



The Federal Supreme Court (F S C) has been convened on 29.7.2019 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, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Head of the Higher Judicial Council/ being in this capacity – his agent the official jurist Esam Fadhil Hilwas.

The Defendants: 1. The President of the Republic/ being in this capacity – his agent the legal counsellor Ahmed Sreeh.

2. The Prime Minister/ being in this capacity – his agent the legal counsellor Haider Al-Sofi.

The Third Party: Muneer Sabri Hatim Al-Haddad.

The Claim

The agent of the of the plaintiff claimed that the second defendant (the Prime Minister/ being in this capacity) previously issued his decision No. (42) For 2019, and according to this decision the first defendant (the President of the Republic/ being in this capacity) issued the decree No. (11) For 2019. This decree included the referral of the former member of the cassation committee in the Iraqi supreme criminal Court the judge (Muneer Sabri Hatim Al-Haddad) to retirement. According to the provisions of article (93) of the Constitution, and because the decision of the Council of Ministers and the decree above-mentioned are violating the provisions of the Constitution formally and objectively. The agent of the plaintiff

proposed to challenge it before the FSC to annul them and to adjudge by unconstitutionality for the following reasons: First: formally: 1. The judge (Muneer Sabri Hatim) had been appointed as a member in the cassation committee of the Iraqi supreme criminal Court. On (9.10.2008) and according to his request, the Council of Ministers decided in its decision No. (357) for 2008 (approval of moving the aforementioned judge from the personnel of the Higher Judicial Council to the personnel of the Judicial Council in the region of Kurdistan, and to refer this subject to Presidency Council to issues the decree in this concern). On 23.10.2018 the Presidency Council issued its letter No. (thal/waw/1/39/2088) which included the approval of moving according to the provisions of the article (4/4th) of the Iraqi supreme criminal Court No. (10) For 2005. On 24.6.2010, the Judicial Council of Kurdistan issued its letter by Ref. (1/1102) which includes that the moved Judge above-mentioned which appointed to Presidency of the second judicial committee/ Al-Sulaymaniyah branch considered retiree according to the judicial order No. (1/285) on 15.10.2010 starting from (14.3.2010) because he didn't attend to the place where he assigned without alibi. The aforementioned Judge initiated the case before the employees' Judiciary Court, the Court issued its decision No. (1640/mim/2017) dated on (21.12.2017) (obliging the Higher Judicial Council to prepare the retirement dossier of the aforementioned Judge. This decision had been rejected by the higher administrative Court according to its decision No. (533/2018) dated on 25.3.2018, the decision included ((the employees' Judiciary Court is not specialized in trying this type of lawsuits, and the committee of Judges affairs is the competent office. Its decisions are challengeable before the expanded committee of the Federal cassation Court)). Accordingly, the employees' Judiciary Court decided ((to reject the case of the plaintiff for incompetence)). Later on, the aforementioned Judge initiated the lawsuit before the Judges Affairs committee, and the members of the public prosecution which issued its decision No. (3/lam/shin/2018) on 22.1.2018, the decision rejected the lawsuit of the plaintiff (Muneer Sabri Hatim Al-Haddad). The expanded civil committee in the cassation Court ratified the aforementioned decision in its decision No. (390/civil expanded committee/2018) on 18.12.2018. 2. The judgments of the Judiciary which became final

considered a plea for all, and it shouldn't be intervened according to the articles (105 & 106) of the law of evidence No. (107) for 1979 (amended). No power can intervene in the Judiciary, or the justice affairs according to the articles (19/1st & 87 & 88) of the Republic of Iraq Constitution for 2005. 3. Regarding the Judge (Muneer Sabri Hatim Al-Haddad) resigned, he should submit to the provisions of article (13) of the unified pension law No. (9) For 2014 with the meaning of article (21/4th/alif) of it, and he lost the judicial title when he resigned. It's not possible to implement the article (14/1st) of it). This means that there is no legal substantiation for the issuance of the Cabinet's decision and the decree – challenge subject – of referring the judge to pension, as he regarded resigned. Second: objectively: 1. the authorities which obtained by the Cabinet according to the Iraqi supreme criminal Court law No. (10) For 2005 became a specialty of the Higher Judicial Council according to the provisions of article (1) of the Iraqi supreme criminal Court amending law No. (35) For 2011. Therefore, the decision of the Cabinet No. (42) For 2019 hasn't a legal substantiation because it relies on the provisions of the Iraqi supreme criminal Court law aforementioned before the amendment. Moreover, the Cabinet is lacking the legal cover which required to issue it, and it also had exceeded the authorities which the Cabinet enjoys which stipulated in the article (80) of the Constitution. This matter requires to annul the decision above-mentioned. 2. Accordingly, the issuance of the decree No. (11) which published in the gazette by Ref. (4532) on 18.3.2019 and included referral of the judge (Muneer Sabri Hatim Al-Haddad) to pension, this decree was relying on the decision of the Cabinet aforementioned, it's also lacking the legal substantiation to issuing it. It relied on the provisions of article (8) of the law No. (35) For 2011 (the amending law of the Iraqi supreme criminal Court law No. (10) for 2005 which stipulated (to let the judges and the public prosecutors choosing between continuing in service or referring to pension. Regardless their age and service years, they shall get a pension salary of 80 % (Eighty percent) of what they were receiving during their service). By noticing the provisions of article (1) of the amendment law (aforementioned) which stipulated ((the Iraqi supreme criminal Court shall associated with the Higher Judicial Council. The phrase (the Higher Judicial Council shall take place of – the Cabinet wherever it

listed in the law). Clearly, the authorities of the Cabinet before the amendment of the Iraqi supreme criminal Court law aforementioned had moved to the Higher Judicial Council after amending the aforementioned law. Accordingly, issuance of the decree – aforementioned – despite its violating to the provisions of article (8) of the law No. (35) For 2011 aforementioned which also violates the provisions of article (3/6th) of the Higher Judicial Council law No. (45) For 2017 which determined the tasks of the Higher Judicial Council by the following ((to nominates the qualified as judges, and sending these nominations to the Republic Presidency to issue a decrees in this concern)). This mean that the power of the Republic President/ being in this capacity in issuing decrees according to the provisions of the Higher Judicial Council law above-mentioned is restricted in the range of ((appointing the judges, not to refers them to pension)). The power of prolonging the judges service, and refers them to pension according to the law is a specialty of the Higher Judicial Council exclusively according to the article (3/8th) of the law aforementioned. Therefore, when the President of the Republic/ being in this capacity issued the decree – challenge subject – considered a violation for the authorities he enjoys according to the article (73/7th) of the Republic of Iraq Constitution for 2005, it's also violates the principle of (separation between powers) which violates the provisions of the article (47) of the Constitution. This matter requires to annul the decree as well. The agent of the plaintiff summarized his claim that the decision of the Cabinet No. (42) For 2019 issued by the second defendant the Prime Minister/ being in this capacity and the decree with the number (11) for 2019 – challenge subject – which related to refer the judge (Muneer Sabri Hatim Al-Haddad) to pension are regarded violation to the Iraqi Supreme criminal Court law (amended) and the provisions of the Higher Judicial Council law. They also includes a violation to the principle of (separation between powers) and the principle of (Judiciary independence), as well as the provisions of the Republic of Iraq Constitution in articles (19/1st & 7 & 73/7th & 80 & 87 & 88) of it, which requires to annulling them. Accordingly, the agent of the plaintiff requested ((to annul the Cabinet's decision No. (42) for 2019 issued by the second defendant (the Prime Minister/ being in this capacity), and to annul the decree issued by the first defendant (the President of the Republic/ being in

this capacity) No. (11) For 2011. Both decision and the decree are including referral of the judge (Muneer Sabri Hatim Al-Haddad) the former member of the Iraqi Supreme criminal Court to pension, and to burden them all the expenses and advocacy fees)). The agent of the first defendant the President of the Republic/ being in this capacity answered as following: 1. The decree No. (11) Which included (referral of the judge Muneer Sabri Hatim Al-Haddad to pension) is a formal procedure required in article (14) of unified pension law No. (9) For 2014, the aforementioned judge had been appointed as a member in the cassation committee of the Iraqi Supreme criminal Court according to the decree No. (61) For 2006. 2. It's a condition that the plaintiff shall has a direct and effective interest of his legal, financial or social position, and he must present the proof that an actual aggrieve had affected him because of the legislation which requested to be annulled. This is what article (6/1st & 2nd) of the FSC's bylaw No. (1) For 2005 pointed to, and this is what not available in the plaintiff because the judge (Muneer Sabri) had been moved from the Iraqi Supreme criminal Court to the judicial Council of Kurdistan. He considered resigned because of not starting his work there without alibi, and the personnel of the judiciary in Kurdistan region is completely independent, not associated with the federal judiciary Council in one way or another, so there is no interest or aggrieve may affect the plaintiff because of the referral decision of Mr. (Muneer Sabri) to pension. As well as, Mr. (Muneer Sabri) wasn't a judge during the date of issuing the decree of referring his to pension, and he doesn't belongs to the Higher Judicial Council. For the above-mentioned reasons, the agent of the first defendant requested to reject the case and to burden the plaintiff the fees, expenses and the advocacy fees. The agent of the second defendant (the Prime Minister/ being in this capacity) answered the case's petition as following: 1. Litigation: the – challenge subject – is to refer Mr. (Muneer Haddad) to pension, whereas the admittance of the plaintiff that Mr. (Muneer Haddad) is not enjoying the employment title (judge) when the Prime Minister issued its decision – challenge subject – and when he initiated this challenge as he clarified in clause (1) of the challenge draft (that the judiciary Council of Kurdistan region in its letter No. (1/1102) counted Mr. (Munerr Haddad) resigned of the employment according to the judicial order No.

(1/285) dated on (14.4.2010) starting from (14.3.2010) because he absented without alibi. Therefore, the following matters shall be accomplished: alif. Mr. (Muneer Haddad) is no more has the judicial employment title after his resignation. The aforementioned doesn't enjoy an employment or judge title after the date of issuing the Cabinet's decision – challenge subject -. Then, he will not be yielding to the provisions of service of the Higher Judicial Council from the date of his resignation as the plaintiff clarified in clause (2nd) of the challenge draft, the competence is for the Higher Judicial Council according to the provisions of article (1) of the amending law of the Iraqi supreme criminal Court law No. (35) For 2011, and he regarded out of the service in Judiciary and doesn't enjoys the employment title. Therefore, the order of granting him the pension rights, or any other right according to the powers of the Prime Minister according to the articles (78&80/3rd) of the Constitution, and according to the article (14) of the unified pension law No. (9) For 2014. Beh-according to what clarified above in the clause (1st) of this draft, and according to the article (6/1st) of the FSC's bylaw No. (1) For 2005 which conditioned the litigation to initiate the case, including (that the plaintiff shall has a direct and effective interest of his legal, financial or social position). Therefore, the plaintiff hasn't an interest to be – challenge subject – effective in his legal position, whereas the jurisdiction of the plaintiff (the President of the Higher Judicial Council/ being in this capacity) doesn't affected his legal and financial position when the Prime Minister issued the decision – challenge subject – and the effect of the decision if occurred should be an advantage for the National commission of pension and the Ministry of finance, as well as an implementation of the principle (separation between powers and its independence) according to the article (47) of the Constitution. Jim. The article (6/2nd) of the FSC's bylaw stipulated (the plaintiff must present a proof about the actual aggrieve which affected him because of the enactment he demanded to annul it). Whereas the plaintiff didn't present the proof that an actual aggrieve affected the Higher Judicial Council because of the issuance of the second defendant's decision – challenge subject -. Therefore, the challenge is lacking to the conditions which should be available in the plaintiff when litigating the second defendant (the Prime Minister/ being in this capacity). Dal. The article (6/4th) of the

FSC's bylaw No. (1) For 2005 stipulated (aggrieve mustn't be theoretical, future or unknown). Whereas the decision which the plaintiff claims theoretical from his point of view, and no aggrieve had been accomplished in his legal, financial and administrative position of the Higher Judicial Council after executing the challenge subject.

2. Objectively: alif. The decision – challenge subject – issued by the second defendant/ being in this capacity according to his constitutional authorities according to the articles (78 & 80/1st & 2nd) of the Constitution, it included an absolute matters and executive tasks. Then, the challenge of the plaintiff has no substantiation in the Constitution, this matter regarded an intervention in the tasks of the second defendant and his constitutional authorities, objecting the decision – challenge subject – considered a violation of separation between powers' principle stipulated in the article (47) of the Constitution.

Beh. The decision – challenge subject – issued by the second defendant/ being in this capacity according to the article (14/1st) of the unified pension law No. (9) For 2014 with the same method of appointing Mr. (Muneer Haddad) which is it a decree, after the second defendant presented the decision to H.E. the President of the Republic to issue the decree according to the text aforementioned. What mentioned by the plaintiff in clause (1st/3) of the challenge draft hasn't a substantiation in the law, because the text of the article (13) of the unified pension law can't be implemented on this case – challenge subject -. The aforementioned text is corresponding to the case of the employee who's removed, expelled or resigned if the conditions of referral to pension are available, and he deserve the pension merits automatically without necessity to issue a decision for referral by the Prime Minister. This point is different from the case of Mr. (Muneer Haddad).

.3. As answer of what listed in the challenge draft: as answer for clause (2nd/1) of the challenge draft, the authorities of the Cabinet has been delivered to the Higher Judicial Council as implementing for article (11) of the Iraqi supreme criminal Court amending law No. (35) For 2011 which concern the judges in service. Mr. (Muneer Haddad) according to what has been clarified in clause (1) of this draft doesn't enjoy the employment title (Judge) to be – subject of granting the pension merits – according to the text aforementioned of the Iraqi supreme criminal Court law. Therefore, the decision of the Cabinet –

challenge subject – is relying on the Constitution and the law according to what has been clarified in clauses (1 & 2/beh) of this draft, and the plaintiff claim hasn't a substantiation. According to the aforementioned reasons, the agent of the second defendant (the Prime Minister/ being in this capacity) requested: 1. To judge by rejecting the challenge because the litigation is not accomplished in the plaintiff according to what has been clarified in clause (1) of this draft. 2. To judge by rejecting the challenge because it doesn't relies to any substantiation in the Constitution according to what has been clarified in the clauses (2&3) of this draft. 3. To judge by burdening the plaintiff the expenses, fees and the advocacy fees. After registering the case according to the provisions of clause (3rd) of the article (1) of the FSC's bylaw No. (1) For 2005, and after completing the required procedures according to the clause (2nd) of article (2) of the aforementioned law. The day 29.7.2019 has been scheduled as a date for argument. On that day, the agent of the plaintiff the Head of the Higher Judicial Council/ being in this capacity the jurist official (Esam Fadhil) attended, and the agent of the first defendant the President of the Republic/ being in this capacity the legal adviser (Ahmed Sreeh Muhsin) attended as well. The legal adviser (Hayder Al-Sofi) who represent the Prime Minister/being in this capacity attended too. The public in presence of all parties argument proceeded, the Court noticed that there is a request from Mr. (Muneer Sabri Hatim Al-Haddad), he wants to be introduced as a third party in the case. All the parties answered that they have no objection of his introduction as a third party in the case, and according to the provisions of article (69) of the civil procedure law, the request has been accepted. The Court called upon him, he attended and he has been assigned to pay the legal fee of his introduction in the case. He accepted this point, and he requested to judge for himself. The agent of the plaintiff repeated the petition of the case, and the Court had inquired the agent of the plaintiff about the challenge reasons. He commented that these reasons are clarified in the petition of the case, it includes that the issued decision and the decree considered an intervention in the judiciary works. The agent of the first defendant the President of the Republic/ being in this capacity answered that he repeats the answering draft, and requests to reject the case for the reasons listed in it. As well as the agent of the second defendant the

Prime Minister answered, and he requested to reject the case for the reasons listed in his answering draft. The third party answered and he requested to reject the case for litigation, whereas the plaintiff has no interest when he initiated the case. He added, when the plaintiff initiated the case wasn't a judge continuing in his service, and doesn't belong to the Higher Judicial Council. He requested to reject the case. The agent of the first defendant the President of the Republic/ being in this capacity answered that the third party (Muneer Sabri) when had been referred to pension wasn't a judge, the decree relied on the Cabinet's decision. The agent of the second defendant the Prime Minister commented that their defend in the case is about the third party who wasn't a judge when referred to pension, therefore, the authority of his client is based on his referral to pension according to the article (14/1st) of the unified pension law No. (9) For 2014 within the meaning of the articles (78 & 80/1st) of the Constitution. The Court scrutinized the petition of the case and the shown documents by the plaintiff/ being in this capacity and the sayings of both parties in this session, in addition to the third party. The Court found that the case had completed the reasons to take a decision about it. The Court decided to make the end of the argument clear and the decision has been recited in the session publicly.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff (the Head of the Higher Judicial Council/ being in this capacity) is challenge the unconstitutionality of the decision issued by the defendant the Prime Minister No. (42) For 2019 and the decree issued by the defendant the President of the Republic No. 11) for 2019/ being in their capacity, the decision and the decree adjudged with referring the third party (Muneer Sabri Al-Haddad) to referral because it violated the provision of article (8) of the law No. (35) For 2011 (Iraqi supreme criminal Court amending law) and it also violates the provisions of the Higher Judicial Council law, as well as the provisions of the article (47) of the Constitution. The defendants answered that the referral to pension had been proceeded according to the article (14/1st) of the unified pension law No. (9) For 2014, and according to the authority of the of the Cabinet stipulated in articles

(78 & 80) of the Constitution, considering the third party (Muneer Al-Haddad) had been appointed according to a decree. This matter requires to refer him to pension according to a decree as well. By returning to the postulates shown by the plaintiff/ being in this capacity, and reviewing the decision issued by the defendant the Prime Minister and the decree issued by the President of the Republic, the Court found from reading the decision issued by the committee of judges' affairs and the public prosecution members No. (3/lam/shin/2018) dated on 22.10.2018 that the aforementioned committee which formed by the Higher Judicial Council members had took a decision about the request of (Muneer Sabri Al-Haddad) which included his involving him with the pension. The committee had rejected his request because he had been moved from the Iraqi supreme criminal Court to the Higher Judicial Council in the region of Kurdistan, he proceeded his work there, then he didn't attend to the office and considered resigned from the judicial service. Later on, he requested to return to the Iraqi supreme criminal Court, his proceeding considered illegal. The committee of the judges' affairs and the public prosecution reached an opinion that the third party relation to between him and both of the Higher Judicial Council in Kurdistan and the Iraqi supreme criminal Court had been cut after he has been regarded resigned in Kurdistan region. His proceeding in the Iraqi supreme criminal Court has been cancelled, his request of involving him by pension has been rejected similar to the judges of the Iraqi supreme criminal Court. This decision had been ratified by the expanded civil committee in the cassation Court on 18.12.2018 by Ref. (390/civil expanded committee/2018) and the third party had admitted during the argument session before this Court on 29.7.2018 by what listed in the decision issued by the committee of judges' affairs and the public prosecution, and the ratified decision above-mentioned. He admitted that he's not a judge anymore after he had been regarded resigned from judicial service in Kurdistan region, and his proceeding in the Iraqi supreme criminal Court wasn't accepted as listed in the decision of judges' affairs and the public prosecution members. Accordingly, whereas the third party when referred to pension by the Cabinet according to the decision and the decree, he wasn't a judge. Therefore, his referral to pension is lacking the judiciary characteristic, and according to the provisions of article

(14/1st) of the unified pension law and the article (78) of the Constitution. the decision and the decree doesn't forms any violation to the article (47) of the Constitution, and the case of the plaintiff/ being in this capacity is lacking to its legal and the constitutional substantiation for litigation because the third party as mentioned above when referred to pension wasn't a judge of a Court that related to the Higher Judicial Council to accept the litigation of the plaintiff the Head of the Higher Judicial Council/ being in this capacity in initiating the case. Therefore, the Court decided to reject the case of the plaintiff and to burden him the expenses/ being in this capacity, as well as to burden him the advocacy fees of the defendants amount of one-hundred thousand Iraqi dinars, to be divided between them equally. The decision has been issued unanimously and decisively according to the provisions of the articles (94) of the Constitution and the article (5) of the FSC's law No. (30) For 2005. The decision has been made clear on 29.7.2019.