



The Federal Supreme Court (F S C) has been convened on 6/5/2018 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, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (dad. ain. feh.) (political prisoner) his agents lawyers (waw. mim. shin.) and (ain. jim. Jim. teh.) both individually and collectively.

Plaintiff / (ha. jim. kaf. ra) Secretary General of the Iraqi National Loyalty Party / being in this capacity - his agent (alif. feh. ain)

Defendant / Speaker of the House of Representatives/ being in this capacity his two human rights officers director (sin. ta. yeh) and the Assistant Legal Counsel (heh. mim. sin).

Claim:

The agents of the plaintiff claimed before FSC in the case No. (4/federal/2018) that the defendant/ being in this capacity he issued a law No.(35) of 2013 (the First Amendment Law to the Political Prisoners Organization Law No. (4) of 2006) the above law contradicts the constitution because of the fallacies of the House of Representatives when legislating and voting on it as well as its wording, misleading and misleading in many of its articles and the paragraphs below have added financial burdens without taking the opinion of the Council of Ministers according to the article (130) of bylaw of House of Representatives, we

will also briefly present them in the form of points below: (first)- The method of legislation of the law has been issued contrary to the text of the article (60/1st) of the constitution which provides for the article (60/1st) draft laws Draft laws submitted by the President of the Republic and the Council of Ministers where this law was not presented as a draft neither by the President of the Republic nor by the Prime Minister, what has been provided by the Council of Ministers as a draft of this law to the Council of Representatives (under Cabinet Resolution No. (151) of 2013 adopted on 9/4/2013) and the location of the Secretary-General of the Cabinet of Ministers on 16/4/2013 in which it was decided to approve the draft law if this law was published (law No. (35) of 2013) but another project did not include what was stated in this law, which was added in an unknown manner and from the parties must be disclosed by the defendant note that most of those additions that were added to the draft law submitted by the Council of Ministers were paragraphs and phrases are as follows: (first) - The phrase (And Rafha detainees) contained in the item (1st) of article (5) as shown below (The provisions of this law shall apply to prisoners, political prisoners and innocent detainees from Iraqis....etc.) . (2)- The phrase (Or outside) contained in the item (5) of the item (2nd) of article (5) as shown below: (Political detainee : who was arrested, detained or detained inside or outside Iraq or placed under house arrest without a court order...etc.). (3)- Paragraph (and) item /2nd/ of article (5) (Rafha detainees : They are the Mujahideen of the Shaaban uprising of 1991 who forced them...etc.). (4)- The phrase (or Rafha detainees) in the paragraph (zin) item (2nd) of article (5) as shown below: The prisoners' relatives or detainees or Rafha detainees : husband and relatives of the degree ... etc.). (5)- Paragraph (jim) of item (5th) of article (7) (A special committee or committee shall be formed to examine the applications submitted by the Rafha detainees under the chairmanship of a jurist... etc.). (6)- Item (9th) of the article (17) (Rafha detainees are entitled to the rights and privileges enjoyed by the political detainee provided for in this Law... etc.) as well as other additions, all of which were designed to save (displaced people in Saudi Arabia) and their inclusion in the benefits of this law. Here is the blatant breach of article (60/1st) of the Constitution, as shown in the draft law submitted by the Council of Ministers collapse this petition.

(Second) - Moreover, these additions, which were introduced by the "reformers of Rafha" at the time of the promulgation of Law No. (35) of 2013, contravenes article (80/2nd) of the Constitution, which states (The Council of Ministers exercises the following powers: (Second) proposing draft laws. Therefore, the additions to this draft law are considered an addition to the provisions of this article in addition to the article mentioned in the paragraphs that preceded it) (third) - That the Iraqis who were displaced to the camp of Rafha in Saudi Arabia during 1991 as arrested or political detainees contrary to international laws and its definition of the meaning of (political prisoner) or (political detainee) or (political retaining) The fact that those who were born in (Rafha refugee) camp or even (the children) who fled to Rafah is more likely to bear the text, The displaced are neither (prisoners) nor (detainees) nor (protesters) because they have (voluntarily) gone to Saudi Arabia , the definitions in the international laws of the term "prisoner" and "arrested " and "detainee" do not apply to them. The internationally agreed definition of the term "political prisoner" or "prisoner of conscience" Is a person who is currently or previously suspended without a criminal charge because of his or her political or ideological ideas and ideas that are contrary to the party's thinking or the ruling party in a country does not recognize international laws that provide for the freedom of political thought and the release of public freedoms. This does not apply to refugees (Rafha) , arrest, imprisonment or detention was not in their country to be covered by this law (Where the displacement was voluntary and the equality of those who were resident in Rafha refugee camp and who were receiving care under the supervision of the UNHCR says that their equality with the arrested, detainee or political prisoner by the repressive apparatuses of the former system is injustice and great injustice and inequality between them , then the UNHCR adopted detainees in several countries, where the difference between them is clear. The term "political prisoner" or "political arrested" or "political detainee" does not apply to them. (Fourth) - The text of article (5/1st) of the Prisoners' Association Law No. (4) of 2006 as amended by Law No. (35) for the year 2013 has violated the provisions of article (60/1st) and article (80/2nd) of the constitution. Article (5/2nd) of item (waw) and (zin) of this law shall also be amended after the amendment and every text entered by (Rafha refugees) in order to benefit from this law and article (17) of this law, after the amendment for the reasons mentioned above, The state does not accept it without reference to the cabinet under the constitution and many of them did not participate in the popular uprising. (Fifth) - Adding the financial burdens to the government violated to article (60/1st and 62/1st and 80/2nd) of the constitution and violated to article (130) of the bylaw of the House of Representatives and that these burdens were added to the benefit of a group of Iraqis do not enjoy

these privileges and financial rights in the law of the institution of political prisoners No. (4) of 2006 amending and damaged the rest of the political prisoners covered by the law materially (financially) and morally). (Sixth) - The Shura Council of the State by its decision No. (126/2012) on 18/2/2018 In response to the clarification of the General Secretariat of the Council of Ministers / Legal Department on 17/7/2018 in the inclusion of the (refugees of Rafha camp) in Saudi Arabia as a (prisoner or detainee) according to the law of the institution of political prisoners, its response was the following legal principle the council considers that the refugees of Rafha camp in Saudi Arabia are not included as (prisoners or political detainee) so the plaintiff agents asked the FSC to judgment by cancel all these amendments, which included (refugees of Rafha camp) for advanced reasons for violating international laws and customs international norms and the Iraqi constitution and for violating the law of the aforementioned institution itself, specifically challenging the unconstitutionality of the following paragraphs in the law No. (35) of 2013 the first amendment to the law of the institution of political prisoners No. (4) of 2006: (1) The phrase (and Rafhaa detainees mentioned in item (1st) of article (5)). (2) The phrase (or outside in paragraph (heh) of item (2nd) of article (5)). (3) The paragraph (waw) of item (2nd) of article (5)). (4) The phrase (or Rafhaa detainees) mentioned in the paragraph (zin) of item (2nd) of article (5)). (5) The paragraph (jim) of item (fifth of the article (7)). (6) Item (9th) of article (17). (7) Each statement of the inclusion of "Rafha refugees" to the law of the institution of political prisoners No. (4) of 2006 amending for violating all the above-mentioned international laws and customs and the Iraqi constitution and to charge the defendant with misappropriations, court fees and legal fees. The defendant's agents answered the petition by pleading date 30/1/2018 Requesting the rejection of the claim with the plaintiff to pay all expenses and fees for the following reasons : 1. The agents of the plaintiff did not show interest in the case, direct and influential in the legal, financial or social status of his client, and he did not prove and did not show the direct factual damage independent of its elements shall be removed if a judgment is rendered in this case, as stated in the article (6/1st) of bylaw of FSC No. (1) of 2005 and if his agent has indicated that his client is a political prisoner, we see that it is in the interest of the plaintiff in this case. 2. The agent of the plaintiff said that the House of Representatives has cited several paragraphs in the text of the law were not within the project submitted by the government. It is no secret that the House of Representatives under the article (16) of constitution of the original competencies of the federal legislation, especially since the approval of the Prime Minister To pass the law replaced by the challenge under their letter No. (9253) on 12/8/2013. 3. According to the prosecutor, the fact that those who were displaced to the Rafha camp in Saudi Arabia in (1991) as political

prisoners violates international laws and their definition of the meaning of "political prisoner" We find that the Rafha detainees fled Iraq as a result of the former system's oppression of their opposition to this policy and they incarcerated against them and remained in detention until they were granted asylum in several countries and that the House of Representatives that legislation reflects the legislative will to include them in the law under challenge. As for what the plaintiff's agent protests against financial burdens, he explained that the House of Representatives is the judge of financial burdens or not, and that under the constitution he draws the state's fiscal policy the draft budget law for fiscal years, which included financial allocations for the law under challenge, the plaintiff was not authorized to challenge the law rather than the Council of Ministers. The plaintiff 's agent refers to the decision of the State Consultative Council No. (126/2012) date 18/12/2012, on the basis of clarification of the General Secretariat of the Council of Ministers on the texts of the law challenged we explained that the decisions of the State Consultative Council are binding on the party that requested the Consultative Council and the House of Representatives, and requested to reject the case with the plaintiff charging the costs and fees of the lawyer and appointed the court a date for the pleadings and on the day appointed for the argument attended the plaintiff's agent in the lawsuit No. (4/federal/2018) and agents of the defendants and began public immanence pleading. The plaintiff's agents repeated what was stated in the petition and asked for a judgment under it, with the defendant / being in this capacity charging all expenses and legal fees. The defendant's agents also repeated what came in pleading and requested to reject the case with the defendant loading all the banks and fees lawyers. Prosecutors said their client's moral and material interests had been affected by amendments to the law (35) of 2013 to bring in detainees with political prisoners and he does not want to be like Rafha detainees this on the one hand and the other his agent has been physically damaged. In terms of material, the court inquired about the interest that was damaged and whether his salary was reduced or not reduced, he replied that he did not lower. The court noted that there was another lawsuit filed by the plaintiff's agent (ha. jim. kaf. ra.) Secretary General of the National Faction Party/ being in this capacity on the defendant himself the Speaker of the House of Representatives /being in this capacity No. (12/federal/2018) where the prosecutor's agent asked the FSC to rule on the unconstitutionality of the first amendment to the prisoners' institution law No. (35) of 2013 the cancellation of all the effects of it retroactively and the defendant to charge all fees and expenses and legal fees. In view of the subject matter and the respondent's unit, the Court decided to unify the proceedings and to consider the numbered case (4/federal/2018) filed by the plaintiff (dad. ain. feh.) is the original as the oldest . The plaintiff's agent

attended the consolidated lawsuit lawyer (alif. feh. ain.) the agents of the defendant and Boucher attended the public and public hearings The plaintiff's agent repeated what was stated in the petition and asked for a judgment under it, with the defendant charging all expenses and legal fees. The defendant's agents repeated what came in their pleading and request to reject the case with the plaintiff charging all expenses and legal fees. The plaintiff explained in the uniform case that the case was set up by his deputy as secretary-general of the National Faction Party and that the amendment has harmed the interest of a large group of members of his party and highlights the explanatory list in this regard linked to the prosecution case and based on the decision taken in the meeting of 5/3/2018 with the introduction of the Prime Minister/ being in this capacity third person in the case as well as the Minister of Finance/ being in this capacity in order to clarify from them what is necessary to resolve the case, he attended the Prime Minister and his undersecretary (ha. sad.) the civil servant (kha. alif.) attended vicarious the Minister of Finance and began to plead publicly public rights and ask the agents of the tow third party they were given permission for a statement of opinion after contacting their agent and they were given permission. On the appointed day of the pleadings the court was formed and the plaintiff attended the lawyer (waw. mim. shin.) and the plaintiff's agent and the defendant's agents and the third person's agent Prime Minister the third person's agent and the Minister of Finance/ being in this capacity and began public and public advocacy. The three agents said they were unable to contact their clients and deal with the case. The court examined the original and unified petition and its contents. Accordingly, the court decided to remove the three persons from the case and continued to hear the case in respect of the plaintiffs and the defendant, The agents of the plaintiffs replied that they had nothing to add to their previous statements, and the defendant's agent repeated their previous statements, and therefore nothing was said. The conclusion of the pleading was understood and the decision was read publicly in the hearing.

The Decision :

For scrutiny and deliberated by FSC found that the plaintiff's agents in the case No. (4/federal/2018) challenges the unconstitutionality of the law No. (35) of 2013 Law of the First Amendment of the Law of the Foundation of Political Prisoners No (4) of 2006 for violating articles (60/1st,62/1st and 80/2nd) of the constitution they ask the FSC to decision to unconstitutional and repeal and cancel all amendments that included refugees in Rafha camp because the moral and material interests of his

client have been affected by amendments to the law including the inclusion of Rafha detainees with political prisoners, he does not want to be like Rafha detainees and since the prosecutor's agents have admitted before this court that the plaintiff did not reduce his salary and did not affect the amendment on the financial side. The FSC found that the plaintiff is not materially harmed by the issuance of the law contested unconstitutionality, so that the plaintiff has no interest in the case approved by the law and accordingly, and if the requirement of interest is not met in the plaintiff's case, his claim will be rejected from this side based on the article (6) of bylaw of FSC No. (1) of 2005 and the article (6) of the Law of Civil Procedure (83) of 1969. As for the plaintiff in the case No. (12/federal/2018) unified with the case (4/federal/2018) which also challenges the unconstitutionality of the same law above and asks the FSC to rule unconstitutional for violating the provisions of the constitution. Since the plaintiff's agent had admitted before this court that his client was not a political prisoner, the FSC found that the plaintiff was not an agent of his party's members in relation to their personal rights and is not authorized by the government to hold the case on the grounds of a waste of public money because it would need to be filed with the lawsuit and the evidence of the face of waste and the amount and support of that. Therefore, the conditions of interest to be provided in the case are not available in his application and stipulated in the article (6/1st, 2nd, 3rd) of bylaw of FSC No. (1) of 2005, as well as the dispute is not available to the plaintiff in the lawsuit in accordance with the requirements of article (4) of the Code of Civil Procedure No. (83) of 1969. If the dispute is not achieved and is not directed in the case, the wisdom of the ruling to return the case on its own without entering the basis according to the substance of article (80/1) of the Code of Civil Procedure for advanced reasons, a unified case No. (12/federal/2018) is also subject to reject. Therefore, the FSC decided for reasons mentioned above rejected the plaintiff's case No. (4/federal/2018) and its uniformity of the case No. (12/federal/2018) with the plaintiffs in charge of all the expenses of the lawsuit and the attorney fees for the defendant's agent amount of one hundred thousand

dinars in equal shares between them and the decision was issued in the presence of the agreement and binding in accordance with the provisions of article (94) of the constitution of the Republic of Iraq of 2005 and the article (5/2) of the law of FSC No. (30) of 2005 it was publicly understood on 6/5/2018.