



The Federal Supreme Court (F S C) has been convened on 5.8.2017 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, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / the Head of Shiite mortmain/ deputy ship/ being in this capacity/ his agent the senior legal consultant (seen.jeem.haa').

Defendant / the Speaker of ICR/ being in this capacity/ his agents the legal officials (seen.taa'.yaa') and (haa'.meem.seen).

Claim

The agent of the plaintiff claimed before the FSC In case number (30/federal/2017), that the defendant/ being in this capacity had directed a letter to his client number (sheen.laam/1/9/832) on 1.24.2017, issued by the ICR/General Secretariat/the parliamentary office notifying him to attend to the ICR for this purpose, on the date one of the council sessions, which determined according to the letter number (khaa'.seen/20) which issued by the Presidency of the Cabinet/ the higher commission of coordination between the governorates) on 3.1.2017, and the request of inquiry violates the provisions of the constitution, law and the bylaw of the ICR for the following reasons: first- the plaintiff was assigned by the tasks of the Shiite mortmain head as deputy ship not by his own, which results, that the aforementioned request of inquiry represent a violation for the provisions of article (61/8th/haa') of the constitution and article (50) of the bylaw of the ICR, whereas the two aforementioned articles stipulated on phrase (the officers of the independent commissions) and this phrase goes to the officers of these commissions (by their own) exclusively, and the absolute in this

case never goes to its absoluteness, where the officers of these commissions (as a deputy ship) determining (their tasks and powers) according to the assigning order, therefore the officer that his (tasks and powers) were determined is incomparable to the other which is completely enjoy it. Second- the signatures that attributed to the members of the ICR (consents) on the inquiry request are stained with multiple legal stains, which resulting a violation for the inquiry request –aforementioned- for the provisions of article (61/8th/haa') of the constitution and article (58) of the ICR bylaw. Third- the request of inquiry –aforementioned- has violated provisions of article (61/7th/jeem) of the constitution and article (56) of the ICR bylaw, because his request included a questions sitting out of the plaintiff's specialty (being in this capacity) as happened in (Q1) of the inquiry questions, whereas the assigning order is a specialty of another body. Fourth- the inquiry request –aforementioned- has violated provisions of article (58) of the ICR bylaw, whereas the (interrogated did not present legal supports to confirm what he went to) in the inquiry request, and did not support it with legal considerable evidences, and what we find it clearly in all (inquiry questions) that presented by him. Fifth- the inquiry request –aforementioned- has violated the provisions of article (58) of the ICR bylaw, whereas it did not including (the reasons that the representative who directed the inquiry rested on which directed by the plaintiff/ being in this capacity). Sixth: what article (61/8th/haa') of the constitution draw of the regulation mechanism of how to direct (inquiry request) to the officers of the independent commissions in the affairs within their specialties, so it requires to including the (inquiry request) a specific facts representing a violation of the constitution or the law, based on that violation a severe financially or morally damage, and where scrutinizing the (inquiry questions) we notice that all of it, are not to that level of (the constitutional and legal violation, which based on that a severe financially or morally damage, and that resulting that the inquiry request has violated the provisions of article (61/8th/haa') of the constitution. Seventh- the provisions of article (61/8th/haa' (of the constitution and article (58) of the ICR bylaw conditioned to clarify the matters related to the interrogated, and the facts and the main points clearly, specifically and strictly, and that is what the aforementioned (inquiry questions) is lacking to, because all the questions are unclear, unspecific and not strict as it is happens in (Q5) of the (inquiry questions) for example, which bases on that, that the inquiry request violated the provisions of article

(61/8th/haa') of the constitution and article (58) of the ICR bylaw. Eighth-the defendant who directed the inquiry against the plaintiff has violated the hierarchy mechanism that approved by him to use the parliamentary monitory means (first is discussing a general subject then the parliamentary investigation then inquiry) resting by that on the provisions of article (61/7th) of the constitution, whereas the defendant did not restricted to this hierarchy mechanism in directing the inquiry to the plaintiff, which resulted, that the request of inquiry was on the contrary of the hierarchy mechanism that approved by him. Ninth- the inquiry request included many of (inquiry questions) which related to issues that violates the legal permanent fact, which decisively means, that the (interrogator in the inquiry request) was not strict or objective in that, which results that the inquiry request has violated provisions of article (58) of the council bylaw. Tenth- the procedures of notifying which according to it the plaintiff were notified, was not according to the law. Therefore and for the aforementioned reasons, the plaintiff requested from the FSC after taking the required procedures to judge with cancellation of inquiry request which directed by the defendant/ being in this capacity. The agents of the defendant answered the petition of the case with an answering draft dated on 4.18.2017, they requested according to the reasons mentioned in it from the FSC to reject the case and to burden the plaintiff its expenses and the advocacy fees, because the inquiry procedures (subject of the case) has been fulfilled the formal and objective conditions, according to provisions of article (61/7th/jeem) of the constitution and article (58) of the ICR bylaw, and the request fulfilled the requirements of its presentation to the speaker of the ICR, because it is written and signed by the representative, and with approval of (25) representatives, and the request included clarification for the matters which should be interrogated about such as the facts and the main points which digested by the inquiry, also it is included the means and the evidences which supports what he went to of the inquiry questions, and the ICR is the specialized authority to evaluate and satisfied of these questions or not at the inquiry process, as for the plaintiff claiming that he was assigned by tasks of Shiite mortmain head on behalf of his own not authentically and this is contrariwise what article (61/8th/haa') of the constitution texted on, here we clarify that the authenticity or on behalf of own in responsibility assessment both are the same matter in rights and duties that entrusted to the principal, and no problematic in applying the provision of the constitution article (61/8th/haa') against the plaintiff, whereas

the procedures of the inquiry request (subject of the case) fulfilled all the formal and objective conditions, as for the plaintiff claiming, that the hierarchy should be used in the parliamentary monitoring means, according to the provisions of article (61/7th) of the constitution, therefore the agent of the plaintiff expressing his point of view in interpreting for the constitution provisions, and the provisions of the constitution allowed these options without arrangement, and the inquiry (subject of the case) according to the provisions of article (61/8th/haa') of the constitution, and the general secretariat of the ICR is the specialized body that issuing a letter to the bodies that may concern, and informing them by the ICR decisions. The court was completing its legal procedures which stipulated on in the second article of the FSC bylaw number (1) for 2005, the day 5.8.2017 set as a date for the pleading, on that day the court convened, and on behalf of the plaintiff/ being in this capacity the senior consultant at the office of the plaintiff, the legal official (seen.jeem.haa') attended, and on behalf of the defendant/ being in this capacity his two agents, the legal officials (seen.taa'.yaa') and (haa'.meem.seen) attended, according to the power of attorney attached to the file of the case. The public in presence pleading proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it, and to burden the defendant the expenses and the advocacy fees, the agents of the defendant repeated what they listed in their answering draft dated on 4.18.2017 and requested to reject the case and to burden the plaintiff the expenses of the case and the advocacy fees. The agent of the plaintiff presented answering written draft on the defendant's draft, and he repeated his previous sayings and requests and requested to judge according to it, as well as the agents of the defendant repeated their sayings and previous requests, and requested to reject the case. Whereas nothing left to be said, the court ended the pleading, and the following decision made clear.

The decision

After scrutiny and deliberation by the FSC, the court found that the ICR and with a request of one of its members and approval of twenty five representatives decided to direct an inquiry to the plaintiff/ being in this capacity. The plaintiff challenged that decision claiming that the inquiry request was contrariwise the constitution and law, and for the reasons he listed in the petition of the case, and the FSC finds after scrutinizing the

reasons which listed by the plaintiff and the answers of the defendant, that the inquiry request has fulfilled the requirements of its presentation to the speaker of the ICR, written and signed by one of the representatives and with approval of more than a twenty five representatives, and this request had included the facts and the matters inquired about, as well as the main points which listed in the inquiry questions. The FSC finds that occupying of the plaintiff/ being in this capacity for his post on behalf of his own never precludes him of accountability of what he charged with, in case it was affirmed, because the phrase listed in article (61/8th/haa') of the constitution which includes (the officers of the independent commissions) involves the officers authentically and on behalf of their own, because the unity of the role they carrying out in administrating these commissions. Therefore the court finds that the plaintiff is involved to the provisions of inquiry which stipulated on in article (61/8th/haa') of the constitution, and that is what this court headed to in its decision issued on 4.18.2017 in case number 37/federal/2017. Also the FSC finds that the way of hearing manner selecting of the principal as a parliamentary monitory mean, its assessing refers to the ICR according to the constitution, and without a specific hierarchy, but the other points stirred by the plaintiff in the petition of his case, so it could be stirred before the ICR while the inquiry process is on regarding that the ICR is the body which specialized in investigation in such matters and assessing it and forming satisfaction or not in this concern. Based on that, the FSC finds that the inquiry request and its procedures was contrariwise to the provisions of articles (61/7th/jeem) and (61/8th/haa') of the constitution and article (58) of the ICR bylaw, therefore the case of the plaintiff/ being in this capacity is not based on reason of the constitution or the law, and should be rejected for the aforementioned reasons, therefore the FSC decided to reject the case of the plaintiff/ being in this capacity and to burden him the expenses and advocacy fees for the agents of the defendant/ being in this capacity misters (seen.taa') and (haa'.meem) a sum of one hundred thousand dinar. The decision issued unanimously and decisively and made clear on 5.8.2017.

