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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: (fa.alif.fa) – his agent the barrister (mim.ha.ain).

The Defendant: the Speaker of the ICR/ being in this capacity - his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

### The Claim

The agent of the plaintiff claimed in the petition of his case that the Constitution of Republic of Iraq for 2005 confirms in article (1) of it the principle of democracy, and of democracy pictures is (the freedom of expression) to let the Iraqi in the lead of advanced States. Article (13/1<sup>st</sup>) of the Constitution considered it obliged all over Iraq, with no exception and every text listed on the contrary of it considered void according to clause (2<sup>nd</sup>) of article (13) aforementioned. The basic of rule in Iraq is democratic, therefore no law shall be enacted may contradicts with the principles of democracy (article 2/1<sup>st</sup>/beh) of the Constitution. Each individual has the freedom of thought, opinion and believe, this freedoms shouldn't be restricted by any legal text (article 15 of the Constitution). The text of article (226) of Iraqi penal code is made by a dictatorship regime, and this regime collected in his hands all the powers (and executed all freedoms, especially the freedom of expression). According to aforementioned text, the accusation

could be directed against any individual intended to reform the regime in Iraq. His client, as he regarded a barrister and according to provisions of article (19/4<sup>th</sup>) of the Constitution which confirms (the right to a defense shall be sacred and guaranteed in all phases of investigation and the trial). His client carried out the defense in the crime of killing the victim (Zaid Salman Hajim) before the second committee in the central criminal Court. A penal case was initiated against him in the subject of offense the Court's members, and he was referred to the central criminal Court/the first committee/ by Ref (4689/jim/2018) according to provisions of article (226) of the penal code which stipulates (each person offense publicly the Nation Council, the government, the Courts, the armed forces or any other governmental committees, public authorities, interests, official and unofficial offices shall be punished with prison for seven years or fine). The agent of the plaintiff also claimed that article (226) of penal code is made by dictator regime, even judicial authority was controlled by the dictatorship in that time. As well as it had been enacted to serve the dictatorship, against the Constitution and the new democratic rule system. Accordingly, the agent of the plaintiff requested to judge by unconstitutionality of article (226) of Iraqi penal code because it violates the Constitution, and it also touches the freedoms and rights stipulated in this Constitution. The agent of the defendant answered the petition of the case that the text – challenge subject – is a legislative choice and is doesn't violates any constitutional text. Any public insult or offense to offices mentioned in challenged text are behaviors incriminated by the penal code, and the subject Court is the office which investigate about the elements of the crime availability. This text doesn't bounding freedoms, freedoms is not meaning chaos, and no text or law are existed may inhibits any enactment which regulates the public freedoms. Accordingly, the agents of the defendant/ being in this capacity requested to reject the case, and to burden the plaintiff all judicial expenses. After registering the case according to provisions of article (1/3<sup>rd</sup>) of the FSC's bylaw No. (1) For 2005, and after completing required procedures according to provisions of article (2/2<sup>nd</sup>) of aforementioned bylaw. The Court set the day 4.2.2019 as a date for argument, and on this day the Court has been convened. The agent

of the plaintiff attended as a barrister by himself, and his client didn't attend in spite of he was notified legally. Also the agents of the defendant attended, and the public in presence argument proceeded. The agent of the plaintiff repeated what listed in the petition of the case, and he requested to judge according to it. The agents of the defendant the Speaker of the ICR/ being in this capacity answered that they repeat what listed in their answering draft, and they requests to rejects the case for the reasons mentioned in that draft. The Court had scrutinized what listed in the petition of the case, and it found that the case has completed its reasons to take a decision about it. Therefore, the Court decided to the end of the argument clear and the decision was recited publicly.

### The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff by the tongue of his agent in the case had plead in a criminal case as a barrister before the central criminal Court, his plead was implementing for provisions of clause (4<sup>th</sup>) of article (19) of the Constitution. Aforementioned article and its clauses had guaranteed the right of defense in this field. The aforementioned Court had prosecuted a criminal case against him to take procedures according to article (226) of penal code No. (111) for 1969 because he excoriated the Court's committee during the argument session. His excoriation included a words considered as insult to the Court, and the criminal procedures against him was token. He had been referred to competent Court to suing him according to aforementioned article (226) of penal code. Therefore, he presented his case to challenge unconstitutionality of this article because it had been enacted in the era of dictatorship. He relied in his challenge on the provisions of article (19/4<sup>th</sup>) of the Constitution. The FSC finds that the article (19/4<sup>th</sup>) of the Constitution had guaranteed the right of defense in all phases of investigation and trial, but it didn't guaranteed the trespassing of this right, and if it was trespassed, the enactor and according to his legislative authorities had set a penal for this trespassing. The right must be stopped when who own it trespass the rights of the others. Therefore, enacting article (226) of penal code in regardless of the

time of its enactment doesn't violates the provisions of the constitutional articles which the plaintiff relied on. Therefore, his case is not relying on any reason in the Constitution. Accordingly, the Court decided to reject the case of the plaintiff, and to burden his the expenses and the advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to provisions of article (5) of the FSC law, and article (94) of the Constitution. The decision has been made clear on 4.2.2019.