its execution practically.

8- the agent of the plaintiff claims in clause (2nd/8/alif) of his draft, that the ICR added to this article (18/jim) which included the possibility of contracting with the employees of registration centers in the independent higher commission of elections, and we would like to clarify that the clause which the agent of the plaintiff points to is clause (heh) of article (18) from the law not clause (jim), as well as in sequence of the other clauses, and we answer the mentioned clauses as following:

Alif- as for clause (jim) which included to stop employment in the three presidencies or moving or assigning to it. We like to clarify that this clause came in accordance with article (62/2nd) of the constitution in reducing the expenses, as well as with the reformation plan which announced by the government and comply with the general orientation to compress the expenses and comes from the ICR to carry out its parliamentary monitory tasks.

Beh- as for clause (dal) which included moving the employments posts and the financial allocation for those whom holding the university certificates and desirous from the personnel of the Ministry of interior to the other Ministries or directorates for desirous after

approval of the body that he is moved to, and that comes in accordance with the orientation of the state in pressing the expenses because the personnel of the Ministry of interior receive a salary higher than the other civil offices where they will be moved to, and that will save funds for the treasury, and the clause conditioned to not build on that any financial sequences.

Jim- as for clause (heh) of the abovementioned article, the ICR wants in this clause the continuity of registration centers employees work and the directorate of parties and political organizations in the independent higher commission of elections as an operating contracts and get advantage of experiences without returning to temporal contracting manner and burdening the government a new financial burdens.

Dal- as for clause (waw) which obliges the national pension commission to pay the pension allocations for those set to retirement of the general companies' employees, here we like to clarify that the ICR desired in this article to confirm on dispense the allocations to this segment of pensioners whom were retired according to unified pension law No. (9) For 2014, whereas article (12/3rd) of the aforementioned law stipulated on ((for the specialized Minister or the head of unattached body to a Ministry the right to retire the employees of losing self-finance companies for (3) years consecutively if the employee has a service not less than (15) years as an exception of age condition)).

9- The agent of the plaintiff claims in clause (2nd/9) of his draft that the ICR added to article (24/jim) which according to it, to dedicate percentage (50 %) (Fifty percent) to the administrative units which collected the fees to execute a utility projects, here we clarify that this clause is compatible with provisions of article (122) of the constitution and governorates incorporated into a region law No. (21) For 2008 and it is stimulate the administrative units to activates its role to carry out it.

10- The agent of the plaintiff claims in clause (2nd/10) of his draft that the ICR added to article (26) a phrase and ((every issuance must be reviewed on the ICR to approve it)), and here we like to clarify that this phrase rested on the financial administration and the general debts law No. (95) For 2004.

- 11- The agent of the plaintiff claims in clause (2nd/11) of his draft that the ICR added to article (27) the phrase (domestic product) and we clarify that this phrase came to activate the implementation of Iraqi products protection law No. (11) For 2010 to protect the domestic product and to operate the manpower and moving the wheel of the Iraqi economy and percentage of (10 %) is not high in comparison with the expenses which the domestic product burdens from the costs of the raw materials and electricity.
- 12- The agent of the plaintiff claims in clause (2nd/12) of his draft that the ICR added to article (32/5th/waw, zin) and we clarify the following:
- Alif- as for clause (waw) which included that the Ministries of the state and unattached bodies to a Ministry shall carry out the redemption of its exterior obligations with a condition that the government of Iraq must get its entitlement from administrative jobs in these organizations and according to the percentage of Iraq's contribution, we would like to clarify that the bylaws of the Arabic and foreign organizations for example not exclusively and according to articles (3,6,7,9,11) from the basic order of the executive drafts of the Arabic organizations which belongs to the League of the Arab States) whereas adding this clause to help the government to pressure on organizations to let Iraq gets its entitlement of jobs in it, and not to pay the allocated amounts on Iraq.
- Beh- as for clause (zin) which indicates to that the Ministry of finance must study the feasibility of contributions in the Iraqi fund for exterior development, and to present its report to the cabinet. We would like to make clear to the honorable court that Iraq has investments in a number of companies in several countries and contribute in capitals of the companies and most these companies are losers. So it is prior from the government to reconsider in Iraq's contribution in these companies by carrying out a study of feasibility to continue it or not because it will support the general budget. And there is no interference between two clauses (waw) and (zin) which related to two different subjects.
- 13- The agent of the plaintiff claims in clause (2nd/13) of his draft that the ICR added to article (33/1st) which included distributing the deductions (3.8 %) from the total salaries and allowances of state's employees. Here, we would like to make clear that the deduction was added by the ICR in the general budget law for 2016 and adopted by

the government includes the general budget law for 2017, and the main target of deduction is the human contributing and sharing of employees and pensioners to donate to their bothers and sons in the public mobilization and to aid the displaced. Therefore, these amounts never enters in the calculations of the budget by financing the deficit or financing projects or includes multi programs, rather it goes to the purpose it is dedicated for. The cabinet has raised the percentage of deduction to (4.8 %) according to the governmental text without returning to the ICR whereas this matter will weigh the shoulders of the employees and the pensioners. As for the transaction listed in the same article, so it is a constitutional power for the ICR according to article (62/2nd) of the constitution and clause (7) of financial administration and general debt law No. (95) For 2004 in addition to the decision of the FSC number (24/federal/2016) which stipulated on (making transaction between the chapters of the general budget and reduce its total amounts is right of the ICR), therefore, making transaction which listed in this article to aid the displaced and reconstruct their liberated areas from terrorism to ensures their returning to their areas from the allocations dedicated for the displaced includes the budget of migrants and displaced Ministry.

As for transactions on percentage (0.8 %) which listed in this article and detailed in table (ha) which attached to the budget's law, so, the transaction had been achieved according to the aforementioned power stipulated on, and was transacted for humanitarian cases included (to print the school books to treat the diminish of the books for the school pupils and to provide services to the visitors of holly Karbala and support ITU, so, these amounts had been deducted from the citizen and will goes to him not to the general treasury and the tables (zin , ha) which attached to the general federal budget law for 2017 which regarded inseparable part of the general budget and follows the text of article (33/1st) and the follower never individualizes in judgment.

- 14- The agent of the plaintiff claims in clause (2nd/14) of his draft that the ICR added to article (35/ alif, beh) which according to it, all raw materials and imported components by the public sector companies are exempted of fees. Here we like to clarify that this article is submitted to what listed in article (28/1st) of the constitution, whereas exemption of taxes and fees shall be done with a law, as well as the

clause came to stimulate the public sector companies on production and not to exploit this exemption to evade from fees by the contractors with the general companies and to enhance the general treasury revenues.

As for clause (beh) of this article, it aims to encourage using the replacement energy which has a significance to pressure the allocated expenses annually to generate the electricity and reducing its usage in addition to maintain the environment.

15- The agent of the plaintiff claims in clause (2nd/15) of his draft that the ICR added article (47) which related to transactions of the operating allocations to the syndicates, unions and societies to the Ministry of labor and social affairs. Here we clarify that the transaction is a constitutional power of the ICR according to article (62/2nd) of the constitution. Also article (22/3rd) of the constitution stipulated on (The State shall guarantee the right to form and join unions and professional Associations and this shall be regulated by law) and the text of the article care to except (the International contributions) because they are listed includes the same categorization in the budget in way never affect the Iraqi exterior contributions.

16-alif- The agent of the plaintiff claims in clause (2nd/16/alif) of his draft that the ICR added the article (48/1st) which obliged the federal government and the Ministry of oil to review the contracts of oil licenses sessions. We here like to clarify that these contracts were concluded without being approved by the legislative power, especially it includes a financial obligations on the Iraqi people and this article was listed because of the force circumstances which Iraq turned to, because the terrorism controlled on some oil regions and decline of oil prices and these contracts becomes forming a damage on the state more than it is an investment brings benefit to Iraq.

Beh- The agent of the plaintiff claims in clause (2nd/17) of his draft that the ICR added article (48/2nd) which related to make settlement between what arises from the financial assets of the oil products distribution company. Here we clarify that adding this article to give a power and more flexibility to the Ministry of finance to make required settlements between the achieved profits to the company with the debts of the Ministries and the bodies unattached to a Ministry which arises from financial assets for the benefit of oil

product distribution company because of its purchasing the products of the company and because of incapability of the Ministries to fulfill its financial obligations.

- 17- The agent of the plaintiff claims in clause (2nd/17) of his draft that the ICR added article (49) which related to transaction. Here we like to clarify that the constitutional power of the ICR according to article (62/2nd) of the constitution and clause (3) of section (7) of financial administration and general debt law No. (95) For 2004 and the decision of the FSC number (24/federal/2016). Whereas the aforementioned transaction pours in the same purpose, which is it taking back the displaced to their regions and that will contribute to rebuild their houses.
- 18- The agent of the plaintiff claims in clause (2nd/18) of his draft that the ICR added article (53) which related to add the phrase (medical appliances and requirements) to the table of ruling expenditure the clause (the drugs). We clarify to the honorable court that this clause relied on article (62/2nd) of the constitution because the need of the health sector to the appliances and medical requirements in addition to drugs which enables the health sector to present its services to detect the diseases.
- 19- The agent of the plaintiff claims in clause (2nd/19) of his draft that the ICR added article (56) which included dedicating a percentage of allocated revenues from the border outlets which mentioned in the governorates incorporated into a region law No. (21) For 2008. We clarify that this article added to stimulate the government to execute the provisions of the governorates law and comes in harmony with the governmental orientation and the plan of financial reformation and the aim of the general budget by the services availed by the border outlets, and the text of the article pointed to execute with instructions issued by the cabinet.
- 20- The agent of the plaintiff claims in clause (2nd/20) of his draft that the ICR added article (57) which related to the deducted interest from the farmers for the agrarian bank. Here we clarify to the honorable court the deficiency of farmers from amortization in the first year because they did not receive their dues from the government of marketing their product which lead to their delinquency in amortization, so, adding this article in to ensures not to put any additional burdens on the farmers because of repetition of the benefit which the agrarian

bank intend to deduct it, in spite of it collected the percentage of its agreed benefit in the first year.

21- The agent of the plaintiff claims in clause (2nd/21) of his draft that the ICR added article (95) which included makes transaction, and in this concern we pointing to the constitutional power of the ICR according to article (62/2nd) of the constitution and the decision of the honorable court number (24/federal/2016) which stipulated on (the transaction between the chapters of the general budget and reducing its total expenses is a right of the ICR) and what the agent of the plaintiff mentioned about the effectiveness of transaction on Basra gas allocations. We pointing to make transaction were done after reviewing the Ministry of finance data, which clarified that the allocations of the Ministry of finance had been increased to (2) billion Iraqi dinars in the financial years (2016 & 2017) when it reached in 2016 amount of (17) billion Iraqi dinars, but in the general budget for 2017 it reached (19) billion Iraqi dinars under the high prices of oil. Therefore the Ministry of finance can redeem these dues of its allocations and worth to mention that the allocations of Basra gas are listed includes the Ministry of oil budget. Therefore, the requests of agent of the plaintiff from the FSC to judge with the unconstitutionality of many articles and general budget law items for 2017 in pretence that these requests has no support in the constitution and law, especially his request in clause (2) judged with removing the phrases he pointed to of the aforementioned articles in his draft, and that regards a request from the honorable court to make amendments on the aforementioned texts and the request of the plaintiff will goes out of the FSC competences, therefore the agent of the defendant requested to reject the case and to burden him all the expenses. The agent of the plaintiff answered the agent of the defendant's draft according to an answering draft dated on 4.11.2017 which attached to the petition of the case confirming in it on the true competence of the ICR in enacting the laws according to what the constitution confirmed, but this competence must be practiced according to the constitutional contexts and what the constitutional judiciary settled on, so, what the agent of the defendant went to in clause (1st) of his draft that the ICR possesses the constitutional right to enact laws is refers to him, whereas this right is restricted by asking the government about the additional financial burdens and to

not violates the general policy of the state and getting the approval of the government and the amendments which carried out by the ICR must not be substantial, as well as the amendments must not violates the ministerial course of the government. Pointing in this concern to the decision of the FSC number (19/34/unified/federal/media/2015) confirming in the same time that the amendments which carried out by the ICR violates what abovementioned which listed in our draft presented to the honorable court. As for the other matters listed in the draft of the agent of the plaintiff which presented to the court, it is a repetition to what the case's draft listed, so, he requested from the court to judge according to the petition of the case. After registering this case according to provisions of article (1/3rd) of the FSC bylaw number (1) for 2005, and after completing the required procedures according to clause (2nd) of article (2) of the aforementioned bylaw. The day 4.11.2017 was set as a date for pleading and on that dates the court convened and the agents of the plaintiff and the agents of the defendant attended as well as the representative (mim.ha) attended. The public in presence pleading proceeded, the agent of the plaintiff repeated what listed in the draft of the case and requested to judge according to it, and to burden the defendant the expenses of the case and the advocacy fees. The representative (mim.al) requested to be accepted as a third party in the case to clarify what he has of defends, and the court found that his request is corresponding to the provisions of article (69/1) of civil procedure law number (83) for 1969 (amended) and the court decided to introduce the Ministry of finance as a third party in the case to inquire from it about what must be done to take a decision in the case according to the law. The agent of the plaintiff repeated what listed in the answering draft which presented to the court requesting to reject the case and to burden the plaintiff all the expenses and advocacy fees, also the agent of the plaintiff presented a draft dated on 4.11.2017 consist of eleven pages to inform the third party and the agents of the defendant with a copy of it. The court entrusted the agent of the plaintiff to prepare tables with many fields, the first field includes the points that challenged because of its unconstitutionality, facing it in the second field the text of the bill (the budget) and in the third field the text which enacted by the defendant and the fourth field the constitutional article which violated by the defendant in enacting the text, and the

aforementioned table shall be presented to the court. The court also directed a question to show the total amount of the annual budget before the amendment and adding to it by the ICR and its amount after making the addition and amendment, as well as does these added clauses or amended by the ICR includes obliging the government with a specific date to execute it, or it is just conducting to carry out a specific procedure for a specific commitment. The agent of the plaintiff presented an answering draft dated on 5.2.2017 and he pointing that there is a typo in page (2 , 6) in the attached table to the answering draft (13567 on 5.2.2017). The agents of the defendant were notified with the rectifying, and the court returned to items (2nd & 3rd) of the answering draft which reported (the amount of the budget before and after the first and second amendment and the consistency of the amount) then the phrase of some amendments was done by the ICR came in, which included many of additional amounts on the federal general budget for 2017 and led to a deficit in the federal general budget and the government is obliged to repay the deficit from the financial abundance, then that will increase the financial burdens on the government) as mentioned in the draft, and the court entrusted the agent of the plaintiff to clarify how he harmonized between what he listed in clauses 2nd & 3rd of the draft, and the legal official (kha.ha.ain) attended as an agent of the Ministry of finance according to the private attorney number (801/396/2017) on 5.4.2017. The agent of the Ministry of finance answered that the budget office in the Ministry of her client prepared an answering draft on the draft of the plaintiff's agent, and the court clarified the subject of the case to his agent the third party, and the court wants to understand on the changes which occurred on the budget from the governmental project which presented by the cabinet and the law issued with title of general annual budget for 2017 and all related matters to the case which fixed to the minutes of pleading's session dated on 5.8.2017. The agent of third party (Minister of finance) presented an answering draft dated on 5.17.2017 in session dated on 5.29.2017, as well as the agent of the plaintiff presented an answering draft dated on 5.21.2017 as well as the defendant presented an answering draft dated on 5.21.2017 and in all drafts a documents and pleas of their owners. The court found what the plaintiff/ being in this capacity challenged matters in the petition of

the case and by the pleadings and illustration drafts and the last one the draft dated on 5.21.2017 as well as what the agent of the defendant defended by as an answer on what listed in the petition of the case and the later drafts to it, and his last defends listed in draft dated on 5.21.2017, also what clarified the agent of the third party the Minister of finance in her draft dated on 5.17.2017 that all what raised in all of that in the interest of financial aspects in the general budget for (2017) and in these aspects are legal and technical matters one of it the transaction between the chapters of the budget and the additions and changes made on some of its articles, whereas the agent of plaintiff challenged these changes because it is done contrarily the provisions of article (62/2nd) of the constitution and out of the ICR competences and increasing in budget amounts arises from it even if it was unclear, except the bonuses of the ICR, its amount was clear and as a sequence to that any increasing may affect on the deficit and that what the agent of the third party/ being in this capacity confirmed and the agent of the defendant clarified that what occurred on the budget bill as transactions and additions not affect on the financial situation and never exceed the financial ceiling of expenses and expenditures, and the council cared in these changes the social aspects and its requirements according to the situation of the state in the present time and the additions which listed by the council on the budget regarded as a recommendations never obliges the plaintiff/ being in this capacity to execute it within a limited time and its execution yield to issuing an instructions about it, and if that matter did not happen, so, it will be invalid. Based on that, the court found that what listed in the petition of the case and the exchanged drafts as much it is related to the financial sides by transaction or addition needs to return to experts in this field to stating their experience on the changes of the budget for 2017, especially the transaction and additions, and does that adds an unclear financial burdens on the budget, but it will appear when its clauses being executed. As well as, does these changes included diminishing some sources which feeds the budget, and does the plaintiff able to pass these additions and changes and consider it as a recommendations. The experts may clarify each transaction and addition if it has effect on the budget ceiling for 2017. The two parties of the case did not agree on electing the experts and leave that matter to the court, and

the court decided to elect the specialized experts in budget field misters (Beh. Jim. Alif) and PhD (Mim. Sad) and PhD (Feh. Nun) whom nominated by the accountants' syndicate. The representative (Mim. Ra) clarified that the changes in transaction or addition was done by approval of the Prime Minister whether by a meetings except two clauses were approved telephonically and all that done with knowledge of the financial officials. The agent of the Prime Minister answered that any change in the budget must be done written and with approval of the cabinet, and in the session dated on 6.5.2017 the agent of Mr. (Sin. Mim) the head of independent high electoral commission presented a request to access the case as a third party because the plaintiff/ being in this capacity had challenged in transaction carries on article (50) of budget law, and it is one of his client benefits the court is not responding to the challenge after deliberation. The court decided to accept the request and regarding the head of independent high electoral commission a third party in the case beside the defendant the speaker of the ICR/ being in this capacity. In session dated on 6.13.2017 the experts attended and took the legal oath according to its codes and the experience charged to them made clear by them and they asked to give them a period to achieve their experience. In session dated on 7.12.2017 the experts presented two reports, the first signed by misters PhD. (Mim. Sad) and Mr. (Beh. Jim. Alif) and the second signed by PhD. (Ra. Ain. Nun) and these two reports were reviewed and the parties of the case informed with it. The court noticed the two reports as a result are matching except one clause which related to the societies and organizations, whereas the second report was differed from the second, and the two experts attended and the third expert excused from attending because of his travel outside Iraq. The agent of the plaintiff presented a draft dated on 7.12.2017 he clarified in it his objection on some of experience clauses with reservation on some other clauses and the experts did not give their opinion about article (48) of budget law, and the agent of the defendant answered that he has a lot of reservations on the experts' report and his client prepared an answering draft and he request to elect five experts and charge the task to them. The third party the head of the financial committee in the ICR answered that half of the report which presented by the two experts is not neutral whereas they reflected the government's point

of view which listed in the petition of the case and its illustrations, and one of the experts is a consultant in one of the government establishments which is the central bank, especially PhD. (Mim. Sad). As for the third expert who is the head of financial auditors and accountants, so, he has a benefit in challenging article (47) of budget law which concerns the financial allocations to the syndicates and societies and his opinion is not neutral, and the three experts have exceeded the task they are assigned to and gave the legal and constitutional opinion in articles objected against, and this is the role of the court not their one, in addition to that the government presented an amended budget for the decided budget for 2017 and in its items there were what related to the objections in this case and also it can amend what it wants contrarily to what listed in the budget law which is objected by it. The third party presented the amended budget to review it and knows its intersections with the listed objections in the case, and he wished that the court to review into what the agent of the defendant shows from going to five experts to do this task which the court to stand on. The agent of the third party the Minister of finance confirming the third expert report PhD. (Ra. Nun) in all clauses, and the agent of the third party (the independent high electoral commission) presented an answering draft about what listed in the experts' report, requesting to elect five experts instead of three, and the expert PhD. (Mim. Sad) clarified that he is not a consultant in the Iraqi central bank but he is a member of board of directors in the bank as a representative of Iraqi private banks union, and he testified together with the expert (Beh. Jim) they listened to the objections and the challenges which presented on two reports and they obliged to the orientations of the court which it asked them to stand on the objection and it cared the social and economical situation after the oil price declining and they did not discuss the legal control of these objections, if it corresponds to the law or not. The court digested the presented objections against the three experts' report in addition to presenting the amended budget of (2017), and to let the court stand on if there were some items in the amended budget that intersect with the listed objections in the petition of the case and to answer what not listed in the experts' report and to lift the ambiguity from what listed in the experts' report that the plaintiff is right in his case or not. The court after

deliberation directed to elect a new five experts to carry out the mentioned task in the minutes of the seventh session, exclusively the minutes of the session dated on 6.13.2017 and both parties were assigned to elect five experienced experts who specialized in budget and financial affairs, so, they left this matter to the court. Based on that, and after returns to the concerned, the court elected five experts who are misters (Heh. Beh. Dal) and (Ain. Mim. Ha) and (Nun. Mim. Ha) and (Sin. Mim. Kha) and PhD. (Sin. Jim. Kha). The aforementioned names were displayed on the case's parties and no one of the parties objected. The experts swore the legal oath, and they proceeded their task which the court notified them with, and the court provided them with the minutes and all documents. After the experts got the period they requested, they presented their report on 8.16.2017, and a copy of this report were provided to all parties of the case to show what they have about it before the pleading date on 8.21.2017 in appropriate time. In the session convened on 8.21.2017, the agents of the parties attended and the third party (Mim. Ha) and the agent of the third party the Minister of finance/ being in this capacity and the agent of the third party (the independent high electoral commission) which interfere quarrel interference. The public in presence pleading proceeded, the agent of the third party Minister of finance/ being in this capacity presented a draft dated on 8.20.2017 where she testified about the experts' report. The agent of the plaintiff presented a draft dated on 8.21.2017 showing his notes about the experts' report, as well as the agents of the defendant/ being in this capacity presented a draft in the session, then the court listened to their comments and decided to adjourn the session for appropriate duration to study what presented in the session of 8.21.2017, and after finishing its studying, the court returned to convene and listened to last sayings of the case's parties, then it decided to move out the third party the head of the legal committee in the ICR and the third party the Minister of finance from the case, after they were in the case to ask them about what required to take a decision in the case. Whereas the case completed its reasons to take a decision in the case, the pleading was ended and the judgment was recited.

The decision

After deliberation and scrutiny by the FSC, the court found that the plaintiff the Prime Minister has challenged the unconstitutionality of articles (2/1st) and (8/5th) and (11/3rd/5th/jim , dal, waw) and (11/6th) and (12/1st) and (14/5th) and (18/jim/dal/heh/waw) and (24/jim) and (26) and (27) and (32/5th/zin/waw) and (33/1st) and (35/alif/beh) and (47) and (48/1st/alif) and (48/2nd) and (49) and (53) and (56) and (57) and (59) of the federal budget law number (44) for 2017 and he litigate in his challenge the defendant the speaker of the ICR/ being in this capacity who the of the parliamentary financial committee followed him, and the head of commissioners' council in the (independent high electoral commission) being in this capacity and the Minister of finance/ being in this capacity moved into the case to inquire them about what required to take a decision in the case. The plaintiff claimed in his challenge the unconstitutionality that the ICR when legislate the federal budget law had made an amendment on the articles the budget's bill which sent to it by the cabinet without returning to it in these amendments, exceeding by that its legislative role which stipulated on in article (60/1st) of the constitution and violates the provisions the constitutional article (47) which judge to separate between powers in carrying out its tasks. The court scrutinized the petition of the case and its annexes and the defends of the defendant and the third parties. And after returning to the provisions of the constitution in field of enacting the federal budget law, It found that the text which ruling the relation between the ICR and the cabinet in each one of them roles in preparing the federal budget law, and its enacting the text of article (62) of the constitution:

(Article 62-First: the cabinet presents the general budget law bill and the closing account to the ICR to approve. Second- the ICR has the right to make transactions between the chapters of the general budget, and reducing its total amounts, and at necessity the ICR may suggest on the cabinet to increase the total amounts of expenses). And by reading the aforementioned text, the court finds that the specialties of the ICR by dealing with the general budget bill is approval of the bill includes to what listed in, and it has the power to make the transaction between the budget's chapters and reducing its total amounts, and if there is a necessity to increase the total amount of expenses, so, it shall be suggested to the cabinet to make this increasing and cannot be carried out

without standing on the cabinet's opinion because it is the body in charge of the budget according to article (80) of the constitution who assigned to execute it law texts. In regard to the defends which presented by the defendant and the third parties, and to stand on if the ICR had exceeded its determined role in the constitution when enacting the general budget law for 2017 which regards a transaction between the chapters or increasing the total expenses, whereas this matter requires to stand on the experts' experience in the technical angles and the current changes on the budget's bill, then a decision were token to elect three specialized experts in this field, then to five experts after objection on the three experts issue. After studying and returning to whole dossier of the case, the five experts presented their report and this report was reviewed by the case's parties and each party stated his opinion about it. The court found after studying the report, it is fulfill its tasks which the experts assigned for with reasons, therefore the court directed to depend on it as a reason to take a decision in the case, according to the provisions of article (140) of law of evidence No. (107) for 1979, as following:

- 1- As for the challenge listed on article (2/1st/waw) of budget law which obliged the government to issue a treasuries to repay the dues to oil producer governorates or the natural gas. The Ministry of finance estimated its values about (10) trillion Iraqi dinars except the interest through implementing of federal general budget law provisions for 2017, and the amounts of theses treasuries must be paid by the government, therefore increasing the general budget deficit. This text forms a violation to the provisions of article (62/2nd) of the constitution because it was set without returning to the cabinet in this matter.
- 2- As for challenge listed on article (8/5th) of budget law which includes to allocate a percentage from federal land forces of the Iraqi army allocations to the beshmergah forces according to the population percentages, which may lead to increase the financial burdens of the budget, so, this text violates provisions of article (62/2nd) of the constitution, because it was set without returning to the cabinet.
- 3- As for challenge listed on article (11/3rd) of budget law which added the Ministries of migrants and displaced, and electricity to the exempted bodies of stopping employments, by occupying the vacancies and personnel movement which is it not allocated in the budget of 2017. This matter will increase the general expenses without

returning to the cabinet. This matter violates provisions of article (62/2nd) of the constitution.

- 4- As for challenge listed on (11/5th/jim) of budget law which allowed the Ministries and the other bodies to keep the vacancies because of personnel movement which is not allocated in the budget of 2017. This matter will increase the general budget in return to pay salaries to who occupies these vacancies and that done without returning to the cabinet and setting this text forms a violation to provisions of article (62/2nd).
- 5- As for challenge listed on article (11/5th/dal) of budget law which restricted employment in the listed vacancies in table (jim) – the manpower – which allocated to the Ministry of interior in the governorates and liberated regions from terrorism on their sons only. So, this restriction in employment conflicts with principle of equal opportunities between Iraqis which the two articles stipulated on (14) & (16) of the constitution and violates it.
- 6- As for challenge listed on article (12/1st) of budget law which raised the ceiling of authorization which issued by the Minister to the governor, after it was limited in the budget bill by (10) billion Iraqi dinars, and this matter which done by the ICR conflicts with article (123) of the constitution and article (47) of which, whereas the executive power is specialized in this procedure not the legislative power, as well as it is conflicts with provisions of article (62/2nd) of the constitution.
- 7- As for challenge listed on article (14/5th) of budget law which obliges the Ministries and the bodies to the decision of the cabinet (number 347 for 2015), which was not listed in the bill. Listing this decision in the budget law may limiting the cabinet by cancelling it or amend it according to the circumstances which caused its issuing, for this reason the ICR had violated listing this text, without returning to the cabinet, the principle of separation between powers which stipulated on in article (47) of the constitution as well as its power which stipulated on in article (62) of the constitution.
- 8- As for challenge on article (18/heh) of budget law which allowed the independent high electoral commission to contract with employees of registration centers and the parties directorate employees and the political organizations, without an allocations for them in the budget, and this matter will increase the financial expenses in the general

budget without returning to the cabinet, so, setting this text forms a violation to the provisions of article (62/2nd) of the constitution.

- 9- As for challenge listed on article (18/waw) of the budget law, which obliged the pension commission to pay the pension dues for all pensioners less than 50 fifty years of age from the employees of companies and the general directorates self financing which receive a donation from the general treasury from the date they were retired and the Ministry of finance is obliged to pay their backwardation to the pension box. And the aforementioned text set by the ICR without returning to the cabinet in spite of it is increase the general expenses and increase the deficit as well in the federal budget for 2017 because there were no allocations set in the budget covers its implementation, therefore the challenging the unconstitutionality of the aforementioned text finds its support in article (62/2nd) of the constitution, and this what the opinion of the five experts in their report abovementioned – clause (12) of it. And orienting on the contrary of that makes a violation to the provisions of article (62/2nd) of the constitution. The challenge matter in article (18/waw) of budget law needs a legal treatment by the government to whom sent to pension without his willing and did not reach fifty years of age and he has a duty not less than (15) fifteen years, so he will be deprived from his employment salary as well as will be deprived from pension salary on the contrary of what article (12/3rd) stipulated on from pension law No. (9) For 2014 which still valid according to provisions of article (130) of the constitution.
- 10- As for challenge listed on article (26) of budget law which the ICR added to it what obliges the Ministry of finance before any issuance of drafts or treasuries based on a request from the Ministry of oil must review this issuance on the ICR to take its approval about it. The FSC finds this matter is a repetition to the approval which was includes the approval on the budget, as well as it will delay the issuance process and violation to provisions of article (47) of the constitution which obliges to separate between powers which related to the specialties that practiced by the three powers.
- 11- As for challenge listed on article (27/alif) of budget law which added what obliged to orient the general purchases to the domestic product even if these products increases with a value of (10%) of the imported product, in spite of our pride to the domestic product, this

matter will lead to increasing the deficit in the budget without returning in this matter to the ICR. This matter regarded a violation to the provisions of article (62/2nd) of the constitution.

- 12- As for challenge listed on article (33/1st) of budget law which stipulated on reallocate the deducted amount (3.8 %) from the total salaries and allowances of the state's employee and the general sector and pensioners and this mean repetition of the allocation which leads to increasing the expenses and the financial deficit and this matter forms a conflict with provisions of article (62/2nd) of the constitution and that happened without returning to the cabinet.
- 13- As for challenge listed on article (35/alif/ba) of budget law which expanded in the exemptions listed in, on the contrary of what listed includes the governmental bill, and that caused a reduction in the revenues of the budget and increasing in deficit, without returning to the cabinet in this matter and this addition by expanding the exemptions violates article (62/2nd) of the constitution.
- 14- As for challenge listed on article (48/2nd) of budget law which stipulated on to make clearing between debts of the Ministries and the bodies with profits of oil products distribution company which goes to the Ministry of finance which forms a revenue for it to repay its dues. And this matter may withholding a part of treasury revenues and makes a burden on the budget and that was done without returning the cabinet on the contrary of article (62/2nd) of the constitution.
- 15- As for challenge listed on article (49) of budget law which cancelled an allocated amounts to the Ministry of migrants and displaced and updating a new expense which is it (covering the fees and interest to the mortgages which granted from the real estate bank to the citizens of some governorates which exposed to ruins because the terrorist works. And this matter forms an outlet to leak the budget finances was not exist in the governmental bill, and it is necessary to repay what leaked from the allocation of migrants and displaced Ministry from the Ministry of finance because of necessity, therefore this will increase the deficit, and this was done without returning to the cabinet, so, the text violates provisions of article (62/2nd) of the constitution.
- 16- As for challenge listed on article (56) of budget law which includes allocating a percentage of border revenues to rehabilitate the infrastructure in it and the regions surrounding. These revenues

basically are allocated to the general budget, so taking a part of it to another expense forms a deficit in the budget, which cause unbalancing in executing it, and this done without returning to the cabinet and by setting this article a violation occurred to the article (62/2nd) of the constitution.

17- As for challenge listed on article (57) of budget law which includes amending the interest percentage to the loans granted by the agrarian bank without returning to the cabinet, this matter will reduce the revenues of the budget and forms a deficit on it and this violates the text of article (62/2nd) of the constitution.

18- As for challenge listed on article (59) of budget law which includes transacting (220) billion Iraqi dinars from the total of Ministry of finance and (50) billion Iraqi dinars from the Ministry of defense (investment) this matter will delay the dues of Basra gas, therefore it will not supply the Ministry of electricity with gas in addition that this transaction leads to a deficit in armament allocations of the Ministry of defense to repay the amount of contracts which reaches (50) billion Iraqi dinars, while the aforementioned amounts cannot be compensated but with adding a new amounts and this matter cause a financial burdens on the treasury and contributing in increasing the deficit, and this transaction done and its reflects sorted with increasing the deficit in the budget without returning to the cabinet on the contrary of provisions of article (62/2nd) of the constitution.

19- As for challenge listed on article (11/6th) of budget law which orders to renew the contracts and counting the contract period for the permanent personnel after 4.9.2003 as an active duty for promotion and pension purposes. The FSC finds that the aforementioned text which set by the ICR in harmony with what listed in the previous budgets makes increasing in allocations amounts which counted on base of a percentage of the salary without returning to the cabinet in this increasing, also it makes increasing of the state's shares from the pension savings, therefore it forms a violation to the provisions of article (62/2nd) of the constitution. But the judging with its unconstitutionality – as the plaintiff requested/ being in this capacity- will lead to unbalancing between the employees and the difference of their legal post in comparison with those whom were regarded permanent in the previous budget for 2015 and before and create a dissimilitude in salaries and the other rights to those who are in the

same specifications and conditions, therefore the request of judging with unconstitutionality of article (11/6th) violates provisions of articles (14) and (16) of the constitution, whereas these two articles were listed in chapter (rights and freedoms) and its content was mentioned in the preface of the constitution, which require to overriding of its implementation on article (62/3rd) of the constitution to achieve fair and equality between the employees who has the same level and the required conditions in the general duty.

- 20- As for challenge listed on article (18/jim) of budget law which includes stopping the employments in the three presidencies and the bodies related to and prohibit moving or assigning to it. The FSC finds that this article did not exceed the provisions of article (62/2nd) of the constitution because their contents have a saving and diminishing the public finance.
- 21- As for challenge listed on article (18/dal) of budget law which includes allowing to those who has the university certificates from the personnel of Ministry of interior to the Ministries and the other directorates except the three presidencies. The FSC finds that this article did not exceed the provision of article (62/2nd) of the constitution because this moving if done it will be by approval of the two Ministers or concerned Heads not against their approvals, therefore this matter will increase in expenses and it will support the efficiencies in the Ministries and the other official bodies.
- 22- As for challenge listed on article (24/jim) of budget law which includes granting the Ministries and the other bodies and the governorates council the authority of imposing a new fees on the new services except – the sovereign fees- and allocate a percentage of (50%) of it to the administrative units which collected it. The FSC finds that this text never cause increasing in the financial expenses because it is implementing the aforementioned percentage to the administrative units, this matter happen for the first time while executing the budget of 2017 and this percentage shall not be includes its financial revenues when the budget is set, therefore this text not conflicts with provisions of article (62/2nd) of the constitution.
- 23- As for challenge listed on article (32/5th/waw) of the budget law which obliges the Iraqi bodies conditioning of getting Iraq its allocation from the employments and administrative posts in the Arabic and international organizations in return it shall repay the dues

to these organizations. The FSC finds that this text was set as a legislative option by the ICR according to its legislative power to maintain the rights of Iraq in the employments and the administrative posts in these organizations, and it is not conflicting with provisions of article (62/2nd) of the constitution.

24- As for challenge listed on article (32/5th/zae) of busget law which included the request from the Ministry of finance to study the feasibility of the Iraqi box contributions of foreign development in the foreign companies and presenting a report about it to the cabinet to take the attitude to the benefit of Iraq. The FSC finds that this article achieving the benefit of Iraq and not conflicts with provisions of article (62/2nd) of the constitution.

25- As for challenge listed on article (47) of budget law which includes transacting the operating allocations of the syndicates, clubs and unions – except the international contributions and conferences- to the Ministry of labor and social affairs to prepare a program to rehabilitate the liberated cities children, widows and orphans and that never cause increasing in expenses or in deficit and this article is one the ICR powers and never conflicts with provisions of article (62/2nd) of the constitution. This point corresponds to the current circumstances of Iraq.

26- As for challenge listed on article (48/1st) of budget law which includes obliging the federal government including the Ministry of oil to review the license of oil contracts sessions to amend the items of these contracts to the benefit of Iraq. The FSC finds that setting this article came include the legislative powers of the ICR and there is no conflicts in this article with provisions of article (62/2nd) of the constitution and never adds and financial burdens on the government out the allocations of the general budget.

27- As for challenge listed on article (53) of budget law which includes the necessity of purchasing the medical requirements to present the therapy services to the citizens instead of burdening them a financial amounts and the difficulty of travelling outside the country for treatment. The FSC finds that this text (challenge subject) was set in the legislative powers of the ICR, and not conflicts with provisions of article (62/2nd) of the constitution.

Based on what abovementioned, the pages of this judgment to the challenged articles with its unconstitutionality, according to the

petition of claim and its annexes, and according to the defends of the defendant/ being in this capacity and the third party for his side, and after reviewing the report of the five experts which is issued unanimously, and reading the constitutional articles which ruling the litigation subject, especially article (62) of the constitution, therefore the opinion of the FSC settled on what following:

First- to judge with unconstitutionality of articles (2/1st/waw) and (8/5th) and (11/3rd) and (11/5th/jim) and (11/5th/dal) and (12/1st) and (14/5th) and (18/heh) and (18/waw) and (26) and (27/alif) and (33/1st) and (35/alif/beh) and (48/2nd) and (49) and (56) and (57) and (59) of federal budget law No. (44) For 2017 for the aforementioned reasons towards each one of it in this judgment.

Second- to reject the challenge against the unconstitutionality of articles (11/6th) and (18/jim) and (18/dal) and (24/jim) and (32/5th/waw) and (32/5th/zeh) and (47) and (48/1st) and (53) of federal budget law No. (44) For 2017 for the aforementioned reasons towards each one of it in this judgment.

Third- to reject the claim of the third party the head of independent high electoral commission who interfere as a litigant to what related to his request to judge with constitutionality of article (18/heh) and (59) of federal budget law No. (44) For 2017 for the listed reasons towards the aforementioned article in this judgment.

Fourth- to burden the defendant the speaker of the ICR/ being in this capacity the proportional expenses and the advocacy fees the agent of the plaintiff the Prime Minister/ being in this capacity Mr. (ha.sad) amount of (100.000) one hundred thousand Iraqi dinars. And to burden the plaintiff the Prime Minister/ being in this capacity the proportional expenses and advocacy fees to the agents of the defendant the speaker of the ICR/ being in this capacity misters (sin. Ta) and (heh . mim) amount of (100.000) one hundred thousand Iraqi dinars, and to burden the third party the head of independent high electoral commission/ being in this capacity the fee of the case and advocacy fees the agent of the plaintiff Mr. (ha.sad) amount of (100.000) one hundred thousand Iraqi dinars. The judgment issued in presence and unanimously, final according to the provisions of article (94) of the constitution and made publicly on 8.21.2017.