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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, Hussein Abbas Abu Al-Temmen and Mohammed Rijab AL-Kubaisi who authorized in the name of the people to judge and they made the following decision:

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

The Defendant: Head of the higher judicial Council and the Head of cassation Court/ being in this capacity – his agent the jurist (ain.fa.ha).

### The Claim

The agent of the plaintiff claimed on 26.2.2017 that the judicial committee had been convened which overseeing the elections of Iraqi jurists union held in 27.2.2016 to take a decision the request presented by one the candidates for the post of union's Head, and he requested ((to regard the nomination of the plaintiff for third period is void, for issuance of decision No. (48) For 2017. This decision had annulled the decision of the revolutionary leadership Council (dissolved) decision No. (180) for 1977 retroactively starting from (9.4.2003), and the judicial committee which overseeing aforementioned elections ((the text of article (8) of Iraqi jurists union law No. (137) for 1981 didn't includes a limit for the term of union's Head and the executive office members by two periods, more or less. As in the advocacy law No. (173) for 1965, on the contrary the text was definite and the definite remains like this, unless a text restricts

it. There is no text in the union aforementioned law or any other law restricts this absoluteness. The law No. (48) For 2017 which its provisions are applied starting from (9.4.2003) is not producing any legal traces on the Iraqi jurists elections, on the contrary of unions and syndicates which its laws included a texts that restricts the right of the Head or the Bâtonnier to be nominated for two sequence periods)). The requestor has challenged the decision of the committee which overseeing the elections of Iraqi jurists union aforementioned before the federal cassation Court on 1.3.2017, and the Court rejected this request for the reasons mentioned in the recitals of the cassation decision. According to the cassation decision above-mentioned, the committee whom overseeing the elections of Iraqi jurists union to void the nomination of the plaintiff (ain.nun.al) and considered his electing as Head of the union void. As well as, notifying concerned office to take a proper decision about electing a new Head with the legal duration stipulated in article (13) of Iraqi jurists union law No (137) for 1981 (amended). Because Non-satisfaction of the plaintiff by the decision issued by the judicial committee which overseeing the elections, and this decision became as a result for the cassation decision aforementioned, he initiated to challenge it before federal cassation Court. Whereas aforementioned Court decided to reject the cassation draft, and to ratify the decision of the committee which overseeing the elections of Iraqi jurists union because it is correct and corresponding to the law. Because of Non-satisfaction of the plaintiff by the decision issued from the federal cassation Court above-mentioned, his agent initiated to challenge it before the FSC, and for the following reasons: 1. Article (8) of Iraqi jurists union law No. (137) for 1981 (amended) didn't determine the period of the union's Head, or the members of the executive bureau of the union for two periods more or less as in the advocacy law No. (173) for 1965. 2. The decision of the federal cassation Court is violating the letter of the ICR/ legal committee/1303 on 5.4.2017, and this letter didn't included dealing with the elections of Iraqi jurists union in what related to his research subject. 3. The decision of the federal cassation Court is violating the letter of Republican Presidency/ the President's office/ Ref (mim/ra.jim/1/46/183) on 28.5.2017 because it considered the power which ratifies the laws and guardian of the Constitution. Whereas it listed that the elections of this Bâtonnier and the

administration Council members for each syndicate, union or assembly shall be submit to the law of this syndicate, and determined period in this law. Therefore, the decision of the federal cassation Court is violating the Constitution and the law. 4. The decision of the Federal cassation Court above-mentioned violated the Constitution in article (16) of it, which confirms the equal opportunities is guaranteed for all Iraqis and the state guarantees all required procedures to achieve this matter. 5. As well as the decision of the Federal cassation Court violates provisions of article (20) of the Constitution which granted the right to all citizens, men and women to participate the public affairs, and the plaintiff obtained (2780) votes in the elections of Iraqi jurists' union. The Federal cassation Court violated the Constitution by standing against the voters' will. Accordingly, the agent of the plaintiff requested: first- to introduce the Speaker of the ICR/ being in this capacity as a third party in this case for inquiry. Second- to introduce the President of the Republic/ being in this capacity as a third party in this case for inquiry. Third- to judge by unconstitutionality and illegality the decisions of the Federal cassation Court by the numbers (3/general committee/2017) on 15.7.2017 and the number (11/12/14/16/general committee/2017) on 24.5.2017 because it violates the texts of Iraqi jurists' union law No. (137) for 1981 (amended) and the error in implementing the law No. (48) For 2017 correctly, and contrariwise the provisions of the Constitution. The agent of the defendant/ being in this capacity answered the petition of the case by his answering draft dated on 28.11.2018 as following: 1. the litigation is not directed against his client in the case (the Head of the Higher juridical Council/ being in this capacity) because he doesn't asking about the judiciary works, and he has no authority to overseeing or directing. Whereas the judiciary is independent and no authority over it except that of the law according to provisions of articles (87 & 88 & 90 & 91) of the Constitution and article (2) of judicial regulation law No. (160) for 1979 and article (3) of Higher judicial Council law No. (45) For 2017, and according to the base that the judiciary has no power over it, but it corresponds in its decisions and judgments to legally determined methods except one case which is it complaining from judges. This matter is stipulated in article (186) of civil procedure law which the FSC judgment settled on take it in consideration. 2. The

litigation is not directed against the Head of cassation Court because he doesn't has the required legal personality for judicature, and to be a litigant in the case. Whereas the Head of cassation Court exercising his tasks as a judge. 3. Claiming of the plaintiff didn't be intent on challenging unconstitutionality of a law, regulation or valid order. But it to be intent on the request of unconstitutionality of the cassation Court two decisions (3/general committee/2017) on 5.3.2017 and (11/12/14/151/16/general committee/2017) on 24.5.2017, and this regarded out of the FSC's competences stipulated in article (93) of the Constitution and in article (4) of the FSC law No. (30) For 2005. For the aforementioned reasons, the agent of the defendant requested to reject the case according to provisions of articles (87 & 88 & 89 & 90 & 91 & 93) of the Constitution, and article (4) of the FSC law No. (30) For 2005 and articles (4 & 80) of civil procedure law No. (83) For 1969 and (2) of judicial regulation law No. (160) for 1979 and (3) of Higher judicial Council law No. (45) For 2017. Also on what the FSC judiciary settled on, in a number of its decisions, among these decisions (108/federal/2017) dated on 14.11.2018. After registering this case according to provisions of clause (3<sup>rd</sup>) of article (1) of the FSC bylaw No. (1) For 2005, and after completing required procedures according to provisions of clause (2<sup>nd</sup>) of article (2) of aforementioned bylaw. The Court set the day 4.2.2019 as a date for argument, and on that day the Court has been convened. Whereas the agents of the plaintiff the barristers (ain.shin) and (sin.ain) and (fa.sin) attended according to the power of attorney attached to the dossier of the case, and the agent of the higher judicial Council and federal cassation Court (ain.fa) has attended as well. The public in presence argument proceeded, the agents of the plaintiff repeated what listed in the petition of the case and they requested to judge according to it. The agent of the defendant answered that he repeats what listed in the answering draft, and he requested to reject the case. The Court scrutinized defends and defends of the defendant, and it found that the case is complete to issue a decision. The Court decided to make the end of the argument clear, and the decision was recited in the session publicly.

## The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff mentioned in the petition of his case that the commission which overseeing the elections of Iraqi jurists union had voided the candidate of the plaintiff (ain.nun.kaf.shin) and to void his election as a Head of the union. Also to notify concerned office to take the decision to elect a new Head of the union above-mentioned within the period stipulated in the Iraqi jurists union law No. (137) for 1981 (amended). This decision followed reversed decision issued by cassation Court by Ref. (3/general committee/2017) on 15.3.2017, and above-mentioned decision was ratified by the federal cassation Court according to its decisions (11 & 12 & 14 & 15 & 16/general committee/2017) on 24.5.2017 because it had been challenged by the plaintiff and other members from the executive office, and the members of general committee in the Iraqi jurists union. For Non-satisfaction of the plaintiff by the cassation decision above-mentioned because it violated the provisions of articles (16 & 20) of the Constitution. The plaintiff proceeded to challenge it before the FSC, and he requested to judge by unconstitutionality of these articles because it violates the law of Iraqi jurists union No. (137) for 1981 (amended), and it also violates the letters of the Presidency of the ICR and the Republic in this concern above-mentioned. While the law No. (48) For 2017 is violates the Constitution which adopted by the judicial office when it issued its challenged judgments. He also requested to introduce the President of the Republic and the Speaker of the ICR as third parties in the case/ being in their capacity for inquiry. The FSC finds that the Head of higher judicial Council/ being in this capacity can't be considered a litigant in litigation, but within competences limits that exercised by the higher judicial Council which determined in articles (90) and (91) of the Republic of Iraq Constitution for 2005. These competences are about administrating judicial committees, judiciary affairs, overseeing the federal judiciary, candidate the federal cassation Court members, the Head of public prosecution and the Head of judicial oversight commission. As for the judgments and decisions issued by federal appeal Courts, commissions, Courts and committees associated with it, the higher judicial Council has no power over them according to independence that these offices enjoys. These competences are

mentioned in the article (19/1<sup>st</sup>) and article (88) of the Constitution, therefore, trying its legality is out of the higher judicial Council competence. Litigation shouldn't be directed to the Head of the Council in this concern. Besides, its litigation as a Head of federal cassation Court, and at the same time he shouldn't be litigated for decisions and judgments issued by the Court according to its competences which stipulated in the law. The federal cassation Court according to article (12) of judicial regulation law No. (160) for 1979 doesn't have the legal personality which its provisions are stipulated in articles (47) and (48) of the civil law No. (40) For 1951 to be litigated legally, therefore it isn't allowed to litigate its Head in what decisions and judgments it issues. This matter is corresponding to provisions of article (4) of civil procedure law No. (83) for 1969 which stipulates that the defendant must be a litigant, his admission is related to an admission issued by him, and he must be obliged with something according to constancy of the case. Accordingly, the FSC finds that directing litigation in a case of the plaintiff to the Head of federal cassation Court and higher judicial Council has no substantiation in the law, even if the litigation weren't directed, the Court has to automatically take a decision by rejecting the case without discussing its basis according to provisions of article (80/1) of civil procedure law. Based on that, the Court decided to reject the case of the plaintiff for litigation, and to reject his request of introducing the President of the Republic and the Speaker of the ICR/ being in their capacity as third parties in the case, because this matter in unproductive, and to burden the plaintiff the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to provisions of article (5/2<sup>nd</sup>) of the FSC's law No. (30) For 2005 and article (94) of the Constitution. The decision has been made clear on 4.2.2018.