



The Federal Supreme Court (F S C) has been convened on 3.28.2017 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, Aboud Salih Al-temimi, Michael Shamshon Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / Deputy Director of AL-waha for satellite channels services L.L.C/ being in this capacity/ his agent the barrister (aen.taa'.meem).

Defendant / the General Director the Head of the excusive body of the communication and media commission/ being in this capacity/his agent the official (meem.raa'.aleef).

Claim

The agent of the plaintiff claimed that the hearing committee which belongs to the CMC issued its decision No. (19/hearing/2013) on 1.29.201, which included imposing a license suspension penalty for four months from the date of its issuance, which granted to albaghdadia channel, which belongs to the company of the plaintiff. The plaintiff proposed to challenge the decision before the (challenge council) which belongs to the CMC, which issued the decision No. (3/challenge/unified/2014) on 4.20.2014, which included overturning the decision of hearing committee and cancelling the granted license for the channel and finishing its media and satellite works and closing all its offices in Iraq. The decision regarded final according to the order No. (65) For 2004 issued by the civil governor of Iraq, which belongs to coalition authority section (8) clause (6) of it. The

plaintiff sees that the challenge council had exceeded the limits of its powers, whereas it does not possessing but to overturning the decision of hearing committee or confirm it, which regards final, based on that the plaintiff proposed to initiate a case before alkarradah first instance court, but the decision of alkarradah first instance court was rejected by federal appeal court because of non-jurisdiction of the instance court to viewing the case. The claim sees that there is a disadvantage affected him, because he was unable to initiate a case about the subject, because the decision of challenge council regards final and that matter violates the constitution, especially article (100) of it, which stipulates on (it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision, as well as there is a violation for article (19) of the constitution, which stipulates on (litigation shall be a protected and guaranteed right for all), according to what aforementioned, the plaintiff request to judge with unconstitutionality of clause (6) of section (8) of order No. (65) For 2004. After completing the legal procedures which stipulated on in the second article of the FSC bylaw No. (1) For 2005, the day 3.28.2017 was set as a date for the pleading, on that day the court was convened, and the agents of the two parties attended, the public in presence pleading proceeded, the agents of the two parties repeated their previous sayings and requests and requested to judge according to what listed in the petition of the case. The agent of the defendant attended as well, and he repeated his sayings and requests, and requested to judge by rejecting the plaintiff's case for the reasons he listed in his answering draft. The court scrutinized what listed in the petition of the case and the sayings of the two parties, and where nothing left to be said, the pleading was ended, and the decision had been made clear.

Decision

After scrutiny and deliberation by the FSC, the court found that the (hearing committee) which belongs to the CMC, issued its decision No. (19/hearing/2013) on 1.29.2014, which included the imposing penalty of suspension for the license that granted to albaghdadia channel, which belongs to AL-waha for satellite channels services L.L.C, which possessed by the plaintiff/ being in this capacity, and

he proposed after the issuance of the aforementioned decision to challenge it before the (challenge council) which belongs to the CMC which issued its decision No. (3/challenge/unified/2014) on 4.20.2014, which included overturning the decision of hearing committee and cancelling the granted license for the channel and finishing its media and satellite works and closing all its offices in Iraq. That decision regarded final according to the order No.(65) for 2004, which issued by the civil governor of Iraq, which belongs to coalition authority according to the section (8) clause (6) of it, the plaintiff sees that the (challenge council) had exceeded its powers stipulated on in the aforementioned section, whereas its powers limited neither by overturning the decision of hearing committee nor by confirm it, which regards final, as a result for the disadvantage that affected the plaintiff, he challenging the unconstitutionality of clause (6) of section (8) of order No. (65) For 2004, because of its violation for the articles (100&19) of the republic of Iraq constitution in 2005. From scrutinizing the case by the FSC, the court found that the challenged text because of its unconstitutionality, which is it the clause (6) of section (8) of the order No. (65) for 2004 is a legislative text issued by a legislative power, posses the power of issuing it, and the power which concern in amending or cancelling it is the power that took its place, which is it the ICR, whereas the plaintiff initiated the case against the General Director the Head of the excusive body of the communication and media commission/ being in this capacity, which is not fit to be a litigant in this case, according to provisions of article (4) of civil procedure law No. (83) for 1969, therefore the case must be rejected as for the litigation, based on that the court decided to reject the plaintiff's case Deputy Director of AL-waha for satellite channels services L.L.C/ being in this capacity for the aforementioned reasons, and to burden him the expenses and the advocacy fees for the agent of the defendant the legal official (meem.raa'.aleef) amount of one hundred thousand Iraqi dinars. The decision issued decisively according to the provisions of article (5/2nd) of the FSC code No.(30) for 2005 and article (94) of republic of Iraq constitution, and made clear on 3.28.2017.