

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court

(Emblem)

(Kurdish Text)

Ref: 29/Federal/2017

The Federal Supreme Court has convened in 29.5.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Faroq Mohamed Al-Sami , Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Mikaeel Shamshon Qas Qourqis , Hussain Abbass Abo Al-timen and who are authorized to judge in the name of the people. And it issued the follow decision:

The Plaintiff: (Aen. Waw. Aen.), his agent the attorney (Ha.. Meem.).

The Defendant:

1. The ICR Speaker/being in this post, his agents the legal official (Seen. Ta'. Ya'.) and (Hah. Meem. Seen.).
2. The Prime Minister/being in this post, his agent the legal co-consulter (Ha. Aen. Geem.)

THE CLAIM:

The agent of the plaintiff claim that previously the first defendant/being in this post by his decision no.(15) for year 2015 empower his legislation authority to the second defendant/being in this post so he will be able of making reformations, the ICR is not allowed to empower any of it authorities or it competences to the executive authority according to the Constitutional principle (separation of powers) as in article (47) of Constitution that stipulate on (The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers).

The Constitution shown the cases where that the Prime Minister can accepts some authorities which is in the (War or Emergency cases), the two situation aren't exist, therefore the empower of authorities to the Prime Minster is unconstitutionally.

The second defendant proceed his duties with unconstitutional empower and issued decision no.(333) for year 2015 and there were a judicial decisions adopted the mentioned empower and took it as a base in its judgment, for all the aforementioned the agent of the plaintiff request to

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judge in the void of the mentioned empower and all the consequences resulted from it because it is a violation to the Constitution.

The agents of the first defendant/being in this post answered on the case petition that the agent of the plaintiff did not clarified the direct and privet benefit that infected the legal or financial or social position of his client, and he didn't clarified the real independent damage that can be removed if a judgment in this case issued as article (6/first) of the FSC Bylaw no.(1) for year 2005 stipulate on. Among The ICR competences the one that is mentioned in article (61/second) of Constitution "Monitoring the performance of the executive authority". This monitoring give it the power to make many decisions that coincide with the Constitution and the valid legal law; guaranteeing the smoothness of the government works according to the competences that was authorized to it. The ICR in decision no.(15) for year 2015 voted on the reformations letter of the Council Of Ministers based on the authorities that the Constitution give to the legislative and executive power according to articles (61&80) of it.

For the aforementioned reasons the agents of the first defendant request to reject the case in formally and objectively.

The agent of the second defendant answered on the case petition by three sides: competence, litigation and subject. The FSC according to article (93/first) of Constitution is specialized in (Overseeing the constitutionality of laws and regulations in effect). Which means the FSC competence is concentrated on the laws issued by the legislative power and the regulations issued by the executive power. Whereas the claim focus on requesting to judge in the unconstitutionality of the ICR decision no.(15) for year 2015, and the claim subject is a decision not a law therefore the article (93/first) of Constitution don't coincide with it because the impeached decision don't has any legislative or validity power, so the ICR decision is like a recommendation and proposition to the government according to article (61/first) of Constitution that specified it competence in legislation laws only, without the right to issue legislative decisions. Therefore the impeached decision will become out of the FSC competence stipulated in article (93/first) of Constitution.

The second defendant/being in that post is not a litigant in the case as he isn't the party that issued the impeached decision according to article (4) of Civil Proceedings Code no.(83) for year 1969/amended; that what is decided by the Constitutional Judgment in Iraq (case 18/Ta'./2017). The plaintiff is an employee in Al-Kofa Concrete Factory as he claim; the impeached decision subject about the reformations that contain excessive

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privileges for the supreme positions holders that conflict with the country economic situation, so, the plaintiff hasn't any direct and private benefit that infected his legal or financial or social position; he wasn't harmed by the impeached decision.

The defendant wasn't the beneficiary of the impeached decision and it wasn't applied on him or will be apply in the future according to article (6) of Civil Proceedings Code no.(83) for year 1969/amended and article (6) of the FSC Bylaw no.(1) for year 2005, that what the Constitutional Judgment issued in Iraq in (decision 99/Ta'./2011) on 8.10.2011. the impeached decision no.(15) for year 2015 includes the ratification on the Council Of Ministers decision no.(307) for year 2015 that don't require the ICR ratification for its validity and executively and didn't include empowering it's legislation authorities for the Prime Ministers. The plaintiff can't conclude that the empowering and the Council Of Ministers decision no.(333) for year 2015 issued according to the authorities stipulated in article (80/first) of constitution without relying on the ICR decision no.(15) for year 2015 as a base or delegation or authority. Therefore there isn't any inherence between the ICR impeached decision no.(15) for year 2015 and the Council Of Ministers decision no.(333) for year 2015. So it didn't practice any of ICR competences that specialized in article (61/first) of the Constitution so he can use it to made the case on the base that he used the authorities empowered to him by the ICR.

For all the above the agent of the second defendant/being in this post request to:

1. Reject the case for the case is out of the FSC competence stipulated on article (93/first) of Constitution.
2. Reject the case as the litigation in this case isn't accomplished to his client.
3. Reject the case subjectively.

After registering the case in the FSC according to clause (third) of article (1) of the FSC Bylaw no.(1) for year 2005 and completing the required procedures and the answering of the agents of the two parties on the case petition, a day 29.5.2017 appointed as a date for hearing the case, on it the court convened and the agents of the two parties attended and started the public in present proceeding, the agent of the plaintiff repeated what is mentioned in the case petition and request to judge by it and added that he has illustration draft which he read in the session and attached to the case file and there is no truth for what is mentioned in the answering draft

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that his client is an ex-member in Al-Najaf Governorate Council and that he was prohibited of his retirement salary according to the Prime Minister reformations, and request to cancel the decision the subject of the case and the Council Of Retirees Cases decision and the Federal Appeal Court decision that ratify on this decision.

The agent of the first defendant repeated what is listed in the answering draft and requesting to reject the case for the reasons mentioned in it. The agent of the second defendant request to reject the case for the reasons mentioned in his answering draft. The Court inquired the agent of the plaintiff about the impeached empowering decision and he replied that it is decision no.(15) for year 2015.

As the case is ready to be judged the Court decided to end the proceeding and the follow decision made clear.

THE DECISION:

In the deliberation and discussion the FSC found that the agent of the plaintiff claims that previously the first defendant/being in this post by his decision no.(15) for year 2015 empower his legislation authority to the second defendant/being in this post so he will be able of making reformations, the ICR is not allowed to empower any of it authorities or it competences to the executive authority according to the Constitutional principle (separation of powers) as in article (47) of Constitution, the Constitution shown the cases where that the Prime Minister can accepts some authorities which is in the (War or Emergency cases), the two situation aren't exist, therefore the empower of authorities to the Prime Minister is unconstitutionally. For all the aforementioned the agent of the plaintiff request to judge in the void of the mentioned empower and all the consequences resulted from it because it is a violation to the Constitution.

The FSC found that the impeached decision no.(15) for year 2015 issued by ICR on 11.8.2015 included the ratification on the Council Of Ministers decision no.(307) for year 2015 and the first patch of reformations that was presented to the ICR so it will be ratified and the Prime Minister shall be empowered so he will be able of making these reformations. Also the FSC finds that the ratification of the ICR on decision no.(307) for year 2015 don't means the empowering any of its authorities stipulated on articles (60 & 61 & 62) of Constitution to the

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Prime Minister as it was mentioned in case petition. Also the ratification on the mentioned decision the executing of its clauses are restricted as it should coincide the Constitution and the valid laws, while any violation to the Constitution done by the executive authority can be impeached before the FSC or any other specialized Court.

According to that the case lost its legal proof therefore a decision was made to reject it and burden the plaintiff the expenses and the fees of the defendants agents (100000 Iraqi Dinar to be divided among them in half). The decision was made unanimous and made clear in 29.5.2017.