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The Federal Supreme Court (F S C) has been convened on 10.17.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Rijab AL-Kubaisi, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mohammed Qasim AL-Janabi and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff: the Prime Minister/ being in this capacity – his agent the legal assistant consultant (heh.sad).

Defendant: Speaker of the ICR / being in this capacity – his agents the legal officials (sin.ta.yeh) & (heh.mim.sin).

### Claim

The agent of the plaintiff/being in this capacity claimed, that the defendant/ being in this capacity has approved the (the general committee to monitoring the federal revenues allocation numbered 55 for 2017) law, which included adding and listing a number of phrases and articles were not listed in the law bill which presented by the government and erased a phrases were existed in it, whereas the aforementioned procedure includes a constitutional violations objectively and subjectively and violates the constitutional judiciary in Iraq for the following reasons: first: the defendant carried out changing the body of connecting from the cabinet to the ICR, and in this concern he stated what follows: 1. Articles (61 & 62) of the constitution determined the ICR specialties by enacting the laws and monitoring the governmental performance and makes transaction in the chapters of the budget, as well as approving the agreements and appointing the high posts occupiers in the state, and the aforementioned committee is specialized in monitoring the federal revenues allocations which is it an executive nature represented by verifying the justice of allocating the

federal revenues in provinces and governorates incorporated into a region and distributing the donations, aids and the international loans with a way which secures the benefit for all components of the people with principle of justice and transparency which approved by the constitution in article (106) and that activity clearly has an executive nature represented by the government's carrying out to verify in money distribution justice which dedicated to the regions and governorates, as well as distributing the donations, aids and the international loans which confirmed in the text of rationale of the law, whereas the nature of this committee specialty is executive nature within the government's specialty which determined in article (80/1<sup>st</sup>) of the constitution (to plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a ministry). Therefore, the ICR has exceeded its competences in enactment and violated the principle of powers independence (article 47) of the constitution. 2. The basis of the independent commissions is to not be associated to a department unless the constitution stipulated on what contrarily, and article (106) were not stipulated on the department which the commission is associated with the ICR, while the articles (102 & 103) stipulated on to associate the higher commission of human rights, the higher independent electoral commission, federal fund monitory divan, commission of integrity and the media and communication commission with the ICR, so, associating these commissions with the ICR is not supported by the law and existence of a reference for these commissions depends on the nature of its work, therefore its associating to the cabinet is a determinate matter. 3. The ICR as it is the legislative power does not has the executive body which enables it from achieving the follow up, required monitory and supervision on the bodies are not associated to a Ministry, one of it the work and activity of the aforementioned commission (challenge subject), also deactivating the work of the ICR (four months in the year) (two months for two legislative periods) for the annual convention session which one of it (eight months) according to article (57) of the constitution and refers the commission out of monitory, supervision and follow up during all this long period, and this matter is not what the constitution aims to protect the state's interest and guarantees the unity of its entity and secures its harmony with completing of the state's executive bodies to practice its work and tasks and well performance of

the commissions not associated to a Ministry. 4. Associating of these commissions which has an executive nature to the ICR never harmonizes with what is common in the parliaments of the world, whereas administrating of these commissions is not entrusted to it which has an executive activity because it does not have the elements which enables it for daily supervision and following up the independent commissions activity, especially if the parliament is not convened, as well as there is an elections duration and what preceding it of preoccupation of the political components and representatives with electoral campaigns and the convening of the first session and its regular delay, as well as the process of electing the Speaker of the ICR and preparing the bylaw and forming the committees, also the cases of absences of the parliaments and committees and lack of quorum and not convening of the committees meetings for several durations during the parliamentary session, with necessity of associating the commission (challenge subject) to the cabinet to let it handling the planning of the general policy of it without interfere with its decisions, procedures and vocational affairs, and take in consideration the matter of its financial and administrative independence which the constitution stipulated on to immunize it from what may affect on its independence. Second: the ICR has amended the article (7/1<sup>st</sup>/alif) of the bill by adding the phrase (to not be more than three members) and replace the phrase (the cabinet) instead of the phrase (the Prime Minister and determining the governments' representatives with three members and make their selecting by the cabinet instead of the Prime Minister, without inquires the government. Therefore, the ICR has amended the governmental bill text without getting the approval of the government or taking its opinion, and by that it violated the constitutional text which according to it a commission shall be established with a law to monitoring the allocations of the federal revenues and this commission consist of the government experts, regions and governorates, also a representatives of it, takes in consideration that the constitutional text did not determine the number of the government's experts and its representatives. Third: the ICR has amended the text of article (8/4<sup>th</sup>) of the governmental bill, which was indicating to the commission to present its annual report to the ICR. Whereas the nature of commission work and activity overcomes with executive nature according to what listed in article (106) of the constitution and article (3) of the commission law which is

it (verifying the justice of federal revenues distribution and verifying the best usage of these revenues), whereas the associating body according to the executive specialty is the cabinet not the ICR, so, when the ICR changed the body which the commission presents its reports to, by the cabinet to the ICR violates the constitution as shown aforementioned, especially article (78) of the constitution which described the cabinet as the direct executive responsible of the general policy of the state and article (80/1<sup>st</sup>) of the constitution granted the cabinet specialty of (to plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a ministry which one of it (the commission of challenge subject). Therefore it will be necessary that this commission presents its report to the cabinet not the ICR which has the right of monitoring the executive power performance including (the cabinet, Ministries and department not associated to a Ministry). In this case the law may not necessary to stipulate that the commission shall present its report to the ICR, and associating the commission with the cabinet does not mean it is not submitted to the monitoring of the legislative power similar to the other executive bodies, even the ICR and especially the representative according to article (61/7<sup>th</sup>) of the constitution may direct to the Prime Minister or the head of the commission any question within their specialty, as well as for twenty five members of the ICR according to article (61/7<sup>th</sup>/jim) may state a general subject for discussion to inquire the policy and the performance (the commission of challenge subject), and for the member of the ICR with approval of (25) members may direct an inquiry to the head of the commission to account him in his specialty affairs. In conclusion, he requested to judge with unconstitutionality of the following phrases (and to be associated with the ICR which listed in article (1) of the law) (to not be more than three members) which listed in article (7/1<sup>st</sup>/alif) of the law (and to be send to the ICR within the first two months of the next year which listed in article (8/4<sup>th</sup>) of the law. After registering this case at this court according to clause (3<sup>rd</sup>) of article (1) of its bylaw, and receiving the defendant's/ being in this capacity answer which he requested according to it to reject the case for the reasons listed in the two answering drafts: first: formally, because the plaintiff had divided his request to judge with unconstitutionality of the texts (selectivity of the request) and this matter is contrarily with what the FSC is

specialized with according to article (93) of the constitution. Second: the true specialty of the ICR which stipulated on in article (61/1<sup>st</sup>) of the constitution is to enacting the federal laws which does not forms a financial burden and not affects the judicial power or the general policy of the state, at the end he said that enacting the law (challenge subject) introduces as the specialties of the ICR, and after completing the required procedures according to clause (2<sup>nd</sup>) of article (2) of the FSC bylaw No. (1) For 2005, the day 9.18.2017 was set as a date for pleading, then it was postponed until 10.17.2017 and on that date the court was convened and the public in presence pleading proceeded. The agents of both parties attended, and the court noticed that the defendant presented by his agent an illustrative draft, and the agent of the plaintiff answered this draft and attached it to the file of the case and after the agents of both parties repeated their sayings and the court completed its investigations, whereas nothing left to be said, the end of the pleading and the decision were recited publicly on 10.17.2017.

### The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff the Prime Minister/ being in this capacity had claimed that the defendant Speaker of the ICR/ being in this capacity as he represents the ICR in the judicial litigation had enacted (the general committee to monitoring the federal revenues allocation) No. (55) For 2017, and the council had listed and adding a phrases and articles were not listed in the bill which presented by the government, as well as it deleted a phrases were existed in the bill, and what defendant/ being in this capacity did forms a constitutional violations formally and objectively, and the plaintiff/ being in this capacity restricted its challenges and requested to judge the unconstitutionality of the following: - associating the aforementioned committee to the ICR according to the provisions of article (1) of the aforementioned law. – necessity of sending the annual report of the committee to the ICR in the first two months from the next year according to the provisions of article (8/4<sup>th</sup>) of the aforementioned law. The FSC finds by studying the petition of the case and the defends of the defendant/ being in this capacity and return to the aforementioned committee law, that associating this committee administratively to the ICR is not supported by the constitution whereas it did not find a text judge with that, similar in associating (fund monitory divan) and (the

media and communication committee) whereas article (103/2<sup>nd</sup>) of the constitution stipulated on associating them with the ICR, we finds that the constitution set them under the (fourth chapter) of it, which specialized in the independent committees, especially in article (106) of it and it did not associating it with any of the three powers stipulated on in article (47) of it, to preserve it from carrying out its tasks independently and objectively. This matter is what the ICR headed to when enacted (the state council law) No. (71) for 2017 and did not administratively associating to one of the three powers to secure its independence of it when carrying out its tasks, and this matter was approved by the FSC in the judgment it issued No. (85/federal/2017) on 10.10.2017. In addition to that, associating the aforementioned committee administratively with the ICR is different objectively of the ICR specialties stipulated on in article (61) of the constitution, whereas the independence of the committee administratively of it is not hindering to not monitoring it according to its monitory specialty constitutionally. Based on that, and whereas no text in the constitution judge with associating the aforementioned committee administratively with the ICR, therefore this associating became violating the constitution. As for orienting of the ICR to determine the federal government experts not more than three members in the aforementioned committee and the necessity of presenting its report of its activity annually within the first two months of the next year to the ICR, so, it is a legislative option for the ICR and not conflicts with the provisions of the constitution, on the contrary it comes as a correct implementation of it according to the provisions of article (61/1<sup>st</sup>) of it, and because this option never affect the principle of separation between powers and not adding any financial commitment on the government or forms a conflict with its general policy, as well as it never affects the judiciary independence. This matter is what the constitutional judiciary in Iraq settled on which represented by the FSC and in the judgment issued by it in case (21/federal/2015 and its unified) issued on 4.14.2015. Based on that, the court decided the following: first- the unconstitutionality of associating the general committee of monitoring the federal revenues with the ICR which stipulated on in article (1) of the aforementioned committee law No. (55) For 2017. Second- reject the challenge listed by the plaintiff/ being in this capacity on what listed in article (7/1<sup>st</sup>/alif) of the committee law which related in determining the government's experts not more than

three members, as well as reject the challenge on article (8/4<sup>th</sup>) of the aforementioned committee law which includes obliging it to send the annual report to the ICR, because it does not violates the constitution. Indicating that this matter never hindering the committee from sending a copy from the report to the government to let it review the mechanism of donation, aids and loans distribution and to guarantee transparency and justice in that, according to its specialty stipulated on in article (80/1<sup>st</sup>) of the constitution. Third- to burden both parties the proportional expenses and to burden the defendant/ being in this capacity 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 provisions of article (94) of the constitution and article (4) of FSC law No. (30) For 2005 and made clear on 10.17.2017.