In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 57/federal/media/2017

Kurdish text

The Federal Supreme Court (F S C) has been convened on 8.3.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Qasim AL-Janabi, 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: (ha.heh.mim) his agents the barristers (feh.heh.nun) and (alif.sin.shin).

Defendants: 1- The Speaker of the ICR/ being in this capacity/his agents the legal officials (heh.mim) and (sin.ta).

2- The Prime Minister/ being in this capacity/ his agent the assistant consultant (ha.sad).

Claim

The plaintiff claimed that the federal cassation court and according to its decision number 8537/first penalty committee/2013 dated on 5.26.2013 had decided to open an individual case for the plaintiff (ha.heh.mim) according to article (340) penalties not with the other accusers and judge on him according to it, and to burden him the value of the damage that affected the public finance, and to apply the provisions of the decision (120) for 1994 against him only. On 3.3.2014, AL-Najaf felony court decided to convict the plaintiff according to article (340) penalties, and decided to imprison him for two years in penalty case number (232/jim/2014) and to obliges him to repay the value of the damage to AL-Najaf reconstruction committee which affected the public finance amount of (one hundred seventy million and five hundred twenty thousand and nine hundred sixty dinars which caused by his intentional fault, and to not be released after the duration

of his sentence is over but if he paid the aforementioned amount, according to the provisions of the decision (120) for 1994. The plaintiff clarified that the decision issued by the Revolution Leadership Council (dissolved) (not to release the accuser of embezzlement felony or stealing the state's finance or any other intentional crime happens upon it after he spend the duration of his sentence if these finances were not retrieved from him or transferred to him or changed with or its value). The agents of the plaintiff claimed that this decision regards a violation for the true Sharia and the Iraqi valid constitution, as well as the justice rules, the human rights principles and the International pacts, and violates the Iraqi laws and the penal jurisprudence. Therefore he initiates to challenge it before this court because of its unconstitutionality, requesting to cease working with it. The agents of the plaintiff claimed that the unconstitutional challenged decision violates the International .human rights announcement for 1948 and the International pact document which concerns in civil and political rights for 1976, and violates the Iraqi valid constitution in articles (2/1st/jim) and article 19/6th and article 37/1st and article (46) of it. Also it is violates the principles of justice by not letting the accuser in custody and restricted after the duration of his sentence is over. And the penalty must conform to the magnitude of the crime, and his staying in prison after the duration of his sentence is over means he is imprisoned for life. Also it is not proper to call the sentenced by accuser, because he attained his penalty and regards debtor to the state, and what made on his trust of damage, and the civil law separate that. The agents of the plaintiff added, that the decision conflict with the liability law number 31 for 2005. And it is conflicts with Islamic Sharia and the jurisprudence base (time limit till the debtor gain the debt's money) and his not repaying the judged finance means the accuser will spend all his life in prison. The agents of the plaintiff requested to call upon the defendants/ being in this capacity, and to judge with unconstitutionality of the Revolution Leadership Council (dissolved) number (120) for 1994, and to oblige the two defendants to cancel working with that decision, and to release the plaintiff of custody, and to burden them the fees and charges. The two defendants were informed with the petition of the case and its documents, so, the agents of the first defendant answered with their drat dated on 7.4.2017, which they listed in, that the challenged decision is still valid, and it is not intersecting or violating the constitution, and the decision aims to

maintain the public finance and not the let the accuser from getting advantage of his crime, and they requested to reject the case. The agent of the second defendant/ being in this capacity answered according to his draft dated on 6.6.2017, which included several defends, among it, that the court is not concern to review the case, but it is a specialty of the penal court, and the plaintiff staying in prison not violates the law, and the litigation is not directed to his client because is not one of his tasks to enact the laws, but it is a specialty of the ICR. And the rest of the agents of the plaintiff's claims has no base in law, and the listed penalty in decision number 120 is appurtenance penalty, and the plaintiff committed his crime and damaged the state's finance, and he requested to reject the case for non-adversarial against his client, and non-specialty of this court. The court called upon the agents of the two parties, so the agents of the plaintiff and the agents of the first defendant and the agent of the second defendant attended, the pleading proceeded publicly. The agents of the plaintiff repeated what listed in the petition of the case, and requested to judge according to it, and they presented an illustrative draft. The agents of the first defendant repeated their previous defends, and the agent of the second defendant repeated his sayings and what listed in his answering draft, the court ended the pleading and issued the following decision publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the case of the plaintiff produced from the federal cassation court which directed in its decision issued by first penalty committee in number (8537/2013) to open an individual case for the accuser (ha.heh.mim) (the plaintiff in this case) and to court him according to article (340) of penalty law. Based on that, the felony court in AL-Najaf courted him according to the law and judged on him for two years in prison, and to oblige him to repay amount on (171.52.968) one hundred seventy one million and five hundred twenty thousand and nine hundred eighty six Iraqi dinars to the reconstruction committee in AL-Najaf, of his intentional fault which caused the loss of the aforementioned committee what equal that amount, and to not be released after the duration of his sentence is over according to the provisions of Revolution Leadership Council (dissolved) number (120) for 1994. The plaintiff initiated a case this case, challenging the unconstitutionality of the aforementioned

decision, because it is violating the International pacts and the International Human rights announcement and the listed articles in the Republic of Iraq constitution for 2005 which mentioned in the petition of the case. The FSC finds from reciting the decision of the Revolution Leadership Council (dissolved) number (120) for 1994 which judged with not releasing the accused of embezzlement crime or stealing the state's finance or any other intentional crime happens upon it after he spend the duration of his sentence if these finances were not retrieved from him or transferred to him or changed with or its value. And by reviewing the implementations of this decision, and after the accuser spend the duration he is courted with of any crime from the aforementioned crimes in it, he must stay in prison for a duration has a start but endless, and the end of the imprisoning duration came is a condition could not be achieved with insolvency, which is it repaying the damage amount that affected the state in its public finance, and by analyzing this attitude, the legal post of the accuser who spent the duration of the penal judgment duration which he was courted with, and fit to the size of the crime he committed, he will be debtor to the damaged body, which is it one of the state's foundations and meant by the challenged unconstitutional decision. The FSC finds, that collecting of this foundation to its debts, is right guaranteed by law for it, and to get this right, it must be done with the determined procedures in the laws, not by executing on the debtor himself, and with value that ensures pressure on him to manifest his money and with the duration determined by the law not endlessly. Whereas the execution law number (45) for 1980 had determined this duration in article (43) of it with no more four months to compel the debtor to manifest his money, in addition to the other methods which determined by law to get these finances back, by restrain him or travel banning etc…, as well as what the governmental debts collection law number (56) for 1977 listed, of means that ensures collecting the state's rights. And saying the contrary of that, and keeping the debtor under custody or prisoner with no limits if he was insolvent, and the state with its abilities was not capable to discover his finances and getting its rights with the legal means, and resorting to implementation of the provisions of decision (120) for 1994 by keeping him prisoner without determining the duration of his imprisonment, which means conflicting with the principles listed in the constitution in the second section of the second chapter which related to freedoms,

articles (37-46), one of it, what article (37/1st/alif) stipulated on (the liberty and dignity of the man shall be protected) and what clause (jim) of same article which stipulated on prohibiting all physiological and physical torture. As well as what article (46) forbidden of not restricting the rights and freedoms but with a law, and that law must not touches or restricting the core of right or freedom. Based on that, whereas article (2/jim) of the constitution did not allows to enact a law conflict with the rights and the freedoms listed in, because enacting such law or its existence already forms a violation to the provisions of the constitution, and that needs to judge with its unconstitutionality and that correspond with the Revolution Leadership Council (dissolved) No. (120) for 1994 which keeps the insolvent debtor who ended his penal sentence duration in prison endlessly, and that forms a conflicting with the basic freedoms and rights listed in abovementioned articles. As for the defend which listed by the first defendant the Speaker of the ICR/ being in this capacity, and this decision still valid and targets to maintain the public fund and hindering without advantaging the accuser from his crime which listed by the second defendant the Prime Minister by saying that executing decision (120) for 1994 regards an appurtenance penalty the court of penalty judge with it, he also defended that the FSC is not competent of reviewing this case by challenging the aforementioned decision, in addition to his defend with non-adversarial against him because he did not enact the decision (challenge subject). The FSC finds, as an answer to the defend of the first defendant the Speaker of the ICR/being in this capacity, that the decision (challenge subject) targets to maintain the public fund, and maintaining the inviolability of the public fund is an obligatory listed in article (27) of the constitution, and it is includes both, the state and the citizen. The establishments of the state are obliged to maintain the public fund and protect it, by putting the basis that ensures the way of its dispensing for the public benefit with strict and transparent procedures by considerable enactments to close the corruption loopholes and a conscious and honest monitory to hindering fall in crime, as for the citizen obligation by respecting and protecting the public funds, so the duty of citizenship obliges him by that, and if he attacked or touched the public fund without a right, the law and the judiciary are responsible of imposing the penal sentence on him and implementing the listed texts in execution law to retrieving that fund, and it is not permissible to inflict the body punishment on him with no

limits – as the decision of the challenge subject – because this regarded a form of physical and psychological torturing forms, which is forbidden in article (37) of the constitution, so, the court decided to reject the defend of the first defendant/ being in this capacity. As for defend of the second defendant the Prime Minister/ being in this capacity, that the decision No. (120) for 1994 is an appurtenance penalty, and this defend is rejected, because the appurtenance penalty listed exclusively in articles (95-98) of penalty law No.(111) for 1969 not among it what mentioned in decision No. (120) for 1994, as for his other defend that the FSC is not competent in reviewing the listed challenge on decision (120) for 1994, the court answer on that defend, that reviewing of the aforementioned challenge is the core of the court competence which stipulated on in clause (1^{st}) of article (93) of the constitution, which is it monitoring the constitutionality of the valid laws and regulations. The court decided to reject the defend from this aspect, as for his defend of non-adversarial against him in this case, because he is not the body which enacted this decision (challenge subject) and he is did not took its post, the FSC finds the truth of this defend because litigation and the listed meaning in article (4) of the civil procedure law No. (83) For 1969 in not available for him, so, the court decided to accept defend from this aspect. According to what mentioned of reasons and substantiations of unconstitutionality of the decision (challenge subject) in this case, it is relying on the listed provisions in the constitution, which clarified in the core of this judgment. Based on that, the FSC decided to judge with unconstitutionality of the Revolution Leadership Council (dissolved) No. (120) for 1994 and cancelling it, and to burden the first defendant/ being in this capacity the expenses and the advocacy fees to the agents of the plaintiff amount of one hundred thousand Iraqi dinars, and to reject the case of the plaintiff against the second defendant the Prime Minister/ being in this capacity for the aforementioned reasons, and to burden the plaintiff the proportional expenses and the fees of the second defendant agent amount of one hundred thousand Iraqi dinars. The judgment issued unanimously, in presence and final according to the provisions of article (94) of the constitution and article (4) of the FSC law No. (30) For 2005, and made publicly on 8.3.2017.