



---

The Federal Supreme Court (F S C) has been convened on 10.10.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-Sami, Sulaiman Abdullah Abdul-Asamad, 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 Justice/ being in this capacity – his agents the legal officials (feh.ain.ain) & (ha.dal.sin).

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

### Claim

The agent of the plaintiff claimed, that the ICR issued the decision No. (28 for 2017) relying on the provisions of article (101) of Republic of Iraq constitution which article (1) of it included (according to this law a council of state must be produced specialized in the judicial administrative job, casuistry and drafting, and this regarded an independent commission enjoys the juristic personality represented by the head of the council and chosen by the council presidency and he must be among the consultants and assigned according to the law). Whereas article (101) of the abovementioned constitution stipulated on (it is allowed by a law to form a state's council and other general committees specialized by the judicial administrative jobs, casuistry and drafting before the judiciary bodies, but if one of it were excepted with a law) came in the third chapter which related to the judicial power and formations belongs to it, or those might be formed in the future, so, regarding the state's council an independent committee considered a clear violation to the constitution and exceeding on the authority of the judicial power, as long as the Iraqi legislator individualized the fourth

chapter of the constitution for the independent committees, so, legally forming an independent committee according to the third chapter and requested to cancel the state's council law No. (71 for 2017) according to the provisions of article (2<sup>nd</sup>/2) of the FSC law and to burden the defendant all the fees and the case expenses. After registering this case at the court according to clause (3<sup>rd</sup>) of article (1) of the FSC bylaw and the answer of the defendant/ being in this capacity by his two agents who they requested to reject the case for the following reasons: first: an interpreting decision issued by the FSC numbered (118/federal/2015) as an interpretation of article (87) of the constitution which stipulates on (the judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law), and the number of administrative judiciary and casuistry which listed in article (101) of the constitution from the judicial power facets and when inducing the constitutional texts which related to the inquired subject. The court finds that article (47) of the constitution stipulated on principle of separation between powers and it takes its privacy and validity from the constitution and its works are regulated by the constitutional texts listed in articles (88 & 89 & 90 & 91) of the constitution and the laws, and article (101) of the constitution allowed with a law to form a state's council specialized with the administrative decision, casuistry and drafting..Etc), and the nature of the social affairs and quarrels were the instigator to create a private law which is it not a part of federal judicial power, but is a part of the executive power with administrative entity, and the state's council is the body which initiate the administrative judiciary and by it the administration shall yield to the power of law. Second: article (108) of the constitution stipulated on (it is allowed to create another new independent committees according to the necessity and need with a law), so, it gave to the ICR a legislative option and this option shall enjoy independence as similar in the councils of the other states, and affixing the state's council to the executive power will affect negatively on its performance in employment and assignment or by its financial sides, then an answering draft had been received from the plaintiff by his agents on 10.5.2017 as an answer on the answering draft to the defendant dated on 9.26.2017 which includes 1- the draft of the defendant listed that the judiciary power exercising its tasks on the principle of separation between powers and takes its privacy and authority of article (87) of the

constitution and its works regulated by the constitutional texts listed in articles (88 & 89 & 90 & 91) forgetting the rest of articles (92 to 101) of the constitution which enters the core of judiciary power works. 2- by regarding the state's council not a part of the judiciary power never gives the right to the council to violates the constitution by forming an independent committee by relying on a constitutional articles not within the special chapter of the private committees, because the constitutional legislator was careful to dedicate a special chapter for each of the powers in accordance with what all constitutions in the world worked with. 3- The agent of the first defendant, that affixing the state's council to the executive power affect negatively on its performance, and that matter listed in the rationales to issue the state's council law, because it was legislated for its independence from the executive power. Meanwhile the secretariat of the cabinet according to its letter (27399) on 8.23.2017 in its presentation about the state's council (the reference of the independent committees was not determined with a clear text that it is connected to the ICR or the cabinet, its reference must be to the cabinet without need to a text in the core of its laws, and the court relied in that to the decision of the FSC No. (88) for 2010 which disaffirm the characteristic of independence from the council (research subject) because the cabinet is a part of the executive power according to article (66) of the constitution, and this matter contrarily the goal of enacting the state's council law which is it its independence from the executive power. 4- Their client requested to cancel law No. (71) for 2017 because of unconstitutionality, as for its engagement to the judicial power or else, so, the ICR is able to determine it in a following law, neither it remains includes the executive power represented by the Ministry of justice nor to the Higher Judicial Council. They requested to judge with cancelling law No. (71) For 2017. Then an answering draft received by the agents of the defendant dated on 10.8.2017 as an answer to the answering draft of the plaintiff dated on 10.5.2017 which included: first: article (101) of the constitution included the specialty of the state's council of the administrative judiciary, casuistry and drafting jobs, as well as representing the state and the other committees before the judiciary, so, how it is connected to a body works on representing the state before it, also the existence of a formation in a part of constitution parts never considered a presumption of law to be connected to that part, for evidence the high commission De-

Ba'athification were listed in article (135) of the constitution, whereas articles (102-108) of the constitution treated the situation of the independence committees, so, does that considered a justification to apply the independence characteristic on the commission. Second: the plaintiff pointed in his answering draft to the letter of the general secretariat of the cabinet/ the legal department and did not transfer the truth which this letter included, and he attached it to the draft. The Ministry of justice had to relinquish its decision after receiving the abovementioned letter and not to continue in case because the executive power consist of two sections represented by the Presidency of the Republic, the Presidency of cabinet and the Ministry of justice is a part of the last one and it has to follow its directions, and the FSC has completed the required procedures according to clause (2<sup>nd</sup>) of article (2) of the FSC bylaw. The day 10.10.2017 was set as a date to review the case, and on that day the court was convened, so, the agents of the defendant attended the PhD (feh.kaf.shin) & (sin.tayeh) & (heh.mim.sin). The public in presence pleading proceeded publicly, and the agents of the plaintiff repeated what listed in the petition of the case and the illustrative draft which came as an answer for the defends of the defendant, and after the court completed its investigations and both parties repeated their sayings, the end of the pleading and the decision were recited publicly on 10.10.2017.

### The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff the Minister of justice/ being in this capacity had challenged in his case the state's council law No. (71) For 2017 and he restricted his challenge against the defendant Speaker of the ICR/ being in this capacity because he represent the ICR as adversarial by text which made (state council) (independent committee) and did not connect it to the judicial power, depending in his challenge on the place where the mentioned (state council) of the constitution, which is it the third chapter of it. Exactly article (101) of the constitution, and the defendant/ being in this capacity answered that the specialties and tasks of the state council, as well as its neutrality was approved in that. After returning to the tasks and specialties of the state council which article (1) of its law stipulated on, we find it is specialized to carry out the tasks of (administrative judiciary, casuistry, drafting), which means drafting the law bills and the

legislative decisions, these tasks and specialties is differed from the tasks and specialties of the judicial power formations, which stipulated on in the constitution and in a number of judiciary laws regulation. Therefore, connecting the state council to the judiciary power just for its mentioning at the end of the third chapter of the constitution which concern the judicial power, is a matter never touches the substance of the subject, but it is regulatory matter, so, it does not forms a constitutional violation allows to cancel the law (challenge subject). From this aspect and across, describing the (state council) because it is (independent committee) as listed in its law, this matter finds its support in article (108) of the constitution which allows to create an independent commissions in addition to the independent commissions stipulated on in articles (102-107) of the constitution, according to the need and necessity and shall be done with a law, and this is what the ICR carried out according to its authorities which stipulated on in article (61/1<sup>st</sup>) of the constitution, by its issuance to the law (challenge subject) (the state council law) and to not connecting this council to the federal judicial power because of difference of tasks and specialties from its tasks, and it was not mentioned in article (89) of the constitution which counted the judicial power formations and not among it (the state council), also not connecting it to the executive power to ensures its neutrality and independence when its administrative judiciary facing the decisions and orders issued by this power. Based on that, the case of the plaintiff/ being in this capacity is lacking to its legal and constitutional substantiation, so, the court decided to reject it and to burden him the expenses and advocacy fees to the agents of the defendant/ 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 (5) of FSC law No. (30) For 2005 and made clear on 10.10.2017.