

(Translated from Arabic)  
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 34/federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 2/7/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff:

Mazen Abd al-Wahed Khalaf Makiya – his agents the attorney Mohammed Majeed Al Saadi and Ahmed Mazen Abd al-Wahed Mekia

The Defendants:

1. President of the Republic/ being in this post – his agent the legal advisor Ahmed Serih.
2. The speaker of the parliament/ being in this post - his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

### The Claim:

The agents of the Plaintiffs claimed before the F.S.C. in case No.(34/federal/2019) that article (3) of the law of the F.S.C. which was issued under the order No.(30) for 2005, has violated and contradict the provisions of the constitution for 2005, on that bases and reasons they requested to judge by its unconstitutionality, in the session dated 21/5/2019 the plaintiff restrict request to the appeal against article (2) of the law of the supreme judicial council, and against the whole law, the plaintiff state that article (2) of the law of the supreme judicial council consider as article the base that the structure of the Supreme Judicial Council, therefore its violation for the constitutional articles makes the entire law of the Supreme Judicial Council in contrary to the constitutional provisions, because all other articles are not effective and valid in case of disabling this article, and will be in a legislative vacuum. Therefore they requested the F.S.C. to judge that article (2) of the Supreme Judicial Council law, and also to judge that the entire law is unconstitutional, and recommending the I.C.R. to accelerate the legislation of a law that is consistent with the provisions of the Constitution. And to burden the defendants the dues and expenses and advocacy fees. The agent of the first defendant has replied with his draft submitted to the court on 14/4/2019 requesting to reject the case from the point of litigation according to article (4) of the amended Civil Procedure law, because his client did not legislated that law, and to burden the plaintiff all expenses and advocacy fees. The agents of the second defendant has replied with their answering draft dated on 14/4/2019, stating that the plaintiff did not show the current, direct and effective interest in the legal, financial, and social position of his client in the case, also the agent of the plaintiff had been requesting the F.S.C. to judge that article (2) of the law of the supreme judicial

council as a whole is unconstitutional, not that the court had been already adjudicated in the case No.(136/federal/2017) and it unified (137/federal/2017) where it decided to reject the appeal against article (2) of the supreme judicial council law No.(45) for 2017. Therefore they requested to reject the case and to burden the plaintiff its expenses and the advocacy fees. The court set a date to proceed with the case. the court convened, the agents of the plaintiff has attended, the agent of the first defendant the President of the Republic the legal advisor Ahmed Serih has attended, the agent of the second defendant the speaker of the parliament the legal advisor Haytham Majid has attended, and proceed with the case in presence and publicly, the agents of the plaintiff repeated the case petition and requested to judge ,after restrict it, that article (2) of the supreme judicial council law No.(45) for 2017 is unconstitutional, and also to judge that the entire law is unconstitutional, and recommending the I.C.R. to legislate a law that is consistent with the Constitution. the agent of the first defendant has replied repeating what listed in his answering draft and requested to judge according to it, and to reject the case for his client from the point that the litigation is not directed. The agent of the second defendant has replied repeating what listed in his answering draft requesting to reject the case for the reasons listed in it, and to burden the plaintiff all the expenses and fees. The agent of the second defendant was assigned to respond to the violations attributed to the article (2) of the law for the constitutional articles in the case petition (1, 3, 14, 16, 59, 116, 117, 125) of the constitution, The plaintiff's agent was assigned to prove the violation of the second defendant to the provisions of the article (95) of the Constitution that the quorum of attendance was not achieved, and that the quorum of attendance was not achieved when voting during the legislation of the Supreme Judicial Council

No.(45) for 2017. It was noted that the Head of the Supreme Judicial Council submitted a request on 16/6/2019 to enter into the lawsuit as a third party litigant interfere because its subject concerns the Supreme Judicial Council, the agent of the plaintiff demand to reject the request as the listed appeals in the case concern two parties which contain constitutional violation and the Supreme Judicial Council has nothing to do with it. The Court found the admissibility of the request to enter into the lawsuit as litigant alongside with the defendants according to the provisions of article (69) of Civil Procedure law, attended for him his agents the Judge and the Judicial Supervisor Haidar Ali Nuri under the power of attorney No.(6245) on 16/6/2019) for the head of the council, and the legal official Essam Fadel, And to pay the legal fee for the case according to the rules. The agent of the second defendant the speaker of the I.C.R. submitted answering draft dated on 15/6/2019 which included the minutes of the session in which the vote on the law of the Supreme Judicial Council the subject of appeal was held, as well as a CD recording for the minutes of the session. The court confirm the requests of the plaintiff's agent in the minutes of the session that dated on 17/6/2019. The agent of the third party requested to reject the case because the plaintiff have no interest in institute it, also the F.S.C. has already decided the constitutionality of the article (2) of the Supreme Judicial Council law. The court assigned the plaintiff's agent to show his defenses about what is new in the session dated on (17/6/2019), the agents of the plaintiff submitted answering draft dated on (27/6/2019) and was reviewed by the agents of the case parties, the agents of the third party stated that what was listed in the draft does not concern the case, and does not have constitutional base, he repeated his request to reject the case. It was noticed that the agents of the speaker of the I.C.R.

submitted minutes of the session dated (12/1/2017) with list of attended MP signature by their names under the letter No.(1/9/101) on 28/5/2019, also submitted CD record of the session minutes, the agents of the plaintiff reviewed it and confirm that this minutes are the one concerning the voting session on the Supreme Judicial Council law No.(45) for 2017, stated in it that the number of attendance is (227) and the number the voters on the law bill is (188) MP, the agents of the plaintiff commented on what listed in that minute that the former MP Mohammed Koun and MP Alia Nassif filed a lawsuit which he was the against in it, were they objected that the quorum was not achieved, and that the case was annulled before the proceeding. And that was under the request of the Supreme Judicial Council to the plaintiff Mohammed Koun, and he had confirm his objection during the parliamentary session, as for the CD record they did not request to download or analysis it. As for the rest of the requests that the plaintiff mentioned, it goes to his other request in comparison to the law bill which was sent by the Supreme Judicial Council and the one sent by the Council of Ministers and the law which was enacted. The purpose of this is to prove that the ministers council has made changes to the law bill, which is not with in his jurisdiction, he also comment that he hold on to the rest of his defenses listed in the case petition and the explanatory draft. The agent of the first defendant repeated his request to reject the case as the litigation is directed to his client. The agents of the second defendant the speaker of the I.C.R. repeated what listed in the answering drafts submitted to the honorable court. The agents of the third party repeated what listed in their answering drafts and they confirm the ratification of the plaintiff's agents on the validity of the submitted minutes, and they did not requested to analyses the CD record. According to that the

quorum of the session in which the vote on the law of the Supreme Judicial Council has held legally, while the rest of the requests don't include prove of violating the Constitution. The court scrutinize the case petition and found that it is completed for the reasons of judgment, the argument has been closed and the decision is issued publicly in the session.

### The Decision:

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff after restricting his request to the appeal against article (2) of the law of the supreme judicial council No.(45) for 2017 for being unconstitutional, then against the entire law claiming it unconstitutionality, he listed several articles from the constitution which had been mentioned in the recitals of this decision. By scrutinize his appeals throw the sessions, and the defenses of the defendants/ being in their posts by their agents, and the defenses of the third party by his agents, it found that the appeal by unconstitutionality of article (2) of the supreme judicial council law, The F.S.C. has already adjudicated in it in the case No.(136/federal/2017) and it unified the case No.(137/federal/2017) on 5/2/2018, therefore there is no need to issue a new decision in it according to article (94) of the constitution, as for the rest of the appeals it focused on the claim that the legal quorum was not achieved in the I.C.R. session dated on 12/1/2017 in which the law of the Supreme Judicial Council has been legislated, this defense has been reviewed in light of the minutes of the mentioned session, and in light of the names of the attended MPs and their signatures which was submitted by the agents of the plaintiff the speaker of the I.C.R. with the CD record. After the agents of the plaintiff has ratified its validity, and the lack of need to download and analyze

the CD record. Therefore it found that this appeal is not based on a reason from constitution or the law. As for the appeal of making variables in the law bill, no objection has been received from the Supreme Judicial Council and the Council of Ministers. Therefore, the investigation in it by anyone other than these two parties is not supported by the law and the constitution. as for the rest of the appeals the constitutional article that was listed by the plaintiff it does not apply and does not help to rule on its unconstitutionality, and constitutes legislative options that is out of the jurisdiction of the F.S.C. stipulated in the article (93) of the Constitution and article (4) of its law in responding to it. As the court has completed its investigation in the case the argument has been closed and the decision is issued according to law.

For the aforementioned the F.S.C. decided the following:

**First:** reject the plaintiff's case from the defendant the President of the Republic/ being in this post because its invalid to direct litigation to him according his agent defenses that agreed with the provisions of the constitution and law.

**Second:** reject the plaintiff's case for the appeals that he listed in his case petition and subsequent draft, which already has been adjudicated by rejection in previous cases mentioned earlier, according to the provisions of article (94) of the constitution, and article (105) of the law of evidence No.(107) for 1979.

**Third:** reject the plaintiff's case for the appeal that the quorum of attendance of the MP was not achieved in the I.C.R. session No.(2) for 2017 which held in it the legislation of the supreme judicial council law No.(45) for 2017, dated on 12/1/2017.

After the court has ensured that the required quorum was achieved by scrutinize the minutes of the session and the lists of the attended MPs signatures, according to article (95) of constitution. the agents

of the plaintiff has confirmed the validity of the session minute and the lists of the attended MPs signatures, and the lake the need to analysis the record or download it.

**Forth:** to burden the plaintiff the expenses and advocacy fees for the agents of the defendants and the third party amount of one hundred thousand Iraqi dinars divide by them according to the law. The decision has been issued decisively and unanimously according to article (94) of the Constitution, and article (5) of the F.S.C. law No.(30) for 2005, and issued publicly on 2/7/2019.