



The Federal Supreme Court (F S C) has been convened on 28.10.2019 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, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rijab Al-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Dr. Shihab Ahmed Ali Al-Nuaimi- his agent the barristers Shawkat Sami Al-Samarraie and Muqdad Sami Al-Jubori.

The Defendant: the Speaker of the ICR/ being in this capacity – his agentS the official jurists the Director Salim Taha Yaseen and the legal advisor Haytham Majid Salim.

The Claim

The agents of the plaintiff claimed in the petition of the case which has been summarized that the defendant the Speaker of the ICR/ being in this capacity previously issued a legislative decision named by the decision of political reformation No. (44) For 2008. This decision has been published in the gazette Ref (4102) on 24.12.2008 and listed in item (6) of it ((to execute what had been approved for the lists and political blocs demands according to its entitlements in the State's offices. These entitlements includes the posts of under-secretaries, the Heads of independent commissions, foundations and the private titles. The ICR is obliged to accelerate the approval of the private titles)). Whereas the lists and the political blocs had enacted and granted for itself a rights which considered a uniqueness in gaining the posts and the private titles, all the aforementioned lists and political blocs are ongoing in this course, while there isn't any constitutional text may authorizes

any office to name this right. The remaining of the challenged decision in effect will deprive those who are outside these blocs from assigning any post may violates the Constitution in articles (14) and (16) and (37/2nd) and (13) which related to equality and fair opportunities. The State is guarantor of protecting the citizens from ideological, political and religious abuse, and the supremacy of the Constitution's text. As well as the Constitution had determined two exclusive offices that concerns in presenting the nominees' names to the ICR to occupy the private posts, these offices are the Higher Judicial Council and the Council of Ministers for approving these names. The FSC formerly adjudged by unconstitutionality of article (23) of the Governorates, districts and sub-districts incorporated into a region law No. (36) for 2008 (amended), this article stipulated (the elections of Kirkuk governorate, districts and sub-districts belong to it shall take place after executing the process of sharing the administrative, security and public employments with equal percentages between the major components in the judgment issued in the case No. (24/federal/2013). The Constitution in article (61/1st) of it stipulated on the jurisdictions of the ICR by enacting the federal laws, but it didn't stipulated on issuing a legislative decisions. This matter is what listed in the decision issued by the FSC in the case (140 unified with 141/federal/2018). According to the aforementioned reasons, the agents of the plaintiff requested in the petition of the case to judge with unconstitutionality of the legislative decision issued by the ICR number 44 for 2008 and to consider it void. The agents of the defendant answered the petition of the case by the answering draft dated on (12.9.2019) that the FSC is incompetent to try the constitutionality of the legislative decisions according to the article (93/1st), and the content of the legislative order doesn't contradicts with the reliable constitutional and legal mechanism which adopted by the legal and political State's establishments of choosing the efficient individuals to occupy the posts mentioned in the challenged decision, moreover it voids any agreement violates a legislative text. The ICR has the power to issues a legislative decisions according to its jurisdiction assigned to it according to the article (59/2nd) of the Constitution, as well as the electoral lists and the political blocs are involving an independent efficiencies. The electoral right had decided the right for whom fulfill the legal conditions to be nominated for the ICR membership, this right is denies the possibility of keeping the uniqueness in the hands of the

power, or taking decisions by a party or a specific office. At the end they requested to reject the case. The agents of the plaintiff presented an answering and illustrative draft dated on 17.9.2019, they repeated what listed in the petition of the case. They added that the jurisdiction of the Court is already exist according to the article (4/2nd) of its law No. 30 for 2005, these posts are restricted in those who belongs to the blocs and the political parties. Moreover, the political parties' law had listed in its clauses by adopting the principle of equal opportunities, and to maintain the neutrality of the public employment and the public establishments. The aim of the political blocs from enacting the challenged decision is to pairing the installing the political, democratic and federal system with a principles called the national agreement in addition to the sovereignty of the reconciliation. According to the article (107) of the Constitution, he requested from the FSC to request from the ICR and the central government in addition to the political blocs to accelerate the activation of the executive procedures of the Federal Service Council law No. (4) 2009 dead letter. After completing the required procedures according to the bylaw of the FSC No. (1) For 2005, the Court had scheduled the day 14.10.2019 as a date for the argument. On this day, the Court has been convened and agents of the both parties has attended, the public in presence argument proceeded. The agents of the plaintiff repeated the petition of the case, they included their request by challenging the clause (6) of the decision No. (44) For 2008 and they said that the ICR is competent to issue the legislative decisions. The agents of the defendant repeated what listed in the answering draft and they requested to reject the case. On 28.10.2019 the Court has been convened, the agents of both parties had attended, the public in presence argument proceeded. The Court noticed that the defendant on the tongue of his agent had presented a draft dated on 27.10.2019, they summarized it that there is a law of the Service Council who will carry out after its forming the task of distributing the public employments, it has a text which stipulates that no texts contradicts with its provisions shall be implemented. The agents of the plaintiff replied that the Service Council law issued in 2009 by the Ref. (4) had stipulated (the employees whom are less than General Director shall be appointed in the tenth degree) and the Service Council haven't been formed yet. Moreover, the text (challenge subject) is concerns the posts and the other job titles and it hasn't related to these two matters. The Court had scrutinized the petition of the case and the

exchanged draft, as well as revising the text (challenge subject) of unconstitutionality. The Court found that the case had completed the reasons to take a decision about it. The end of the argument has been made clear, and the decision were recited publicly during the session dated on 28.10.2019.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff and by his agents after restricting his case during the session dated on 14.10.2019 had requested to judge by unconstitutionality of the clause (6) of the legislative decision No. (44) For 2008 which enacted by the ICR and approved by the Presidency Council in that time. The decision had been published in the gazette by the Ref. (4102) issued on 24.12.2008, it stipulated ((6- to execute the approved requests of the lists and the political blocs according to its entitlement in the State's offices for the posts of under-secretaries, the Heads of the commissions and the private posts. The ICR is obliged to accelerate the approval of the private posts)). The plaintiff claimed that this text (challenge subject) had been enacted by the lists and the political blocs for itself to be the only body that gains the posts, especially the private posts in the State. In the same time it deprives the others from getting these posts, and this matter is violating the Constitution. The authority of sending the nominees' names to the ICR to be appointed in the posts and occupying the private posts were determined in the article (61/5th) of the Constitution, not among it (the political lists and blocs). The plaintiff added that the ICR is incompetent of issuing the legislative decisions, including the legislative decision (challenge subject). The FSC finds that when the ICR carried out the issuance of the legislative decision No. (44) for 2008 was according to the existence of the (Presidency Council) which role had ended after the end of the first term of the ICR because the Constitution of the Republic of Iraq for 2005 became in effect. Moreover, this jurisdiction hasn't a substantiation in the Constitution, but in the places which the Constitution stipulated exclusively, not among these jurisdictions are issuing a legislative decisions to replace the laws according to the contexts set by the Constitution to issue the laws. This matter is what the FSC adjudged with in the judgment issued in the case No. (140/federal/2018 unified with the case 141/federal/2018) issued on 23.12.2018. Besides, the FSC finds that the

request of the political lists and blocs by the post if the under-secretary, the Heads of the commissions and the private posts it also hasn't a substantiation in the Constitution. These titles are a job titles determined by the Constitution in the article (61/5th) including the offices which assumes the nomination those whom it sees to occupy it according to the specialty and efficiency, these offices were mentioned exclusively in the article (61/5th) of the Constitution above-mentioned. Not among these offices (the political lists and blocs), moving on the contrary of what the Constitution stipulated had created what called (political sharing) in distributing the posts aforementioned, as well as the drawbacks which affected the State's paths and not in the public interest. Also, it's violates the principle of equality which article (14) of the Constitution stipulated, this article obliged the equality between the Iraqis before the law without discrimination because of gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status. The clause (challenge subject) also violated the principle of equal opportunities which article (16) of the Constitution stipulated on, this article guaranteed for all Iraqis to get their opportunities in assuming the posts and other titles in the State based on the specialty and efficiency in addition to the other requirements of occupying the public employments. The aforementioned constitutional article obliged the State to guarantee the implement of this principle. Accordingly, the FSC became sure that the clause (challenge subject) had violated the constitutional principles which listed in the articles aforementioned, these articles are ruling and the article (2/1st/jim) didn't allow the Constitution to enact any legislation contrariwise. Therefore, the FSC decided to judge with unconstitutionality of the clause (6) of the ICR's decision issued by the number (44) for 2008 which published in the gazette by the Ref. (4102) on 24.12.2008, to annul its effect and to burden the defendant/ being in this capacity the expenses and the advocacy fees of the plaintiff's agent amount of one-hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to the provisions of article (94) of the Constitution and article (5) of the FSC's law No. (30) For 2005. The decision has been made clear on 28.10.2019.