



The Federal Supreme Court (F S C) has been convened on 23.1.2019 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 who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (nun.fa.jim)/ his agents the barristers – (sin.ain) and (kaf.sin.sin).

The Defendants: 1. 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).
2. The Head of the Higher Judicial Council/ being in this capacity – his agent the official jurist (ain.fa.ha).

The Claim

The agent of the plaintiff claimed that article (56) of the valid penal code which aggrieved many accused, and restrained their freedoms. This article stipulates: ((1. every individual who associated in a criminal agreement, even if he didn't perpetrate the agreed crime shall be punished by prison for not less than a seven years if the approved crime considered a penalty. Also to be send to prison for not more than two years, or a fine not more than one hundred fifty dinars if the crime were considered a misdemeanor. If the code didn't stipulates on a special punishment for the agreement. 2. If the purpose from the agreement was perpetrating a specific crime, and its punishment less than what stipulated in the previous clause. The punishment shouldn't be applied more than the quarter limit of the approved maximum limit for this crime)). The plaintiff clarified that

the aforementioned text is violating the Republic of Iraq Constitution for 2005, it becomes clear that the punishment in the code is not for the agreement itself but the punishment for executing the crime or the misdemeanor before it occurs, or before the lawless action occurs. While the law in other texts doesn't punishing for preparation of a crime if the actual perpetration clearly appears. This mean that the criminal behavior had been transformed into actions, as well as the law doesn't punishing for intentions inside people. Also the crime of penal agreement hasn't a substantial perspective, and it isn't a substantial behavior. The plaintiff added that he doesn't finds any reason to incriminate the penal agreement, and such text must be between the executive power to chase its objectors and even if the agreements and meetings were held for noble purposes. Incriminates the penal agreement, and judge by the same punishment which decided in case of perpetrating a crime will instigate the agreed to achieve his crime, even if he decided not to perpetrate it. The plaintiff sees that incriminates the penal agreement doesn't achieve the aims of penal code which represented by private and general deterrence. The agent of the plaintiff requested to annul the punishment of penal agreement, and to reconsider the forming of penal code No. (111) for 1969, as well as to form a code which represent the modern legislative policy. He also requested to oblige the first defendant to issue the required legislations, and to oblige the second defendant to commit the Constitution provisions and to judge by unconstitutionality of article (56) of penal code, with burdening them the expenses and the advocacy fees. The petition of the case had been notified to the two defendants/ being in their capacity, the first defendant answered by his draft dated on 5.11.2018. He listed in this draft that the plaintiff didn't clarify the constitutional violation, or the constitutional text which he depend to initiate the case of unconstitutionality of the text (challenge subject). Moreover, the aforementioned text regarded a legislative choice, and it doesn't violates the constitutional texts. The penal agreement, instigation for perpetrating a crime regarded one the actions which incriminated by the penal code. The subject Court is the body which investigate about the existence of the material element, and the aforementioned text doesn't restrains the freedoms, on the contrary. This mean legislative chaos. He requested to reject the case, and the agent of the second

defendant defended according to his draft dated on 23.10.2018 that his client is not qualified to be a litigant in this case, his client is not concerned in laws enactments, and he requested to reject the case. The Court called upon both parties, and the agents of the plaintiff attended, and the agents of the first defendant and the agent of the second defendant attended as well. The public in presence argument proceeded, the agents of the plaintiff repeated the petition of the case and he requested to judge according to what listed in it. They presented the decision of the constitutional Court in Egypt which includes the unconstitutionality of article (48) of the Egyptian penal code. They clarified that the challenged article is contradicts with the article (38/1st) of the Constitution, and the agent of the first defendant and the agent of the second agent repeated what listed in their draft. They requested to reject the case. The Court has ended the argument, and issued the following decision publicly.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff had challenged according to his petition the unconstitutionality of article (56) of the penal code No. (111) for 1969 which punish every member in a criminal agreement which determined for each crime was agreed between some individuals and weren't perpetrated. The FSC finds that the provisions of the criminal agreement were mentioned in articles (55-59) of the penal code, and by studying these provisions that the (criminal agreement) meaning that there were two individuals or more had agreed to execute an action which incriminated by the law as a felony or misdemeanor like theft, fraud or forgery. This agreement was organized and continuous even for a short period. This meaning that the crime (agreement subject) may cause a damage in the community, or one of its individuals, legal or regular, it also means a perverted behavior by a member of this agreement members. This member must be treated, neither by punishment nor reformation, or amnesty of punishment if the individual proposed to inform the public authority about the crime before it occurs, and before the authorities start chasing those culprits. As article (59) of the penal code adjudges. Also the FSC finds that the constitutional substantiation which mentioned by the agents of the plaintiff in the

argument session dated on (23.1.2019) the article (38/1st) of the Constitution which stipulates (The State shall guarantee in a way that does not violate public order and morality. First- Freedom of expression using all means). From this article we find that the aim is different of what the plaintiff wants in his case, the freedom of expression is associated by way doesn't violates the public order, morality and criminal agreement. Accordingly, all the aforementioned are violating the public order and morality. In this concern, the Egyptian judiciary doesn't restrains the Iraqi judiciary because of difference in rationales, place and time. Accordingly, the Court decided to reject the case from the first defendant the Speaker of the ICR/ being in this capacity because it's lacking its constitutional substantiation. Also to reject the case from the second defendant the Head of the Higher Judicial Council/ being in this capacity for Non-adversarial, and to reject the case for the other requests of the plaintiff which listed in the case because taking decision is out of the FSC jurisdiction stipulated in article (4) of its law No. (30) For 2005 and article (93) of the Constitution. 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 plaintiff should burden the expenses and the advocacy fees of the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision has been recited publicly on 23.1.2019.