



The Federal Supreme Court has been convened on 23.12.2018 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiffs :

1. (Sin.Kaf.Mim)
2. (Alif.Yeh.Mim)
3. (Alif.Yeh.Mim)
4. (Alif.Alif.Mim)
5. (Qaf.Ain.Mim)
6. (Yeh.Ta.Waw)
7. (Alif.Ain.Alif)

Their agents the barristers (Nun.Ain.Ha) and (Alif.Nun.Ain)

The Defendant : Prime Minister/ being in this capacity- his agent the assistant counselor (Ha.Sad).

The Claim :

The Plaintiffs agents claimed that the cabinet previously issued the decision No.(333) for 2015 included the clause (1) of it to determine the scale of wages for who are continuing in the service for the highest levels (the

presidencies, ministers, members of parliament, agents of ministries, counsels, director general, everyone else in the same level and who are get paid with the same salary) according to the enclosed schedule in the aforementioned decision. The clause (2) of it, included that (All allocations that guaranteed according to previous decisions or instructions shall be obscured , the covered by the aforementioned clause (1) get paid the decided allocations according to the articles (11/1st) and (14) from law of government employees salary and the public sector No.(22) for 2008, post allocation is decreased to be (50%) of the nominal salary) while this law applies on all the first level employees and below, it didn't apply on highest level and special levels holders. Applying the decision of the cabinet made an disparity between the salaries of the counselors in the government council due to the adoption of the certificate in the calculation of salary because this post and its occupants the certificate used it in the appointment, starting. Counselor post in the government council is in the highest level (Alif) from the scale of wages, the initiative salary in this post required to be counselor for everyone occupies this post in addition to it the bonus of service years. Calculation of the counselor salary in the government council according to the certificate has annulled any consideration for the post service. Officer who have long service and doesn't have high certificate gets paid less than who have less service and hold high certificate. The law of government council No.(65) for 1979 considered the subject of certificate starting from the appointment. The text of the article (2) from the law of government officers' salaries and the public sector, the aforementioned article stipulated (the provisions of this law applies on the officers of the first level and below which determined according to scale of wages and the annual additions which attached by this law) it doesn't apply on owners of high level. The aforementioned decision of the cabinet referred in the calculation of the counselors salaries to the decided allocations according to the articles (11/1st) and (14) from the law of government officers' salaries and the public sector No.(22) for 2008 and applying it on owners of high levels from the counselors is lacking for law substantiation. The Differentiation in the counselors salaries violates the

text of article (14) of the Constitution. The Plaintiffs agent requested to call the Defendant to the argument and deciding the unconstitutionality of the clause (2) from the decision of the cabinet No.(33) for 2015 and the continuing of their salaries and allocations as it was before the issuing of the cabinet decision. The case petition and its documents has been noticed to the Defendant in addition to this capacity, he answered it with a draft dated on 3.10.2018 which came in it that the competence of the FSC in the article (93) of the Constitution, because the decision of his client No.(333) for 2015 is an administrative decision his client issued according to his constitutional authorities that is stipulated in the article (80/1st and 3rd) from the constitution, so the challenging of it is out of the competence of the FSC. Challenging the decision of his client with claiming that it violated the valid laws, it doesn't consider as substantiation for challenging, the decision doesn't include any violation for the article (47) of the Constitution. Also the Plaintiffs have no substantiation from the Constitution to claim that his client violated the government officers' salaries and public sector law. Also plea by the article (14) of the constitution is misplaced , he discusses the subject of the high certificate which the counselors in the government council are holding. Relying on the provisions of law of government officers' salaries and public sector is a misplaced substantiation. The defendant agent requested to reject the case for incompetence and to reject the challenging for lacking of constitutional substantiation for the challenging draft . the Plaintiffs agents answered the draft of the Defendant agent, they repeated what listed in the case draft, also the Defendant agent represented annexed draft repeated his request to reject the case, also the Plaintiffs agent represented annexed draft repeated their requests and discussion what listed in the draft of the Defendant. The court called upon the parties, the Plaintiffs agent and the Defendant agent attended, the Plaintiff agent repeated the case petition and request the judgment according to it. The Defendant agent answered, I repeated what listed in my draft and request to reject the case. Both parties repeated their sayings, whereas nothing left to say the end of the argument has been understood and the court issued the following decision publicly.

The Decision :

during scrutiny and deliberation by the FSC, the court found that the Plaintiffs challenge the unconstitutionality of the clause (2) of the cabinet decision No.(333) for 2015 which stipulated ((All allocations that guaranteed according to previous decisions or instructions shall be observed , the covered by the aforementioned clause (1) get paid the decided allocations according to the articles (11/1st) and (14) from law of government employees salary and the public sector No.(22) for 2008, post allocation is decreased to be (50%) of the nominal salary except the allocations that guaranteed to the military grades according to what Listed in the Divan order (286) for 2015.)) . in addition to their request of deciding the unconstitutionality of the clause (2) of the aforementioned cabinet law they requested the decision of continuing of paying their salaries as they were get paid before issuing the cabinet law No.(333) for 2015 which is the challenging subject. The Plaintiffs clarified that the challenging text by its unconstitutionality caused a differentiation between the counselors salaries of holders of high certificates (Master's Degree and Ph.D.) and their fellows who holds bachelor's degree. The FSC found that the cabinet decision No.(333) for 2015 which is the Challenging subject is one of the administrative decisions which the law made a method to challenge it and challenging it before the FSC is not the made method. The law determined the competences of the FSC by the article (93) of the constitution and the article (4) of its law No.(30) for 2005. That is what the FSC decided in previous decisions have the same subject of this case including the two issued decisions in the cases (115/federal/2015) and (65/federal/2017) which dated on 5/3/2016 and 3/8/2017. And the issued decisions in the case (37/federal/2018) and (59/federal/2018) and (40/federal/2018) dated on 15.5.2018 and 11.6.2018 . this what the higher administrative court decision in government council No.(91/90/ Administrative judiciary-cassation/2016) directed at, issued on 16.6.2016 which conform the cabinet decision No. (333) for 2015 because it is administrative decision which a party have a competence, is specialized to hear the challenging of it. The case must be rejected for incompetence, also the FSC is not competent in

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issuing a decision for counselor in the government council to get paid their salaries and allocations which they were get before the issuing of government council decision No.(333) for 2015 for the aforementioned reasons about the FSC competence. Based on that the case must be rejected for incompetence too, so the court decided to reject the Plaintiffs case and to burden them the expenses and fees of the advocacy for the Defendant agent amount of hundred thousand Iraqi dinar, the decision issued decisively and unanimously according to the article (94) of the constitution and the article (4) of the FSC law No.(30) for 2005 and has been understood publicly on 23.12.2018