

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful

Republic Of Iraq

Federal Supreme Court

(Emblem)

(Kurdish Text)

Ref: 20/Federal/2017

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The Federal Supreme Court has convened in 4.5.2017, 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 the First Instants Court that specialized in the commercial cases in Baghdad \_ Al-Ressafa Appeals Court while the hearing in the case no.(80/Ba'./2017) in the pleading session dated on 2.3.2017 claiming that the defendant department asking for amounts of money as fees compelled on the plaintiff company by the Communications And Media Commission; among them the money requested on the case that has been made before the First Instance Court that specialized in the commercial cases, also the defendant company 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 that reason the plaintiff company impeaching the unconstitutionally of Appealing Board decisions no.(24/Challenge/2017) on 15.1.2017 and no.(13/Challenge/2016) on 9.11.2016 on two parts; first what is mentioned in the Appealing Board decisions that they are decisive and can't be impeached, and second is relating to imposing fees and expenses for the services retroactively. Also he impeach the unconstitutionally of clause (6) of section (eight) of order

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(65) for year 2004 that the two decision of the Appealing Board in the Communications And Media Commission based on.

He requested from 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 Authority and the unconstitutionally of Appealing Board decisions no.(24/Challenge/2017) on 15.1.2017 and no.(13/Challenge/2016) on 9.11.2016 on two parts; first what is mentioned in the Appealing Board decisions that they are decisive and can't be impeached, and second is relating to imposing fees and expenses for the services retroactively and to cancel them and direct the case to the specialized judicial authority to judge in it, and burden the defendant the fees and expenses of the case.

The First Instants Court that specialized in the commercial cases gained the legal fee of the case on 20.7.2017 and decided to accept the initiated case and postpone the viewed case until the FSC decision is issued, and send it to the FSC in the letter no.(80/Ba'./2017) on 8.3.2017, when the letter arrived to this court numbered (20/Federal/2017) prelude to hearing, the defendant was informed about the case petition, the agent of the defendant answered by his answered draft dated 19.3.2017 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).

Order no.(65) section (4) the Commission Organizational Structure stipulate on forming the Independent Appealing Board headed by a HJC Judge that hears what is directed to The Iraqi Commission Of Communications And Media, clause (1) stipulate on (according to that an

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Independent Administrative Commission non-profit shall be establish and it well be known as The Iraqi Commission Of Communications And Media "the commission"; it will be responsible of the permitting and organizing the telecommunication services and the radio services and all other Media Systems services in Iraq, this Commission shall practice its duties with transparency, objectivity and non-discrimination principles and to take into consideration the proportionality and the rules of legal procedures).

The request of the agent of the plaintiff to direct the case to the specialized court is out of FSC competence also his request to judge in the unconstitutionally and illegality of Appealing Board decisions, the agent of the defendant request to reject the case and burden the plaintiff all the fees and 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 proceeding started with their absent according to article (11) of the FSC Bylaw no.(1) for year 2005.

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. As there is no legal base for his request, his request has been rejected. And his request to entry the ICR Speaker as a third party in this case was rejected also because the request present in an inappropriate time. As the case is ready to be judged the Court decided to end the proceeding and the follow decision made clear.

### THE DECISION:

In the deliberation and discussion the FSC found that the plaintiff impeaching the unconstitutionally of clause

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(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. Also he impeach in the unconstitutionally of Appealing Board decisions no.(24/Challenge/2017) on 15.1.2017 and no.(13/Challenge/2016) on 9.11.2016 that issued by the Appealing Board in the Communications And Media Commission. The FSC find from what is listed in the case petition and the defendant answering draft that the litigation directed to the defendant The Chief Executive Officer Of Communications And Media Commission/being in this post has no legal base and its violate article (4) of Civil Proceeding Code no.(83) year 1969, as the defendant did not issued or legislate the impeached decision, so direct the litigation to him can't be accepted formally.

Objectively; the impeaching in the unconstitutionally of Appealing Board decisions, the FSC finds that the Board headed by a HJC Judge is the party where the challenges on the decision of the General Director of Communications And Media Commission and the decision issued by (the Hearing Commission) in the mentioned commission are presented. This commission work is an applying for article (100) of Iraqi Constitution, not a violation to it. The FSC finds that the request to entry the ICR Speaker as a third party in this case came in un propriety time. As the case become ready for judge according to the law, the FSC decided to reject it according to article (71) of Civil Proceeding Code, also the plaintiff request to direct the impeaching case to the specialized judicial authority is out of the FSC competence that is stipulated in article (4) of FSC Law no.(30) year 2005 and article (93) of Constitution.

According to the aforementioned the FSC decision is to reject the plaintiff case and burden him the expenses and the fees and notify the specialized Court to proceed the case and reach a judgment based on the law. The decision was made unanimous and made clear in 8.5.2017.