



The Federal Supreme Court (F S C) has been convened on 4.2.2019 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Michael Shamshon Qas Georges, Aboud Salih Al-Temimi and Hussein Abbas Abu Al-Temmen and who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (ain.mim.ain)/ deputy Director of Zuhail Company for currency exchange L.L.C/ being in this capacity – his agent the barrister (waw.mim.shin).

The Defendant: the Prime Minister/ being in this capacity – his agent the legal consultant (ha.sad).

The Claim

The agent of the plaintiff claimed before the FSC in the case No. (196/federal/2018) that the defendant/ being in this capacity issued a regulation No. (5) For 2016 to freeze the terrorists funds. The regulation listed a number of violations to the Constitution, and the law of anti-money laundry and terrorism financing No. (39) For 2015, and the valid criminal law. Besides, it's violates the international laws and drafts which specialize in human rights, in addition to its violation for the text of the law (1373) for 2001 issued by the Security Council. In spite of that the article (13) of this regulation pretended that it's implementing it, and rely on it. As well as the regulation had violated a constitutional principle which is it that the laws hasn't a retroactively effect, unless it was the best for the accused. It also violated another constitutional principle which is it (the accused may not be tried for the same crime for a second time after acquittal). Before that, this regulation has granted the committee

which belongs to (the executive not judicial power) a dangerous, wide and destiny powers for Iraqi citizens, this committee consist of (11) individuals only. These powers shouldn't be granted but to a competent Court, which means that this committee had trespassed its limits and it owns a judicial competences with authorities and competences of an executive power. It also violated the principle of separation between powers which stipulated in article (47) of the Constitution, and as following: 1. Article (13/1st) of terrorists funds freezing regulation law No. (5) For 2016 had listed the following: article (13) a committee shall carry out the freezing of terrorists' funds in concern of freezing terrorists' funds and economical sources for individuals whom were determined according to the decision of the Security Council No. (1373) for 2001 and the other decisions in relation, and as following: first: to prepare a local list, the names of individuals whom a sound reasons were available in them to be accused in perpetrating a terrorist attack, attempting to do it, proceeding to do it, participating in it, facilitating to do it or their direct and indirect control according to a request from anti-money laundry office and terrorism financing, or any other office. Clause (5th) of article (13) of aforementioned regulation stipulated (to list the individual without a necessity for premature warning. It is also allowed to list him if there wasn't a criminal investigation, trial or judicial judgment). As long as the aforementioned regulation violated the Constitution and the law, especially article (2/1st/jim) and article (13/1st and 2nd) and article (15) and (19/2nd and 5th and 9th and 10th) and article (47) of the Constitution. The agent of the plaintiff requested from the FSC to judge by annulling every text that violates the Constitution and valid laws in the regulation of terrorists' funds freezing No. (5) for 2016, especially article (13) of it which allowed to freeze the funds of individuals (sound reasons were available in them to be accused in perpetrating a terrorist attack, attempting to do it, proceeding to do it, participating in it, facilitating to do it or their direct and indirect control according to a request from anti-money laundry office and terrorism financing, or any other office). (Article (13/1st) of terrorists' funds freezing regulation). This mean that any individual may be punished just for thinking or suspicion and by unjudicial office, also annulling the clause (5th) of article (13) of this regulation which stipulates ((to list the individual in the list without

necessity for a premature warning, and it is allowed to list him even if there weren't a criminal investigation, trial or a judicial judgment) because this matter violates the Constitution and laws in effect. These dangerous powers which granted to unjudicial committee to decide the destiny of any individual and his family just for suspicion, and without any investigation. It is violates the principle of the accused is innocent until his conviction is proven, and granting such right from a regulation issued by the executive power wasn't granted by the law definitely. This matter represent abuse of using the authority, in addition to the request of annulling any text of this regulation that violates the Constitution and laws in effect, especially annulling any text grants an authorities for the committee of freezing terrorists' funds just for suspicion and according to incorrect criteria or announced by this committee. He also requested to burden the defendant all the expenses and advocacy fees. The agent of the defendant answered the petition of the case by an answering draft dated on (2.12.2018), he requested to reject the case with burdening the plaintiff its expenses and advocacy fees because the FSC is incompetent to try the clauses (1) and the preamble of clause (2 and 2/1st and 4th and 5th and 6th and 7th and 8th and 9th and 10th) of challenge draft. And we like to clarify the following: 1. as an answer of the plaintiff claiming that the regulation (challenge subject) is violating the laws, drafts and the international laws which concern in human rights and the Security Council decision and the instructions issued by the executive power for a law issued by legislative power. As well as the international announcement of human rights, and the international pact of civil, political, economic and cultural of the Constitution and the law. Not to try the litigation produced by implementing it, whereas the jurisdictions of the FSC according to article (93/3rd) of the Constitution is overseeing the constitutionality of laws, regulations, instructions and procedures issued by the federal power, and how it's violates the constitution provisions. The defendant clarified that the FSC is incompetent to try the violation of what above-mentioned. 2. Objectively: first: as answer on clause (2/2nd/alif) of challenge draft: my client the Prime Minister issued by the Cabinet its decision No. (271) for 2016 (challeng subject) executing to its authorities which granted to it by approving the law of anti-money laundry and terrorism financing No. (39) for 2015

according to the Constitution by articles (78 and 80/1st and 3rd) of it, after setting a general policy for the State according to freezing and countering the financing of terrorism in the State. Article (7/2nd) of the Constitution obliges his client to counter the terrorism in all forms, and this matter will burden his client a constitutional obligation to issue the regulation (challenge subject) and he relied on the forma presented by the experts of the International Monetary Fund. His client didn't violate any constitution text in this matter. Second: as answer on clauses (2/2nd and 5th and 9th and 10th) of challenge draft: the regulation (challenge subject) doesn't contradicts with the rights and fundamental freedoms mentioned in the Constitution because his client is obliged to counter the terrorism and financing. The fundamental freedoms mentioned in the Constitution and the rights are guaranteed according to the decisions of his client according to provisions of the Constitution, whereas article (1) of it stipulated that every individual has the right to enjoy the life and security. Financing the terrorism will cause to wasting this right which the Constitution granted to the citizen, the freedom and right of the citizen must be stopped when it pass the limits and harming the others. In this case the regulation will corresponds to the Constitution, and it had been issued as implementing to provisions of article (22) of anti-money laundry law and terrorism financing No. (39) For 2015, and his client has executed the provisions of article (15) of the Constitution. Third: as answer of what listed in clause (2/2nd/alif/2) of the plaintiff's draft that article (4/1) of counter terrorism No.(13) for 2005 had incriminated every one financed or enabled the terrorism, and it also punished the terrorists for aforementioned crimes in this law with the penalty of the original perpetrator. As well as freezing the terrorists' funds is not a punishment, but it is a preemptive procedure carried out by the government according to its constitutional and legal authorities. This matter had been clarified till the charges against accused whom enjoys innocence are proven, and till they are convicted in fair legal trial. Also the regulation wasn't implemented retroactively, because the funds and the assets which the freezing listed is actually existed in banks and deposits. This status queue compels that, because it is not possible to freezing it while its expenditure destiny is unknown. Fourth: as answer on clause (2/3rd) of the plaintiff's draft, the

regulation (challenge subject) issued by his client according to article (22) of counter terrorism and financing law No. (39) For 2015 which enacted by the ICR is a regulation issued to execute a law, and according to authorities granted to it according to article (80/2nd) of the Constitution. The decisions taken by terrorists' funds freezing committee are not judicial, because article (7/4th) of the regulation (challenge subject) had granted the right for aggrieved to object the decisions of aforementioned committee before the administrative judiciary according to the law, with guarantee for each interested had been aggrieved can present a request to the committee to abandon its decisions according to article (7/1st) of the regulation within the meaning of article (5/1st/alif) of the regulation (challenge subject). Whereas we found that these funds are not included by the provisions of clause (1st/alif) of the regulation. Fifth: as answer off what the plaintiff requested in the finale of his draft about article (13) of the regulation (challenge subject) by the phrase (a sound reasons were available in them to be accused in perpetrating a terrorist attack, attempting to do it, proceeding to do it, to the end of the text). The text is clear and it confirms the necessity of there must be a sound reasons. As well as the committee aforementioned depends before it takes its decisions on official reports from security, intelligence and justice offices, and the convicts depositions in the stage of judicial investigation which relies on a considerable and satisfying evidences by reasons that instigates it to issue its decisions and freezing the funds and assets, not to build these decisions on suspicion as the plaintiff claims. Moreover, premature warning which the plaintiff requests, and should be directed to whom financing the terrorism, or assist the movement of money transfer and assets to be delivered to terrorists and their secondary financers. Also the necessity of making investigation with convicts will reduce the opportunity and wisdom from enactment, then the processes of financing and assets will continue, and it will be delivered to terrorists to make terrorism works. As well as the regulation didn't touch the basic of (the accused is innocent until his conviction is proven), because it's not within the basis of conviction, incrimination and punishment. It's basis of preemptive procedures, and it's not abuse of using the power or using it because the decision is taken from specialized committee. All the decision is token from the provisions of the Constitution,

therefore, the agent of the defendant requested from the FSC to judge by the following: 1. To reject the challenge on clauses ((1) and the preamble of clause (2) and (2/1st and 4th and 5th and 6th and 7th and 8th and 9th and 10th) of the plaintiff's draft for incompetence. 2. To judge by rejecting the challenge objectively because it lacks to constitutional substantiation about it, including the clauses (2/2nd/alif/1) and (2/2nd and 3rd and 5th and 9th and 10th). In addition to what the plaintiff mentioned in the end of his draft within his request which he ended his challenge draft with it, and according to what above-mentioned. The Court had set a date for argument, and on the set day the Court has been convened. The agent of the plaintiff the barrister (waw.shin) has attended according to the power of attorney attached to the dossier of the case, and the agent of the defendant the legal consultant (ha.sad) has attended according to the power of attorney attached to the dossier of the case. The public in presence argument proceeded, and both parties repeated what listed in the petition of the case. They requested to judge according to what listed in it. As well as the agent of the plaintiff repeated what listed in his answering draft, and he requested to reject the case. whereas nothing left to be said, the end of the argument has been made clear and the decision was recited publicly.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the agent of the plaintiff challenging in the petition of his case the unconstitutionality of the regulation No. (5) For 2016 (the regulation of freezing terrorists funds) because it violates the Constitution and laws in effect, and he restricted his case by requesting to annul the text of article (13/1st and 5th) of the regulation (challenge subject) because it violates the Constitution in articles (2/1st/jim) and (13/1st and 2nd) and (15) and (19/2nd and 5th and 9th and 10th) and article (47) of the Constitution. He also requested to annul article (13//1st/5th) of the regulation, and he requested to annul any text violates the Constitution of the regulation (challenge subject). Article (13) of the regulation stipulated (the committee of freezing terrorists' funds shall carry out the task of freezing terrorists' funds, or the economy sources of

individuals whom were determined according to the Security Council decision No. (1373) for 2001, and the other related decisions as following: (13/1st) to prepare a local list. The names of individuals whom a sound reasons were availed in them shall be sorted in the aforementioned list, if they thought that those terrorists perpetrated a terror attack, attempted to do it, proceeding to do it, participating in it or facilitate its perpetration. Also against those who behave on behalf of those individuals, directed by them or under their control directly or indirectly according to a request from money laundry office, terrorism financing or any other office)). Clause (5th) of article (13) stipulated ((to list the individual on the list, without need for a premature warning. The individual could be listed in case there wasn't a criminal investigation, trial or a judgment)). By scrutinizing challenged text of the regulation, and in article (13) of it. The Court found that the committee of freezing terrorists' funds is carrying out the listing of individuals' names to freezing their funds, this mean the terrorists' funds or the economy sources of them. Then to determines them after a sound and serious reasons are available to believe in their terrorism, this believe is depending on official reports from the security, intelligence and justice offices. It also depends on the deposition of the accused in stages of judicial investigation which depends on a convincing and considerable evidences by the reasons that instigate the committee to issue its decisions, and freezing the funds and assets. The text of article (13/5th) of the regulation had adjudged by listing the individual on the list without need to a premature warning. This procedure had been issued by this method to accelerate the execution of required decisions of limiting those who financing the terrorism. This procedure is preemptive, and includes the freezing of funds and assets, it also to inhibit delivery of these funds to terrorist to carry out their operations. Whereas article (7/2nd) of the Constitution stipulated (the State shall undertake to combat terrorism in all its forms, and shall work to protect its territories from being a base, pathway, or field for terrorist activities), whereas the Cabinet has the full authority to issue all regulations, instructions and decision that aims to execute the laws according to article (80/3rd) of the Constitution. The issuance of this regulation was corresponding to the article (22) of anti-money laundry and

terrorism financing decision No. (39) For 2015. Whereas article has obliged the State to combat the terrorism in all forms, therefore the FSC finds that issuance of the regulation by the defendant (challenge subject) doesn't contradicts with provisions of the Constitution, especially that aforementioned regulation had immunized the citizen's right in this regulation by (challenge) the decision issued by the committee of freezing terrorists' funds, and shall be done by objecting the decision before the administrative judiciary Court. Accordingly, and for the aforementioned reasons the article (13/1st and 5th) of the regulation (challenge subject) isn't intersect with the Constitution provisions, on the contrary it corresponded with the provisions of article (7/2nd) of it. Therefore, the case of the plaintiff in this concern is lacking to its constitutional substantiation, and it must be rejected. As for the request of the plaintiff about annul the regulation or annulling the texts which violates the Constitution, the Court finds that this request is not possible because the Court is restricted by the request listed in its petition after restricting it, which is it the request of judge by unconstitutionality of article (13/1st and 5th) of the regulation (challenge subject). Therefore, and according to all what aforementioned, the FSC decided to reject the case and to burden the plaintiff/ being in this capacity the expenses of the case and advocacy fees for the agent of the defendant the legal consultant (ha.sad) amount of one hundred thousand Iraqi dinars. The decision has been issued in presence of both parties, unanimously and decisively according to provisions of article (94) of the Constitution and article (5/2nd) of the FSC law No. (30) For 2005 and article (94) of. The decision has been made clear on 4.2.2019.