



The Federal Supreme Court (F S C) has been convened on 1.22.2018 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 , Michael Shamshon Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Head of integrity commission/ being in this capacity – his agent the official jurist (waw.mim.ain).

The Defendant: the Speaker of the ICR/ being in this capacity- his agents the jurist officials the Manager (sin.ta.yeh) and the legal consultant assistant (heh.mim.sin).

The third party: the Head of the public prosecutor – for inquiry.

The Claim

The agent of the plaintiff claimed before the FSC in the case No. (59/federal/2017) that the defendant/ being in this capacity had approved the public prosecution body law No. (49) For 2017, and because of unconstitutionality of some of the aforementioned law texts we proposed to challenge it before your honorable court for the following reasons: first: what article (5) of the aforementioned law included is intersects with the independence of the established integrity commission according to the provisions of article (102) of the constitution and according to the law No. (30) For 2011 whence: 1. the public prosecution carrying out the task of investigation in administrative and financial corruption cases and all other crimes that violates the public job's tasks according to item (12th) of the aforementioned article, while these tasks is the core of integrity commission specialty according to article (1) of its law

abovementioned. This matter will cause interfering and intersecting in specialty and infringing the independence. 2. Creating a department in the presidency of the public prosecution called (the department of the administrative, financial and public funds cases of the public prosecutor) in item (13th) of the same article carrying out supervising the administrative and financial offices of the public prosecution in the Ministries and public independent commissions according to the provisions of item (14th) of the same article. In this matter there is a confirmation about infringing the independence of the commission and cancelling to its role in fighting the financial and administrative corruption by intersecting and interference of specialties as well as cancelling the role of public inspectors' offices which formed by the legislative order No. (57) For 2004. 3. Obliging the state's offices and the bodies which investigate to inform it in case of any felony or penalty may perpetrated which relates to the public right. This matter will deactivate the role of the commission completely in receiving the information and corruptions' allegations and will annulling all the role of investigation office which represent the investigation authority that granted to it by the law.

Second: - in addition to intersecting and deactivate of aforementioned texts of the commission's law and its role, it is unjustified to be enacted includes the public prosecution body tasks because all the investigation outputs of the commission will be consequently reviewed by the higher judicial council, and it is basically performed under its supervision according to the texts of valid criminality procedure law. In the way which it is enacted with does not lack it its value only, but will cause deactivating the work of constitutional commission. Accordingly, for all abovementioned reasons and what other reasons your honorable court may sees, the agent of the plaintiff requested from the FSC to judge with unconstitutionality of the aforementioned texts and to void it and achieving justice, as well as to confirm the principle of harmony between the new legislations which listed in the rationale of the law (challenge subject) and cease its executing till a decision took in the case. The agent of the defendant the jurist official (heh.mim.sin) answered the petition of the case with a written draft dated on (6.5.2017) that the agent of the plaintiff did not clarify in

the petition of his case the constitutional text which intersects it or violated by text of article (5) of the law (case's subject) and article (5/ and its items) stipulated on targets of public prosecution law in the law (challenge subject) and the legislative will had directed to join the public prosecution in investigation based on the monitory role and to contribute in fast detecting of the criminal works and fastness of take decisions in the cases, and to respect implementing the laws. As for creating the administrative and financial offices of public prosecutor body and the financial cases is to supervise on public prosecutor financial and administrative offices for state's bodies, and to stand on the cases that related to public funds and administration, and there is not interference between the public prosecution, public inspectors offices and integrity because each one of it has its role even complementary of each other. Therefore, he requested to reject the case and to burden the plaintiff all the judicial expenses and advocacy fees. On the set day of pleading, the court had been convened and the agent of the plaintiff the jurist official (waw.mim.ain) attended according to the power of attorney attached to the dossier of the case, as well as the agents of the defendant the jurist officials (heh.mim.sin) & (sin.mim.ta) has attended according to their official private power of attorney which attached to the dossier of the case. The public in presence of all parties pleading proceeded, the agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it, and he presented an answering draft dated on (12.28.2017) as an answer on the answering draft of the defendant clarifying in it that enacting the new law of public prosecution and authorize it the listed authorities in articles (5 & 9/1st) of the law contradicts with the text of article (47) of the constitution which determined the three powers and obliged the principle of separation between them. Whereas the interference of public prosecution according to the new law regarded a contradiction with this principle and destruction of it, whereas the judicial power interfere into the works of the executive power and regards an interference in the exercise of public inspectors offices which formed by the legislative order No. (57) For 2004 of the powers and authorities which determined by the same law and restricting of it especially in section (5) & (6) of it because these offices are obliged of referring

all what related to financial and administrative corruption to the commission of integrity. In this case these offices will not be able to perform this because of interfering of its work with the work of public prosecution offices which intent to establish in the Ministries and independent commissions, and this will effect on the commission of integrity work in exercising its tasks which concerns cooperation with public inspectors offices according to article (21) of the commission law No. (30) For 2011. This matter represent an interference in investigation competence of financial and administrative corruption crimes according to clause (1st) of article (3) of the same law which authorized it the power of processing the investigation in these cases, and according to clause (2nd) of article (11) of the commission's law which stipulated on outweighing the real competence of the commission on the competence of the other investigation bodies..Etc. The abovementioned draft was attached to the file of the case, and the agents of the defendant repeated what listed in the answering draft which presented to the court as an answer on the petition of the case dated on (6.5.2017) and they requested to reject the case with burdening the plaintiff the judicial expenses and advocacy fees. The agent of the plaintiff was assigned to clarify the constitutional article or articles which contradict with the challenged articles of the public prosecution law (challenge subject). The agent answered that he is satisfied to list article (102) of the constitution as substantiation for the case of his client because the articles which challenged because its unconstitutionality if implemented will cause deactivating the work of integrity commission in what concerns the financial and administrative corruption cases. For completing the investigation in the case's subject, the court decided to introduce the Head of the public prosecution as a third party in the case to ask him about what requires to take a decision in it because he has the legal entity according to article (1/2nd) of the public prosecution law No. (49) For 2017. The third party the Head of public prosecution an illustration draft dated on 1.3.2018 about the claim of the plaintiff of unconstitutionality of clauses (12 & 13 & 14) of article (5) of public prosecution law No. (49) For 2017. He clarified in it that the content of article (102) of the constitution stipulated on the following (the High Commission for Human

Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law). Therefore, the legislator did not determine the tasks of the commission in a constitutional texts, but it left that matter to the will of the legislator, when it enacted the commission of integrity law No. (30) For 2011, especially in article (3) of it which stipulated on (the commission is working on contributing in hindering the corruption and struggle it, and rely on transparency in managing the judgment's affairs on all levels by (first) investigating in corruption crimes according to the provisions of this law by an investigators subjects to the supervision of the specialized investigation judge according to provisions of criminal procedure law. (Second) to follow up all corruption cases which are not performed by the commission's investigators by the legal representative of the commission with a power of attorney issued from its President. We found from the two text that the legislator was not limiting the investigation in financial and administrative corruption cases which listed in the law on the aforementioned commission but it left the choice for another bodies contributes in inhibiting the corruption and struggle it even if it was not named, but it left this choice for its legislative will to fine a later laws including article (5/12th) of public prosecution valid law, and its investigations came temporal and did not exceeded (24) hours of accuser custody date. Besides that, the legislator granted the legal authorization to the commission of integrity to attend the investigation in the financial and administrative corruption crimes which the investigators of the commission are not a part of it by the attendance of the legal representative of the commission with a power of attorney. In this case the legislator had moved the embarrassment of the commission in such cases which the investigators are not carrying out investigation in it by confirming the attendance of their legal representative. As for what related to the second point of the petition of the case which includes creating a department in the presidency of the public prosecution called (office of the administrative financial and public funds cases in the public prosecution department. The legislator desired to regulate

the body of associating the public prosecutors in the Ministries and independent commission handles directing and monitoring via it, therefore it is created for administrative and regulatory issues (article 5/13th) of public prosecution valid law. As for clause (3) of the petition of the case which includes obliging the state's offices that performs investigation to inform the public prosecution in case that a felony of crime related to the public right occurred, so the existence of such right because the public prosecution is a representative of the social commission and a defender of it, besides, informing which received by the public prosecution does not depend on financial, administrative and crime which related to the public post, but it is exceeded it to include the other penal crimes (article (19/1st) of public prosecution valid law. Accordingly, the legislator had directed to grant the body of the public prosecution an investigation authorities which is it a temporal capacity extends for twenty four hours from the date of accuser's custody in financial, administrative and public post crimes because of the leader role of this unique body in supporting and stabilizing the justice basis in the state. This matter also represent a legislative choice contrarily the investigations which performed by the commission which characterized by continuity, and enacting this law became later on enacting the integrity commission law No. (30) For 2011 and they has the same legal power because they are issued from one legislative body in addition to the independence of the public prosecution body of the executive and legislative powers article (87) of the constitution contrarily the law of integrity commission and spite of its independence but it does not subject to the monitoring of the ICR article (102) of the constitution, and there is no intersecting between the two laws but it came supporting and strengthen to the role of the integrity commission in struggling the corruption. Also he presented a second answering illustration draft on the same date (1.3.2018) as an answer on the illustration draft dated on (12.28.2017) which presented by the agent of the plaintiff and his claim that there is a contradiction between the two articles (5 in its clauses 12, 13, 14 and article (9) of public prosecution valid law with article (47) of the constitution) is a wrong perception for the concept of the abovementioned texts, because one of the law (case subject) targets is to protect the state's system, security, care

of the higher benefits of the people and protecting the public fund as well as the public sector article (2/1st) of valid public prosecution law, and to contribute with judges and specialized bodies in fast detection of criminal actions and to work on fastness of taking decisions in reviewed cases. Therefore, granting the public prosecution and investigation authorities and others represented by receiving notifications about the crimes which forms a penalty or misdemeanor is includes the context of these targets, and there is no contradiction between these texts with article (47) of the constitution that the public inspectors are members of judicial police and subject in their duties performing to monitory and supervision of the judge and public prosecution members. So, there is no intersecting in performing the tasks and duties because each one of them performs a patriotic duty which assigned to them within the frontiers of the law. The texts which found by the enactor with a legislative willingness came to protect the high interests of the state, and introducing a body or more to struggle a criminal phenomenon does not contradicts with the principles of the law and the international commitments which the agent of the plaintiff indicated to in his draft about involvement of Iraq to the United Nations agreement for struggling corruption according to law No. (35) For 2007. After reviewing, presented drafts were saved in the dossier of the case, and the agent of the plaintiff presented an answering draft dated on (1.9.2018) as an answer on the two drafts presented from the third party he clarified in it that the enactor willingness when enacted the law must not contradicts with the provisions of the constitution, and the monitory is different of associating whereas the subjecting of integrity commission to the monitory of the ICR does not affect on its independence according to article (102) of the constitution which is it different of associating aforementioned concept of some bodies according to article (103) of the constitution. Whereas the constitution had dedicated an independent fourth chapter for the independent commissions of the three powers. The monitory does not touch tangent independence, and it is exist between the three powers (legislative, executive and judicial) whereas it exercise its competencies according to principle of separation between powers, and the claim of the third party that the investigation procedures

which performed by the public prosecution is temporal in the financial corruptions' cases, and these cases referred to investigation judge within (24) hours from the date of the (accuser) custody. The investigations which performed by the commission of integrity characterized by continuity and the second draft indicated to the third party because the investigation procedures which performed by the public prosecution referred to the specialized investigation judge and never returns to commission of integrity. Here we like to clarify that activating the new law of the public prosecution will not cause any practical result because the investigation judge notifies the commission of integrity with any case of corruption and save at the commission. Accordingly, the agent of the plaintiff requested from the FSC to judge according to the necessity of the case, and to burden the defendant all the expenses and advocacy fees. The agent of the plaintiff repeated his previous sayings and requested to judge according to it, as well as the agents of the defendant repeated their sayings and previous requests, and they requested to reject the case with burdening the plaintiff all the expenses and advocacy fees. The public prosecutor Mr. (dhad) attended and he testified that he attended to confirm the draft of Head of public prosecutor (third party) which presented in the case after introducing him as a third party in the case, and he is not authorized by power of attorney from the Head of public prosecutor officially. Therefore, whereas nothing left to be said, the end of the pleading made clear and the decision recited publicly.

The decision:

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff challenging in his case unconstitutionality of article (5/12th & 13th & 14th) of public prosecution law No. (49) For 2017. He claimed it is violates article (102) and article (47) of the Republic of Iraq constitution for 2005, and after returning to article (5) of the law (challenge subject) the court found it is stipulated on the tasks of the public prosecution whereas stipulated in clause (12th) of it (investigating all financial and administrative corruption crimes which infringes the public post duties stipulated on in penal law No. (111) for 1969 according to the provisions of criminal procedure law No. (23) For 1971, and the case shall be

referred within (24) hours to the specialized investigation judge from the date of the accuser's custody. And stipulated in clause (13th) of it on (creating an office in the presidency of public prosecution called (the administrative, financial and public fund cases in the public prosecution office managed by a public prosecutor has not less than 15 years in service handles the supervision on state's offices). And it also stipulated in clause (14th) of it on ((an office of public prosecution shall be established in the Ministries and independent commissions for administrative and financial affairs headed by a public prosecutor has not less than 10 years in service. He exercises his competencies according to provisions of article (11th) of this article). As for article (102) of the Republic of Iraq constitution for 2005 stipulated on (the High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law). The FSC finds by inducing the legal texts which challenged because of its unconstitutionality of article (5) in clauses (12th & 13th & 14th) that the willingness of the legislator directed to grant the public prosecution an investigation powers extends to (24) hours from the date of seizure the accuser who perpetrated a financial, administrative crimes or crime may infringe the public post, in addition to what the commission of integrity carrying out in this field. This matter represent a legislative choice and does not contradicts with the text of article (102) of Republic of Iraq constitution for 2005, especially that the public prosecution body enjoys the independence of the executive and legislative power according to provisions of article (87) of the constitution, and there is no intersecting between the texts of the public prosecution law in its aforementioned articles supporting and strengthen the role of integrity commission in struggling the corruption, and there is no contradiction between the articles (challenge subject) with article (47) of the constitution because each power exercising its competencies and tasks based on the principle of separation between powers without interfering in the tasks of the other powers. Worth to mention that the public prosecution body since its established is specialized in

investigating in crimes, especially these which related to the public right. Therefore, the claim of the plaintiff/ being in this capacity is lacking to its constitutional and legal substantiation. The court decided to judge with rejecting the case of the plaintiff/ being in this capacity, and to burden him the case's expenses and advocacy fees for the agents of the defendant the jurist officials (the Manager sin.ta.yeh) and legal consultant assistant (heh.mim.sin) amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued in presence of all parties, unanimously and decisively according to article (94) of the constitution and article (5/2nd) of the FSC law No. (30) for 2005, and made clear on 1.22.2018.