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The Federal Supreme Court (F S C) has been convened on 6.20.2017 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 , Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / the Head of the Republican Presidency divan/ being in this capacity/ his agent the legal official (alif.sin.ra).

Defendant / the Prime Minister/ being in this capacity/ his agent the legal official (ha.sad).

### Claim

The agent of the plaintiff claimed the defendant has issued an instruction (financial assets disclosure) number (2) for 2017. Because these instructions should be subjected to facilitate the law execution process and to clarify it according to what article (80/1<sup>st</sup>) of the constitution obliges, therefore is should not containing what violates the constitution or the law which issued to facilitate its executing and one of these violations what listed in item (1<sup>st</sup>) of article (11) which stipulated on (cease the expending of the salary and the allowances for those whom did not present their financial assets disclosure form...) and this text is a constitutional violation because attaching the salary of the employee should not be implemented but with a judicial decision, and that forms a violation for article (47) of the constitution, as well as the employee's salary is one of his legal rights, because the state's employees' precision law did not allow to deprive the employee from all of his salary even in case of his accusation and taking his powers and a half of his salary

should be expended even if there is a judicial decision by attaching his salary, so fifth of that salary must not be attached to not deprive the employee and his family from the source of his living and to not force the employee to swerve, also the instructions introduced in item (4<sup>th</sup>) of article (12) an offense is not exist in any law which obliges to initiate the penalty case (if there was a conflict with the financial interests of the person who should present his financial disclosure) because this offense is not exist in the integrity commission law number (30) for 2011 and not exist in any other penalty law, and that violates article (19) of the constitution as well as violates article (1) of penalty law. Also the state's shura council showed the violations of the instructions. The plaintiff requested to judge with unconstitutionality of the two challenged items. The defendant was informed by the petition of the case and the documents, so he answered it according to his draft dated on 6.1.2017 which he listed in it that the FSC is not specialized to review the challenge of these instructions which is a specialty of the administrative judiciary. The plaintiff is improper to be a litigant in the case even if he has a Minister's post and has the powers of finance Minister, and these instructions are not damaging the Presidency of the Republic which the plaintiff belongs to. Objectively the instructions was had been issued to facilitate the law execution and obliged the involved to disclose his financial assets and to execute this obligation severely and firmly. And the defendant issued these instructions according to his powers stipulated on in article (80/3<sup>rd</sup>) and article (78) of the constitution. And the instructions did not decide to attach the employee's salary but to stop expending it to force him to disclose his financial assets to prohibit him from evading of his finance disclosing. As for initiating a penal case against the assignee if there was a conflict of the financial interests of the assignee and implementing the penal texts against him including the articles (240 & 329 & 331 & 341) of penal law and the agent of the defendant requested to reject the case. The court called upon the both parties for pleading, and then the agent of the plaintiff and the defendant attended. The agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it , as well as the agent of the defendant repeated his sayings and requested to reject the case. Whereas nothing left to be said, the end of the pleading made clear, the decision issued publicly.

## The decision

After scrutiny and deliberation by the FSC, the court found that plaintiff the Head of the Republican Presidency divan/ being in this capacity challenged in this case the unconstitutionality of articles (11/1<sup>st</sup>) and (12/4<sup>th</sup>) of (financial assets disclosure instructions) number (2) for 2017 which issued by the defendant the Prime Minister/ being in this capacity according to his powers stipulated on in article (80/3<sup>rd</sup>) of the constitution, where article (11/1<sup>st</sup>) of these instructions determined by stop expending the employee's salary and his allowances who did not present disclosure of his financial assets during the period stipulated on in this article. As for article (12/4<sup>th</sup>) the subject of the challenge, the commission of integrity obliged to initiate a penal case against who assigned to disclose his financial assets in case of (financial interests' conflict) occurred to him or for whom mentioned of his family member in the aforementioned article. The FSC finds that listing of the aforementioned texts (the challenge subject) in the instructions forms a violation for the provisions of article (47) of the Republic of Iraq constitution for 2005 which stipulated on the principle of separation between the three authorities, which the state consist of, and these authorities: legislative, executive and judicial). As appreciation from who enacted it in the constitution for the tasks that each authority of these three authorities carries out, as well as to determine its responsibilities. The FSC finds that listing of the two texts (the challenge subject) into an instructions issued to facilitate execution of integrity commission law number (30) for 2011 has passed the goals of the instructions issuance, because the integrity commission law did not containing any text authorizes the Head of the integrity commission to stop expend the salary of the employee and his allowances if he did not present the form of his financial assets disclosure during the limited period, which regards an aspect of salary expending stoppage aspects in its reality. As well as it did not containing or in any penal laws a text condemns the case of (financial interests conflict) if existed for the assignee who should present his financial assets disclosure until it gives the right to the Head of integrity commission to initiate a penal case if achieved. It is not possible to compare this action with another actions condemned by the penalty law might be similar to the case of interests' conflict, because the comparison in the penal field conflicts with the constitutional principle (no crime or punishment but

with a text...) which listed in article (19/2<sup>nd</sup>) of the constitution. Based on that the listing of these two texts (challenge subject) into the instructions forms an addition to the commission of integrity law and this addition in case of it was needed could be handled by the ICR by issuing a legislation for it according to its powers stipulated on in article (61/1<sup>st</sup>) of the constitution. As well as listing of these two texts into the instructions takes it out of its role which explained in article (80/3<sup>rd</sup>) of the constitution, because the task of the instructions is a finder, interpreter and director for how to implement the law texts (the instructions subjects) which had been issued to facilitate its execution and not producing and additional texts to the law. According to what aforementioned the listing of articles (11/1<sup>st</sup>) and (12/4<sup>th</sup>) texts into the instructions number (2) for 2017 (financial assets disclosure instructions) forms a violation for provisions of articles (47) and (80/3<sup>rd</sup>) of the constitution, therefore the court decided to judge with its unconstitutionality and to burden the defendant/ being in this capacity the expenses and the advocacy fees of the agent of the plaintiff/ being in this capacity amount of one hundred thousand Iraqi dinars. The decision issued decisively and unanimously according to the provisions of article (94) of the constitution and made clear on 6.20.2017.