

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court (Emblem)

(Kurdish Text)

Ref: 14/Federal/Media/2017

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The Federal Supreme Court has convened in 8.5.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Mikaeel Shamshon Qas Qourqis , Hussain Abbass Abo Al-timen and Mohamed Rajeb Al-kobaese who are authorized to judge in the name of the people. And it issued the follow decision:

The Plaintiff: The Chief Executive Officer Of Al-Atheer Limited Telecommunication Company/being in this post, his agent the attorney (Meem. Gaen. Aen.).

The Defendant: The Chief Executive Officer Of Communications And Media Commission/being in this post, his agent the legal official (Meem. Ra'. E.).

#### THE CLAIM:

The plaintiff made a case against the defendant before Baghdad \_ Al-Ressafa Appeals Court while the hearing in the appeal case no.(402/Seen 3/2017), the Appeals Court the accepted the initiated case and postpone the viewed case until the FSC decision is issued, and send it to the FSC after fulfillment the legal fee of it in the letter no.(402/ Seen 3/2017) on 14.2.2017 and numbered (14/federal/2017) in the FSC. In it the agent of the plaintiff claims that the defendant department as it is the party who organize the Communications And Media work in Iraq by order no.(65) year 2004 issued by the Director Of The Coalition Provisional Authority as he is the Director of that Authority in that time by the war codes and what is coincide with Security Council decisions including decision no.(1483) and (1511) for year 2003 as it mentioned in the prologue of order (65) for year 2004, after signing the license agreement between his client company (Al-Atheer Limited Telecommunication Company/Iraq) in year 2007 to work in the telecommunications sector in Iraq within the licensing round of mobile phone companies in Iraq, for the damage sustained his client company by the (Appealing Board) that was formed

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by clause (4/Alf, Ba ,Jeem) of section four of order no.(65) year 2004 which is one of the configurations affiliate to the defendant department; the defendant hire the Board members according to clause (4/Jeem) of section four of order no.(65).

The defendant department demand his client company large amounts of money among them this case fees illegally and without any legal standards (as it is mentioned in order no.(65) section eight of / 1&2) and without naming the violation categorically and the commission refusing to present the evidences that the Commission and the Board were based on to name the violation and the damage resulted from this violation and the standards that the fine amount to any violation determine by, so that his client company will be informed of this violation and its fine so the company will be able to defend its rights, the defendant department continue on requesting amounts of money of his client company as fines imposed by the defendant department on his client company among them the fine which is the subject of the initiated case before Baghdad \_ Al-Ressafa Appeals Court no.(402/Seen 3/2017), the defendant department prohibited the plaintiff company from directing his protest to the judicial authority claiming that the decisions of Appealing Board are decisive and can't be impeached, for the extreme damage that happened to his client company and prohibited the plaintiff company from directing his protest to the judicial authority and it can't know the presented evidence and the standards that was considered as legal proof in naming the damage and showing if it is in the competence of the Communications And Media Commissions or not? Whereas the connection between his client company and the defendant department is a contract connection based on the contract between them, and no party shall be the opposition and the judge in the same time; which is what the defendant department trying to stick to.

Therefore his client company impeaching before your honorable Court according its Bylaw for year 2005 the unconstitutionality of the Appeal Board decisions that is related to the defendant department

no.(1/Challenge/2017) on 15.1.2017, and no.(16/Challenge/2016) on 1.12.2016, and the unconstitutionality of clause (6) of section eight of order no.(65) for year 2004 that the two Appeal Board in the Communications And Media Commission decisions based on, for the follow rezones:

1. The authority of the Civil Courts according to article (29) of Civil Proceeding Code is a general authority on all personalities including the government, which is specialized to judge in all disputes except what is excepted in a special text, as article (30) of that Code stipulated on that no Court shall refrain of judgment; otherwise the Judge will be consider abstaining of judging in justice.
2. The Coalition Provisional Authority order no.(65) year 2004 did not stipulate on immunization the Appeal Board in the Communications And Media Commission decisions of impeaching it before the Civil Courts so that the article (29) of Civil Proceeding Code can be apply.
3. The aforementioned order in clause (6) of section eight of it did not consider the Appeal Board decisions decisive, but it considered final (in the issuing of an administrative decision concatenation in the formations of Communications And Media Commission), the final judgment means "obligatory judgment" not the decisive decision as the Appeal Board decisions are an administrative decisions not a judicial decisions according to the Board formation stipulated on clause (4/Ba') of section (4) of Coalition Authority order no.(65) year 2004.
4. According to clause (6) of section (8) of the Coalition Authority order for the Iraqi Constitution for year 2005 the aforementioned decisions violate article (100) of it that stipulate on (prohibit the laws of immunization any action or administrative order of impeaching).
5. The illegality of clauses (6/8) of order no.(65) year 2004 and the Appeal Board decisions which is connected to the defendant

department as it mentioned above, because it considered the Appeal Board decisions decisive and can't be impeached before the judiciary authority, which is contradict what is mentioned in the decision of the General Commission in the Federal Appeal Court no.(54/General Commission/2016) on 29.11.2016 which it said (whereas the case petition shown that the contract on which the fine was imposed was with the Communications And Media Commission, as the fine is connected to a contract that submit in it provision to the Civil Law standards therefore the case will be in the normal judiciary competence. The Court shall hear the case subject and issuing it decision based on the Law.

6. The subject of the initiated case before the Federal Appeals Court Baghdad \_ Al-Ressafa is about his client company request to forbid the financial requests and to cancel the impose of the fine issued by the Communications And Media Commission, which is issued illegally without any legally or subjected base, as the fine is connected to a contract subject that submit in it provision to the Civil Law standards. Therefore the First Instance was able of hearing the case and the two parties defends and shown if there is a violation by his client company and name it and determine the amount of damage and fine or compensation if it was necessary.
7. His client company was not informed of any evidence or rezones that conform the existing of a contract violation in spite of his client company requests for it from the Communications And Media Commission in so many official letters one of them his client company letter no.(17876) on 3.7.2016 directed to the defendant department. It didn't find any standards for determine the fine amount for the alleged violation incase it was proven, therefore the fine imposing and claiming issued by the Commission don't has a legal base, it is no more than an abuse action, in that case the Communications And Media Commission is the opponent and the judgment knowing that there are a decisions issued by the Appeal Board the defendant department didn't committed to, then the Appeal Board issued a decision in the same subject after it was re-

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presented by the defendant department without returning to the previous decisions in the same subject. In that point the Judicial authority was not the judge between his client company and the Communications And Media Commission, the damage effected his client company; indeed it was effected by these decisions, the benefits of making a balance between the contract parties can't be achieved only by transparent judicial procedures.

The agent of the plaintiff request of the FSC to judge in the unconstitutionally of clause (6) of section eight of order (65) for year 2004 issued by the Director Of The Coalition Provisional Authority, and to judge in the unconstitutionally of the Appeal Board decisions no.(1/Challenge/2017) on 15.1.2017, and no.(16/Challenge/2016) on 1.12.2016 and to cancel them and direct the case to the Civil judicial Courts and burden the defendant the fees and the expenses of the case.

The agent of the defendant answered the case petition by his answering draft dated 7.3.2017 that clause (6) of section eight of order (65) for year 2004 stipulated on (the General Director and the Hearing Commission decisions are decisive and remains valid until any challenge on it reach a decision and viewed by the Appealing Board, after hearing the challenges the Appealing Board can support the General Director and the Hearing Commission decisions or cancel them, also the Appealing Board can direct the decisions and the orders to the General Director and the Hearing Commission. The decisions that are supported by the Appealing Board are decisive).

While order no.(65) for year 2004 in section (4) that organizational structure stipulate on the forming the independent Appeal Board consist of three persons headed by a HJC judge, and the Federal Cassation Court decide in it decision no.(838/Civil Commission transport/ 2014/Ta'/821) on 29.5.2014 that stipulate on (as the Appeal Board is a form of the Communications And Media Commission that is headed by a judge and it decisions are decisive and final by the law; don't require a judicial order to be executed).

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And the Federal Cassation Court decision no.(3335/3336/Civil Commission/2016) sequence (3488/3489) on 14.8.2016 mentioned in it(as the Communications And Media Commission established by order no.(65) fir year 2004, this order organized all the legal issued related to the Commission which is a privet text that restrict the general text, the Appeal Board as it is one of the Communications And Media Commission is headed by a Judge, its decisions are decisive and final by the law, therefore the Civil Courts are not specialized to hear or accept the case according to section (4/4) provision of order (65) for year 2004, as the specialty of the courts is a general law and can't be overruled, the court judged by its self according to article (77) of Proceeding Code; it should reject the case as it is out of the court competence therefore it violate the competence rule.

His client department according to article (103) of Constitution stipulate on (First: The Central Bank of Iraq, the Board of Supreme Audit, the Communication and Media Commission, and the Endowment Commissions are financially and administratively independent institutions, and the work of each of these institutions shall be regulated by law), his client department is specialized to hear the violation and the challenges before the Appeal Board, the plaintiff request to judge in the unconstitutionally of the Appeal Board decisions no.(1/Challenge/2017) and no.(16/Challenge/2016) and to cancel them and direct the case to the Civil judicial Courts is not among the FSC competences therefore he request to reject the case and burden the plaintiff the fees and the expenses of the case.

After completing the legal procedures stipulated in article two of the FSC Bylaw no.(1) for year 2005, a day 8.5.2017 appointed as a date for the proceeding, on it the Court convened, the agents of the two parties did not attend beside that they were informed, the Court found that the agent of the plaintiff presented a request to this court on 7.5.2017 requesting an entry the ICR Speaker as a third party in this case, he also request to delay the case for the rezones he mentioned. the proceeding stared with their absent according to article (11) of the FSC Bylaw no.(1) for year 2005. As the case is ready to be judged the Court decided to end the proceeding and the follow decision made clear.

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### THE DECISION:

In the deliberation and discussion the FSC found that the plaintiff impeaching the unconstitutionality of clause (6) of section (eight) of order (65) for year 2004 that issued by the Director Of The Coalition Authority, the aforementioned order is a legislative order issued by a party that is specialized in issuing the legislative orders in that time. The specialized party to amend it or cancel it is the party that took place of the Coalition Authority which is the ICR. whereas the plaintiff/being in this post made the case against the Chief Executive Officer Of Communications And Media Commission/being in this post which he is not fit to be litigant in this case according to article (4) of Civil Proceedings Code no.(83) for year 1969/amended, therefore the case will be rejected for adversarial.

About the plaintiff request to enter the ICR Speaker as a third party in this case; it came inappropriate time while the case become ready to be judged, it decided to reject the request according to article (71) of Civil Proceedings Code.

Therefore it decided to reject the plaintiff case The Chief Executive Officer Of Al-Atheer Limited Telecommunication Company/being in this post. Also it decided to reject his second request to direct the case to the Civil Judicial Courts that is out of the FSC competence according to article (93) of Constitution and article (4) of its Law no.(2005). And decided to notify the Federal Appeals Court Baghdad \_ Al-Ressafa to proceed in the Appeal case no.(402/Seen 3/2017) and to judge in it according to the Law, and burden him the expenses and the fees. The decision was made unanimous and made clear in 8.5.2017.