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The Federal Supreme Court (F S C) has been convened on 11.14.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Mohammed Rijab AL-Kubaisi and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Objector: the Minister of finance/ being in this capacity – his agents the two legal officials (kah.alif.ha) & (yaa.sad.alif) .

Objected to: the decision of Baghdad/ AL-Risafa/ the second appeal commission No. (458/sin2/2014) on 12.4.2014.

### Claim

The objector claimed that the abovementioned decision previously issued No.(485/sin2/2014) on 12.4.2014 from the appeal commission abovementioned which judge by obliging the first appellant (the Prime Minister/ being in this capacity) to inhibit demanding of the appellant (the executive director of AL-Atheer telecommunication company/ being in this capacity). The presidency of Baghdad/ AL-Risafa federal court (the first appeal commission) had moved in the Ministry of finance in the case as a third party in case No.(1073/sin1/2016) on 4.10.2017, and he claimed that clause (1) of section (8) of the financial administration law No. (95) For 2004 stipulated on (each a general establishment can prepare its suggested budget, after the approval of its managers and the concerned Minister. Shall be presented to the Minister of finance for reviewing and final approval... and the Minister must respect the independence operation done by the general establishments). Also section (2) included of clause (14) of the

abovementioned law (the assets guarantees (the other types of demands) and these demands includes revenues besides the fines). As well as section (1) (includes that the all financial revenues directed to a joint box and allocated for the general expenses according to the priorities of the government) according to the sections (1/2) of the financial administration abovementioned, the fines regarded a part of the assets for the treasury which allocated for the general expenses according to the priorities of the government which represented by the cabinet. This matter means that the revenues and fines considered one of the sovereign revenues which represent a type of general budget financing types. Therefore, the cabinet and according to the financial administration law abovementioned has the principality on the sovereign revenues, which means its decisions issued in this concern shall be executed, and relying on the approved contract between the communication commission and AL-Atheer company cannot be reliable in this case. Therefore, the objector requested from the FSC to judge with cancelling the issued decision of the court abovementioned. The second appeal commission in Baghdad/ AL-Risafa federal court answered according to its draft dated on 10.24.2017 on the petition of the case that the plaintiff the executive director of AL-Atheer telecommunication company/ being in this capacity had initiated the case No. (1124/beh/2013) on the defendants the Prime Minister/ being in this capacity and the general manager of media and communication commission/ being in this capacity about the fine imposed on his company, amount of (66.673.608.18) dollars because imposing the fine violates the provisions of the law. He called upon the plaintiff for pleading and to judge with inhibiting them from demands/ being in this capacity of the abovementioned amount. The subject court issued its decision dated on 2.4.2014 to reject the case. And for unsatisfying of the agent of the plaintiff with the premiere decision abovementioned, so, he challenged it appealingly with a draft of his agent dated on 2.11.2014 in presence judgment decided to annul the premier decision, which is it completely appealed, and judge with obliging the first defendant the Prime Minister/ being in this capacity to not demanding from the plaintiff/ being in this capacity the amount mentioned in the petition of the case, and to reject the case from the second defendant/ being in this capacity. The decision issued unanimously, and approved in the cassation court according to the decision No. (94/movable property appeal committee/2015). Also correcting request was rejected according to the decision of the federal cassation court

in No. (488/moveable property appeal committee/2015) on 2.23.2015 and this committee with its previous form had reviewed the case with the formal procedures and the provisions of the law and this committee is not a litigant in the case. Therefore, the case must be rejected for litigation about it and the answering draft signed by the Head of the committee and its two members. The court called upon the two parties of the case for pleading, and on the set day of the pleading, the agent of the objector attended the legal official (yeh.sad.alif) and for the objected to the legal official (ain.fa) attended. The public in presence pleading proceeded, and the agent of the objector repeated what listed in the objection petition and requested to judge according to it, as well as the agent of the high judiciary council repeated his sayings and requested to reject the case. Whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

### The decision

After scrutiny and deliberation by the FSC, the court found that the objector according to the petition of his case requests from the FSC to judge with cancelling the decision of Baghdad/ AL-Risafa federal court issued from the second appeal committee in dossier No. (485/sin2/2014) dated on 12.2.2014 which is approved appealingly according to the decision of the federal cassation court No. (94/moveable property appeal committee/2015) on (2.13.2015). The FSC finds relying on the base (the judiciary shall not be judged) but it followed to challenge its decisions and judgments the challenge methods legally determined, except one case which is it the complain of the judges stipulated on in article (268) of civil procedure law, in addition to unavailability of litigation in the case whereas the appeal committee in Baghdad/ AL-Risafa federal court does enjoy the legal entity according to the requirements of article (4) of civil procedure law No. (83) For 1969 (amended). Therefore, the litigation in the case is not provided and the case must be rejected for Non-adversarial, and the litigation is not exist in the case, the court should judge by itself by rejecting the case without goes into its basics according to the text of article (80) of civil procedure law. Based on that, the FSC decided to reject the case of the objector/ being in the capacity for Non-adversarial and to burden him the expenses and advocacy fees for the agent of the Head of the high judicial council the legal official (ain.fa) amount of one hundred thousand Iraqi dinars. The decision issued decisively, unanimously, in presence and made clear on 11.14.2017.