



The Federal Supreme Court (F S C) has been convened on 9.26.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Rijab AL-Kubaisi, 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: Minister of finance/ being in this capacity – his agent the legal official (kha.alif.nun).

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

Claim

The agent of the plaintiff claimed, that the defendant/ being in this capacity had enacted the law No. (35) For 2013 which is it the first amendment of political prisoners law No. (4) For 2006 whereas the aforementioned amendment law adding a new financial burdens without taking the opinion of the government to know if it is able to fulfill its commitments which imposed by its admission a pension rights contrarily to the government project which approved by the cabinet in its decision No. (151) for 2013 and contrarily of constitution provisions and what the constitutional judiciary in Iraq settled on, as well as it is violates the principle of separation between powers and distribute it and respect every power and the competence of the other powers. The cabinet is specialized with powers of presenting the laws bills to the ICR with presidency of the Republic and the right of the ICR to present the laws suggestions which is not the laws bills, whereas this power is specialty of the executive power, whereas the amendment challenged law had added a financial burdens on the state's finance without taking

the government's opinion, below the legal texts that added by the ICR without returning to the opinion of the government:

First: clause (waw) of item (1st) of article (19) of political prisoners law No. (4) For 2006 (amended) which includes (to calculate any study certificate which acquired by the covered includes the provisions of this law after assignment exception from the valid laws). The abovementioned clause's text will produce a job titles changing to those who are covered in the abovementioned article and to grant them the allowances of this certificate in spite of its adding by the ICR without taking the opinion of the government, so, it is not applicable in jobs which in its occupation needs experience gained by the employee in any gradient in jobs in addition to that legal requirement urges that the certificate is related to the work which practiced by the employee.

Second: item (6th) of article (19) of political prisoners laws No. (4) for 2006 (amended) which includes (the foundation burdens to repay the received loans by those who are covered with the provisions of this law from banks (housing bank, real estate, agricultural) from the date of this law validity No. (4) for 2006 and for one time only) whereas this text costs the treasury a huge financial burdens and these loans ruled by the loan's contract where the loaner presents the necessary guarantees to repay it according to provisions of article (375/alif) of Iraqi civil law. Therefore, the ICR carrying out adding the abovementioned legal provisions to the government project conflicts with the text of article (60) of the constitution and article (130) of the ICR bylaw which obliges to take the opinion of the cabinet in any suggestion of an amendment and a big financial burdens may based on that suggestion which cannot be solved and conflicts with the policy of the government in diminishing the expenses because the financial crisis which the state passing through. Therefore, the agent of the plaintiff requested from the FSC to judge with unconstitutionality of clause (waw) of item (1st) of article (19) of political prisoners law No. (4) For 2006 which amended according to the law No. (35) For 2013, as well as item (6th) of article (19) of political prisoners law No. (4) For 2006 which amended according to the law No. (35) For 2013, because it is violating the provisions of the constitution and what the Iraqi constitutional judiciary settled on, and to burden the defendant the case's expenses and advocacy fees. The agents of the defendant answered the petition of the case with an answering draft dated on 7.31.2017 requesting to reject the

case and to burden the plaintiff all the expenses and the advocacy fees as following: first: the agent of the plaintiff claims that the amendments which made by the ICR costs a financial burdens to not let the burden of the public fund a plea to deactivate what left of a legislative role of the ICR to includes what weighs the government's shoulders and let it lift this burden alone, which may affect on its public expense or force it to find a substantial financing resources to cover it or make a transaction of amounts to burden a cost, and this matter should not goes to a costs became a permanent chapters in the general budget, especially that the challenged law which a chapters singled for it in the general budget for years (2016/2017) to pay the allowances to those who are covered with. Second: we attach our draft the letter of the Prime Minister office No. (9253) on 8.12.2017 which directed to the ICR (the approval of his Excellency the Prime Minister to pass the topical law) and this indicates to questionnaire the government's opinion which represented by the Prime Minister and his approval on the challenged law totally, as well as the letter of general secretariat for the council of Ministers (21406) dated on 8.15.2017 to adopt the recommendation of general secretariat for council of Ministers representatives, the state's shura council, Ministry of finance and prisoners establishment about interpreting article (6/1st) and involving the instructions and the recommendation stipulated on (to calculate the certificate which acquired by those who are covered with political prisoners law..Etc). According to what all aforementioned indicates to questionnaire the government's opinion and its approval on the texts (challenge subject) and what listed by the agent of the plaintiff is not true, therefore his claim is lacking to its legal support and they requested to reject the case and to burden the plaintiff all the judicial expenses and advocacy fees. The court called both parties to the pleading, and on the appointed day the agents of the two parties and the public in presence pleading proceeded. The agent of the defendant repeated what listed in the case's draft and requested to judge according to it. As well as the agents of the defendant repeated what listed in the answering draft dated on 7.31.2017 and they requested to reject the case and to burden the plaintiff all the expenses and the advocacy fees for the reasons listed in. Whereas nothing left to be said, the end of the pleading and the decision were made clear.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff challenging in the petition of his case the unconstitutionality of article (19/1st/waw) of the law No. (35) For 2013 the first amendment of political prisoners law No. (4) For 2006 which stipulates on (to calculate any study certificate acquired by those who are covered by this law after assignment as an exception of the valid laws), as well as he is challenging the unconstitutionality of item (6th) of article (19) of political prisoners law No. (4) For 2006 which amended by the abovementioned law which includes ((the establishment burdens the repayment of received loans by those who are covered by the provisions of this law from banks (housing fund – real estate – agricultural) from the date of law No. (4) For 2006 validity and for one time only)). He requested from the FSC to judge with their unconstitutionality because it is violating article (60) of Republic of Iraq constitution for 2005 and article (130) of the ICR bylaw which obliges the financial committee of the ICR to questionnaire the government's opinion in any amendment presented by any committee in the council or any member if there is a financial burdens based on it. The FSC finds by scrutinizing the case that the ICR has added the two abovementioned texts to the law bill No. (4) For 2006 according to the first amendment of political prisoners law No. (35) For 2013, without getting the government's approval on them contrarily to the text of article (62/1st) of Republic of Iraq constitution and contrarily of article (130) of the ICR bylaw, and with this amendment the ICR has added a financial burdens on the political prisoners finance then it is added a financial burdens on the state's finance, therefore the aforementioned texts (challenge subject) is lacking to their constitutional substantiation because the ICR did not acquires the approval of the cabinet on the amendment in spite of its burdening the state's treasury a big financial burdens. Therefore, the FSC decided to judge with unconstitutionality of clause (waw) of item (1st) of article (19) of political prisoners' law No. (4) For 2006 which amended with the law No. (35) For 2013 and item (6th) of article (19) of the abovementioned law and to judge by cancelling them because of its violation to article (62/1st) of the Republic of Iraq constitution and article (130) of the ICR bylaw with burdening the defendant/ being in this capacity the expenses and advocacy fees to the agent of the plaintiff/ being in this capacity the legal official (kha.alif.nun) amount

of (one hundred thousand) Iraqi dinars. The decision issued in presence, unanimously and decisively and made clear on 9.26.2017.