

The Federal Supreme Court has convened in 20.6.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Mikaeel Shamshon Qas Qourqis , Hussain Abbass Abo Al-timen and Abood Saleh Al-Temimi who are authorized to judge in the name of the people. And it issued the follow decision:

The Plaintiff: Minister Of Interior /being in this post his agent (Meem. Alf.) and (Fa'. Ha'. Ha').

The Defendant: The Chief Of General Prosecution /being in this post, his agent the manager of legal affairs department in the HJC (Aen. Fa').

THE CLAIM:

The agents of the plaintiff claims that the General Prosecution Code no.(49) for year 2017 in article (5) clause (twelfth) mentioned the competence of the General Prosecution in (investigation in the Financial And Administration Corruption Crimes and all the crimes related to the work duty stipulated in Penalty Code no.(111) for year 1969/amended). As the investigation in the financial and administration corruption crimes is in the competence of the General Inspector Office according to order no.(57) for year 2004 issued by the Temporary Coalition Authority; section one of it named the reason of that order (a general independent inspector offices shall be establish, that they will be able to do their investigation and checking and evaluation and any other activity to over view the performance according to the known procedures) that will make a clear intersection in the competence of the General Prosecution Code no.(49) for year 2017, according to article (4/second) of FSC Bylaw no.(30) for year 2005 stipulated (judging in the disputes that is related to the legitimacy of the rules and decisions and systems and orders issued by any party have the right to issue it, and canceling the ones that contradict with the Code of managing the Iraqi Country for the temporary stage, that will be done by a request from the Court or any official party or a plaintiff). Therefore they request from the FSC to judge in the unconstitutionally of article (5) clause (twelfth) of the General

Prosecution Code no.(49) for year 2017 that conflict with order no.(57) for year 2004 according to the aforementioned.

After registering the case according to the standard procedures, the defendant was informed of the case and asked for his answer; he answered by the letter issued by (the General Prosecution Presidency/legal section/77/opinion/2017) in 8.5.2017 that General Prosecution Office is one of the component of the Federal Judicial Authority and it is obligated by law to enforce the valid codes that is related to its duty issued by the legislative authority, as the code passed through the legislative stage and approved by the Republic President according to articles (61/first and 73/third) of constitution and published in the official newspaper and become valid in (6/3/2017) as the General Prosecution Presidency is not the party who legislate this code ; the ICR did, therefore the ICR is the real opponent in this case and the legislative should be directed to it, as the legislative isn't achieved in this case therefore he requested to reject the case.

In the appointed date for proceeding the agents of the two parties attended and started the public proceeding, the agents of the plaintiff repeated what is mentioned in the case petition and requested to enter the ICR Speaker as a third party in the case, the agent of the defendant repeated what is mentioned in the answering draft presented by the General Prosecution Office, as there is nothing to add to the proceeding and the case is ready to be judged the Court decided to end the proceeding and found that there is no point of entering the ICR Speaker in the case as this will dilate the judging in this case. So the follow decision made clear.

THE DECISION:

In the deliberation and discussion the FSC found that the plaintiff agents impeaching in the case petition the unconstitutionality of article (5) clause (twelfth) of the General Prosecution Code no.(49) for year 2017 mentioned the competence of the General Prosecution in (investigation in the Financial And Administration Corruption Crimes and all the crimes related to the work duty stipulated in Penalty Code no.(111) for year 1969/amended). Claiming that its conflict with order no.(57) for year 2004 issued by the Temporary Coalition Authority section one, as the investigation in the financial and administration corruption crimes is in

the competence of the General Inspector Office. The plaintiff claim that will make an intersection with the mentioned order, therefore he request from the FSC to judge in the unconstitutionality of article (5) clause (twelfth) of the General Prosecution Code no.(49) for year 2017.

The FSC finds that the article (5) clause (twelfth) of the General Prosecution Code no.(49) for year 2017 is part of General Prosecution Code no.(49) for year 2017 that was legislative by the ICR therefore the litigation in this case should be directed to the party who authorized it not to the Chief Of General Prosecution according to article (4) of Civil Proceeding Code no. (83) year 1969, therefore the case will be rejected by this side, and if the litigation is not achieved in the case then the Court will decide to reject the case according to article (80) of Civil Proceeding Code. About the claim that the impeached decision conflict with order no.(57) year 2004 issued by the Temporary Coalition Authority; that also will be rejected because conflicting a legal text with another legal code doesn't make it unconstitutional as the impeached text is the most recent one and the two text have the same power and issued by the ICR according to its authority. For the aforementioned reasons the plaintiff case will lose its legal and constitutional proof and will be rejected.

Therefore the FSC decided to reject the case and burden the plaintiff the expenses and the fees of the case. The decision was made unanimous and made clear in 20.6.2017.