



The Federal Supreme Court (F S C) has been convened on 2.12.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (alif.ain.waw.kha)/ Deputy Director of AL-Sa'eh for foreign currencies exchange/ his agents the barristers (ain.waw.ra) and (nun.ain.alif).

The Defendants : 1. The Speaker of the ICR/ being in this capacity – his agents the jurist officials the director (sin.teh.yeh) and legal assistant consultant (heh.mim.ha).
2. The Mayor of Central Bank/ being in this capacity/ his agent the legal representative (alif.feh.feh).

The Claim

The agents of the plaintiff claimed that article (69) of Iraqi Central Bank law No. (56) for 2004 is contradicts with provisions of article (100) of the constitution because it folds an inclusive immunization for the decisions of the Central Bank of challenging right, and for the following reasons: abovementioned article made the right of challenge against aforementioned decisions before ((financial services Court)) within thirty days of issuing the decision from Iraqi Central Bank, or a shorter period, not from the date when notified by the decision. Therefore, the plaintiff had missed the right of challenging the decision which issued against him from the financial services Court Ref. (5/financial

services/2017) on 5.8.2017 because he was not notified about aforementioned decision, and notified by the decision which issued by the other requires notification and not notifying him will produce direct and independent damage on him might be moved by annulling the text (69) of Iraqi Central Bank law abovementioned by enactment issued by the first defendant. This enactment will make challenging the Central Bank decisions within a proper period of notifying date not from the date of its issuance according to the Iraqi law manners in this concern, especially that their client did not get a benefit of some text which requests to annulling it. Accordingly, the agents of the defendant requested to ((judge by illegality of article (69) text of Iraqi Central Bank No. (56) for 2004 and annulling it. Also they requested to enact another text instead of it)). The agents of the first defendant/ being in this capacity answered the petition of the case that trying this case is out of the FSC competences which stipulated on in article (4) of its law No. (30) for 2005 and article (93) of the constitution, therefore, they requested to reject the case. The agent of the second defendant/ being in this capacity answered the petition of the case as following: 1- litigation is not directed to his client (the Mayor of Iraqi Central Bank) according to provisions of article (4) of FSC law No. (30) for 2005. Therefore, he requested to reject the case formally against his client of litigation. 2- the Iraqi Central Bank law had draw the challenge methods against his decisions which issued from financial service Court before the appealing court as a cassation according to clause (1) of article (70) of Iraqi Central Bank law No. (56) for 2004, and as clause (2) of same abovementioned law allowed challenging in decisions issued by financial service Court according to articles (63 & 68) before appealing Court. Therefore, the case is rejected for this reason. 3- article (100) of the constitution stipulates on (it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision), and the challenged text did not stipulate by anyway to immunize the Iraqi Central Bank decisions, on the contrary, the law of Iraqi Central Bank stipulated on establishing (financial services Court) to trying all cases which initiated to object the decisions, orders and procedures issued by aforementioned Bank, and this matter contradicts with claiming of

the plaintiff after that. 4- the period of 30 days which determined for the employees of banking sector to object is more than enough, and the enactor took the principle of (supposed knowledge) because knowing about the decision is supposed practically, and the valid civil procedure law in clause (1) of article (153) of it went to this point, whereas it listed (to whom the order was issued against him, and for the requestor when his request rejected has the right to claim at the court which issued it within three days of the order's issuance date, or from the date he is notified. This shall be done by assigning the litigant to attend before the Court through urging). 5- granting Iraqi Central Bank the right of aggrieved party of decisions, orders and procedures issued from it to demand compensation in case a decision issued from financial services Court of its illegality. Whereas article (6/5th) of the FSC's bylaw No. (1) for 2005 obliged that the plaintiff must not getting advantage of the text which requested to annul it. According to aforementioned reasons, the agent of the second defendant requested to reject the case. After registering the case according to provisions of clause (3rd) of article (1) of FSC's bylaw No. (1) for 2005, and after completing the required procedures according to clause (2nd) of aforementioned bylaw. The day 2.12.2018 was set as a date to trying the case, and on that date the Court was convened, so the agents of the plaintiff and the agents of the defendant the Speaker of the ICR/ being in this capacity attended. As well as the agent of second defendant (feh.alif.ha) attended. The public in presence of both parties pleading proceeded, and the agents of the plaintiff repeated what listed in the petition of the case and requested to judge according to it. The agents of the first defendant that they repeat what listed in the answering draft and requests to judge according to it for the reasons they mentioned. The agent of the second defendant answered that he repeated what listed in the answering draft and requests to judge according to it. The agents of the plaintiff commented that the text (challenge subject) had caused a lost for their client and for many people, whereas it let their client misses the challenge period which it must be the determined period of the text starting after notified by the decision. Both parties repeated their sayings, whereas nothing left to be said, the end of

the pleading made clear and the judgment recited publicly in the session.

The decision:

After scrutiny and deliberation by the FSC, the court found that the agents of the plaintiff challenges the text of article (69) of Iraqi Central Bank law No. (56) for 2004 because it contradicts with provisions of article (100) of the constitution while it folded an inclusive immunity for the decisions of the Central Bank of being challenged where it made these decisions are subjected to be challenged before (financial services Court) within thirty days of the date of its issuance, or a shorter time. Not by date of notified by decision, and this matter caused a damage to their client in according to issuing a decision from financial services Court Ref. (5/financial services/2017) on 5.8.2017. Whereas its client had missed the right of challenging the decision against him from the Iraqi Central Bank within the challenge period abovementioned. Accordingly, the agents of the plaintiff requested to judge (by illegality of article (69) of Iraqi Central Bank text No. (56) for 2004 and annulling it, and to enact a replacement text allows aggrieved party of Iraqi Central Bank No. (56) for 2004 were enacted according to the enactor choice and his constitutional authorities which stipulated on in article (61/2nd) of the constitution, and it does not includes immunizing the decisions issued by the Central Bank of Iraq of challenging it, therefore, it does not violates article (100) of the constitution. The FSC finds also that the plaintiff request of annulling the text of article (69) of Iraqi Central Bank law No. (56) for 2004, to enact a replacement text instead of it. This matter is out of the FSC competencies which stipulated on in article (93) of the constitution and article (4/2nd) of its law No. (30) for 2005 and this requires a legislative intervention from the enactor according to his constitutional authorities abovementioned, and by the method set by the constitution. As well as, the FSC finds that the second defendant/ Mayor of Iraqi Central Bank/ being in this capacity is not a litigant in the case, because it is not the body which issued the law No. (56) for 2004 which challenged unconstitutionality of article (69) of it, and its approving does not produce a judgment of his admission approval as article (4 of civil

procedure law No. 83 for 1969 requires). Accordingly, the case of the plaintiff is lacking to its substantiation in the law, therefore, the Court decided to reject for incompetence and litigation according to provisions of article (93) of the constitution and article (4/2nd) of the FSC's law No. (30) for 2005, and article (4) of civil procedure law No. (83) for 1969. In addition to burdening the plaintiff the expenses and advocacy fees for the agents of the first defendant the Director in the legal department of the ICR (sin.ta.yeh) and legal assistant consultant in aforementioned department (heh.mim.sin) and the agent of the second defendant amount of one hundred thousand Iraqi dinars. The decision issued unanimously, and made clear on 2.12.2018.