



The Federal Supreme Court (F S C) has been convened on 4.30.2018 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, Hussein Abbas Abu Al-Temmen and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. (ha.ain.alif.ain) political prisoner.
2. (ha.jim.ain.alif) political detainee. } Their agent the barrister
3. (mim.jim.ain) political detainee. } (alif.sad.ha)

The first Defendant: Speaker of the ICR/ being in this capacity – his agents the jurists the director (sin.ta.yeh) and the legal consultant assistant (heh.mim.sin).

The second Defendant: Head of political prisoners' foundation/ being in this capacity – his agent the jurist as general director assistant (fa.sin.shin).

The Claim

The agent of the Plaintiffs claimed before the FSC in the case number (45/federal/2018) that the first defendant (speaker of the ICR/ being in this capacity) previously enacted the law number (35) for 2013 (the law of first amendment of the political prisoners' foundation law) number (4) for 2006. This amendment included a true violations in forming article (11) of it which stipulated (anyone has an advantage can request to reconsider the decisions which issued under implementing provisions of the law number (4) for 2006 and may violates provisions of this law). Also the second he claimed that the second defendant (Head of political prisoners' foundation/ being in this capacity) had

interpreted the article for the advantage of the foundation, and implementing it contrariwise the law. Aforementioned foundation's Head granted himself the right of issuing instructions and forming a committee to reconsider the decision which became final. He relied in his pretense on provisions of article (23) of the same law which texts (the Head of the foundation with approval of the cabinet the right of issuing instructions to facilitate executing this law provisions). While challenged article is from a body weren't stipulated to form aforementioned committee. Besides, it violates provisions of article (10) of the law number (4) for 2006 in many clauses whereas the body that presents the complaint or challenging the decisions and legal period. For these reasons, he requested from the FSC to call upon the defendant for argument and to judge by annulling article (11) of the law number (35) for 2013, as well as annulling all instructions which established by the political prisoners' foundation on it. Also to consider all issued decisions by voiding covered persons decisions retroactively and subsequently, and to burden the defendants the expenses and advocacy fees. He relied in the case of his client to the provisions of article (93/3) of the Republic of Iraq Constitution for 2005 and article (4/2) of the FSC's law number (30) for 2005. The agents of the defendant answered by draft dated on 3.20.2018, and they requested to reject the case for the reasons listed in, because the agent of the plaintiff detailed in interpreting and implementing article (11). Therefore, the text (challenge subject) shall not be violated, as well as the constitutional text. They also added that he must go to the competent courts to challenge the decisions which produced from implementing the law. The agent of the second defendant answered by answering draft dated on 4.4.2018, and he requested to reject the case for incompetence for the reasons listed in. Also the agents of the defendants requested to burden the plaintiffs the expenses and advocacy fees. After entitling this case, and completing required procedures according to the bylaw of the FSC number (1) for 2005. Date for argument was set, and the Court listened to the sayings of its parties and reviewed the case's documents, the end of the argument made clear and the decision recited publicly in the session.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the case of the plaintiffs is limited in challenging the post of the first defendant the Speaker of the ICR/ being in this capacity stipulated in the political prisoners foundation law number (4) for 2006 (amended) which is it the text of article (11) of it (anyone has an advantage can request to reconsider the decisions which issued under implementing provisions of the law number (4) for 2006 and may violates provisions of this law). The plaintiffs requested to annul this article and what produced because of its implementation. Among these implications is forming a committees and issuing a decisions concerns political prisoners. The FSC finds that the plaintiffs didn't challenge unconstitutionality of aforementioned article, and it also finds its listing in the law doesn't violates the provisions of the Constitution. As for implementations which it relies on, the law has made a method to challenge the decisions which issues according to it before competent bodies and not among these bodies the FSC which article (93) of the Constitution and article (4) of its law determined its competences. Not among these competences is obliging the first defendant to lift the article (challenge subject). Based on that, trying this case is out of the FSC competence. Besides, litigation of the second defendant the Head of political prisoners foundation/ being in this capacity about a text enacted by the first defendant/ being in this capacity and according to the competence of the ICR which stipulated in article (61) hasn't substantiation from the Constitution and the law. Therefore, the Court decided to reject the case of the plaintiffs for incompetence, and to burden them the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued decisively according to provisions of article (94) of the Constitution and article (5) of the FSC's law number (30) for 2005, and made clear on 4.30.2018.