



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: (ain.waw.ain) his agent the barrister (hah.mim.taa).

Defendants: 1- The President of the Republic/ being in this capacity/his agent Mr. (faa.jim).

2- The Prime Minister/ being in this capacity/ his agent Mr. (haa.sad).

3- The Speaker of the ICR/ being in this capacity/ his agents the two legal officials (sin.taa.yaa) and (heh.mim.sin).

Claim

The agent of the plaintiff claimed in case number 65/federal/2017 that. First- the second defendant previously issued its decision number (333/2015) which according to it cancelled all the legal texts which granted his client a pension salary, so it cancelled his pension salary whereas he was taking the pension salary according to the provisions of article (18/3rd 1/1) of the Governorates Incorporated Into a Region law (number 21 for 2008 (amended)) and after cancelling that text according to article (38/1st/7) of the unified pension law number 9 for 2014. Article (35/1st) of it judged with the pension salary for his client as acquired right which stipulated on (the texted provisions which stipulated on in the law are applied on all matters develops in the pensioners' living circumstances or their families from date of its validity, and the granted rights or that which should be took in consideration to whom was

pensioned of and disengaged of the job or granted to his family before the date of this law validity regarded final, unless there is a special text listed in the law judge contrarily of that). Therefore the aforementioned decision (333) will be a clear violation against the legislative jurisprudence of the legislative power, because it is cancelled an enactment of the ICR enactments which should not be cancelled but with and enactment, where the legal family scaling (Constitution – Code – Orders – Bylaws and Instructions) and the rights granted to his client in the second level, and cancelling it came in the last level which are not amending or canceling the laws in spite of all circumstances, therefore the decision (333) violates the constitutional principle (separation between powers) article (47) of the constitution. Second: the agent of the plaintiff confirms that the decision number (15/2015) issued by the ICR has conditioned when approved on the Cabinet decision number (307) which called the first reformations package that the procedures of executing the reformations must be in conformity with the constitution and the valid laws, and the decision number (333) which is challenged because of its unconstitutionality had exceeded on the contrary of the constitution a legal valid texts by cancelling them, with a plea that there is an authorization for the defendant/ being in this capacity, and no authorization in the decision of the FSC number (29/2017) was confirmed, whereas what listed in the recitals of the decision what texts (as well as, the FSC finds that the approval of the ICR on what listed in the aforementioned decision (307) for 2015 does not meaning an authorization to any of its authorizations stipulated on in articles (60/61/62) of the constitution to the Prime Minister, moreover that the approval on the aforementioned decision and executing of its clauses is conditioned with prerequisite of its conformity with the provisions of the constitution and the valid laws, whereas any violation from the executive power to the provisions of the constitution will be submitted to challenge before the FSC...). Third: the agent of plaintiff confirms to the court that their constitutional substantiation to initiate a case is the text of article (93) which determined the specialty of the FSC (to take a decisions in cases that produced from the federal laws implementation, the decisions, instructions, bylaws, orders and the procedures issued by the federal power) as well as the text of article (4/2nd) of the FSC law (to take decisions in litigations that related to the legitimacy of the laws, decisions, bylaws, instructions and orders issued by any body which has

the right to issue it and cancelling the ones that conflicts with the provisions of the Iraqi state's administration law for the transitional stage, and that must be based on a request from a court or official body or any other plaintiff has an interest), as for the first defendant/ being in this capacity he was not confronting a flagrant constitutional violation by the Cabinet when he issued decision number (333), therefore he will be disclaimer of doing his constitutional tasks and perjured the oath in text of article (67) of the constitution, where it determined the duties of the Republic's President, including (to guarantee the commitment to the constitution), as well as the third defendant/ being in this capacity did not express any objection to be mentioned, as his legislative specialty was taken from him and exceeding by cancelling his its valid legislations and wasting its strength during its validity, finally he confirmed that his client challenging the unconstitutionality of the decision (333) and the constitutional challenge is an exclusive specialty of the FSC according to the text of the constitution, and that is clearly make their case within the specialty of the FSC, and calling upon the defendants for pleading and judge with voidance of item (2nd/1-2-3) of decision (333) for 2015 issued by the second defendant/ being in this capacity, and give the pension rights back to him and burdening the defendants all the fees and the judicial expenses. The answers of the defendants were delivered by their agents requesting to reject the case for the reasons listed in, and after registering the case at this court according to clause (3rd) of article (1) of the FSC bylaw number (1) for 2005. And after completing the needed procedures according to clause (2nd) of article (2) from the aforementioned bylaw, the day 8.3.2017 was set as a date to review the case, and on that day the court had been convened. The agents of the plaintiff and the defendants attended, the public in presence pleading proceeded, and the agents of the case's parties repeated their sayings and the court completed its investigations. Whereas nothing left to be said, the end of the pleading made clear, and the decision's wording recited on 8.3.2017.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff challenging the unconstitutionality of the decision number (333) issued by the Cabinet on 9.8.2015 which he regarded an exceeding on the ICR legislative competence. Also he indicted the first defendant the

President of the Republic/ being in this capacity because he did not objecting the challenged decision, and he regards him repudiator and perjured the oath he swore, as well as he indicts the third defendant the Speaker of the ICR/ being in this capacity because he did not objecting the challenged decision which withdraw its legislative competence. Finally he requested to judge with voidance of item (2nd/1-2-3) of the decision (challenge subject) number (333) for 2015. The FSC finds that what the plaintiff indicted to the first defendant the President of the Republic/ being in this capacity, and the attitude of the FSC from this point, that any accusation directs to him, its resolute, even if it was one of the FSC duties according to the provisions of article (93/6th) of the constitution, but exercising this specialty is related to issuance of a code regulate the procedures of how to resolute in such cases, and that must be according to the provisions of article (61/6th/baa) of the constitution, and without issuance of this code, the specialty of the FSC in accountability remains idle, and that was confirmed by the court in its judgment issued on 6.13.2017 in number 41/federal/2017. As for what the plaintiff indicted the third defendant the Speaker of the ICR/ being in this capacity, the court finds, that the decision issued by the ICR on 8.16.2015 in number (15) had included the approval on the aforementioned Cabinet decision, and on the reformation package, was conditioned with the compatibility of it with the constitution and the law, but does not meaning a substitution to any of its legislative powers to the Cabinet. Also what the plaintiff indicted to the Speaker of the ICR because he did not objecting the decision (challenge subject), the court finds that this matter is out of its powers which stipulated on in the constitution. As for the request by judge with voidance of item (2nd-1-2-3) of the decision (challenge subject) number (333) for 2015 which issued by the second defendant the Speaker of the ICR / being in this capacity, so the reviewing of the challenge against it, is out of the competence of the FSC stipulated on in article (93) of the constitution and article (4) of its law number (30) for 2003. Based on that the litigation of the plaintiff must be rejected as for the three defendants for the aforementioned reasons. Therefore the court decided to reject the case, and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued decisively and made clear on 8.3.2017.