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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, Mohammed Rajab AL-kubaisi, 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:

Plaintiffs / General Director of CMC/ being in this capacity/ his agent the legal official (meem.raa'.aleef).

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 in case number 33/federal/2107 that the presidency of the ICR issued its decision to call upon his client for inquiry based on a request of the representative (haa'. al) which reported to the CMC by the secretary general of the ICR/ on behalf of his own, then a second and third date for inquiry followed that, then a postpone for inquiry followed that till 3.11.2017, in spite of illness of his client, the inquiry achieved in the session of the ICR while his client was absent. The ICR decided to list the subject on the schedule of the ICR 4.3.2017 for voting on relieving him of his tasks, relying in that on the text of article (67) of the ICR bylaw and article (61) of the constitution, and all these decisions are void for the following reasons: 1- order (65 for 2004) determined according to section (4) the organizational structure of the CMC, which consist of a council of commissioners, general director, challenge council and general inspector. 2- The head of custodians' council is the head of the commission, while the general director occupies executive tasks. 3- The plaintiff (his client) occupies the head of custodians' council head on behalf of his own in

addition to his basic tasks. 4- The head of general director post was occupied after that on behalf of his own as well. 5- For more than three years a new speaker for custodians' council was elected, thus the CMC has a speaker, but not the plaintiff. 6- The accountability of the general directors is out of power and authority of the ICR, as long as order (65) is like the Iraqi valid laws which coincides exclusively on the activity of the CMC and clause (a) of section (3) of the order stipulated on (the CMC will borne alone the responsibility of authorizing and organizing the wired, wireless, broadcasting and transmission communication services..Etc) which means that the CMC legally is not submitting to the monitory of the ICR from all sides, the role and connection of the ICR to the activity of the CMC stipulated on exclusively in section (6) of order (65) for 2004, which requires availability of a number of conditions which counted in the petition of the case. As long as article (61/8<sup>th</sup>/haa') of the constitution stipulated on (the Council of Representatives may question independent commission heads in accordance with the same procedures related to the Ministers. The Council shall have the right to relieve them by absolute majority). The constitution clearly determined the concept of (independent committees) and was not mentioned includes the counting (the directorate of his client) which stipulated on in article (103) of the constitution, where it considered the CMC an independent committee financially and administratively, and that shall be regulated with a law. And article (103) itself, confirmed that the Iraqi central bank is the only body in charge of before the ICR, while it is excluded the CMC and the fund monitory divan, in spite of they are connected to the ICR without being responsible before it, therefore the law which regulates the committee work is the text of order (65) and the connection of the committee with the ICR should be through the aforementioned order. As long as the inquiry request related to permissions subject and the executive and operative matters which enters includes the powers that granted to the CMC which out of the ICR monitory, and the inquiry subject is not matching to any of cases stipulated on in section (7) of order (65) whereas by just reviewing the content of the inquiry, we will see it is not related to the capacity of the general director to carry out his tasks because of illness, and not convicting him of committing a crime its sentence is jail, and not by conflicting for benefits or fails in perform the duty, which they are the five conditions stipulates on in section (6) of order (65), according to what aforementioned, the ICR have no right to be

superintendent on his client, and his client's directorate, therefore the inquiry decision and call upon for it and its procedure in absence, and showing the subject of his dismissal, all these decisions obliges to be void, and he requested to judge with the following: 1- avoidance of inquiry call upon to inquire his client (the general directorate of the CMC which presented by the representative (haa'.al)), and in absentia inquiry, and the decision of the defendant being in this capacity of reviewing the dismissal subject of the plaintiff from his tasks because unconstitutionality of these decisions, and because of its lacking for the legal base, and its violation for provisions of section (6) of valid order (65 for 2004) because of non-conformity of article (58) of the ICR bylaw or provisions of article (61/7<sup>th</sup>) of the constitution or (8<sup>th</sup>/haa') of the Iraqi constitution on the inquiry, with clearness of article (103) of the constitution because of its confliction with a private valid law. 2- avoidance of in absentia inquiry for the plaintiff/ being in this capacity on 3.11.2017 because of its unconstitutionality, and because it is relying on a void call upon request for the inquiry and contrariwise of the codes and to burden the defendant/ being in this capacity the dues, expenses and fees, the answer of the defendant/ being in this capacity on the petition of the case was received in the draft of his two agents, requesting to reject the case for the reasons listed in it, it is summary was, that the plaintiff insisting on claiming of his illness was belied his attendance to the session of the ICR number (8) on 2.16.2017 to answer the parliamentary question as he is the head of committee and he did not show any object in all stages. Also the divan order number (27/seen/meem/raa'/noon/dal.seen/11/1102) on 10.9.2013 included the assignment of plaintiff as a head of CMC custodians' council on behalf of his own, in addition to the membership of custodians' council. They made clear that the plaintiff was notified about the inquiry and setting the first date for his attendance on 2.23.2017 but he did not attend, and the council decided to postpone the inquiry till 3.9.2017 and he did not attend too. The inquiry in his right was done on the set date, therefore reviewing on the request to judge the avoidance of the ICR decision is not effective anymore and the case has no reason to be reviewed, after the inquiry process was achieved and he was dismissed of his tasks by voting in the ICR session number (24). On 4.11.2017 and on the assigned day for the pleading after informing the defendant by the petition of the case and its documents according to clause (1<sup>st</sup>) of article (2) of the bylaw and completing the legal

procedures, the agent of the plaintiff attended the legal official (meem.raa'.aleef), also (seen.taa') and (haa'.meem) and the barrister (yaa'.meem.al) attended as an agents of the defendant, the agent of the plaintiff repeated what listed in the draft of the case. The agents of the defendant answered, and they repeated what listed in the answering draft, and requested to reject the case, the agent of the plaintiff stated that his client has stepped down of his post as a general director of the CMC, and that was by a decision from the ICR to dismiss him from the aforementioned title according to the decision number (38) in 11 April 2017. The agents of both parties repeated their sayings, and the court completed its investigations. Whereas nothing left to be said, the court ended the pleading on 5.8.2017:

### The decision

After scrutiny and deliberation by the FSC. The court found that the agent of the plaintiff challenging the unconstitutionality of the ICR presidency decision by calling upon his client (the plaintiff) for inquiry, then inquiring him in absentia, and listing the voting of his dismissal of his tasks on the schedule of the ICR session dated on 4.3.2017 according to the provisions of article (67) of the ICR bylaw and article (61) of the constitution, and he requested to void the inquiry call upon request and in absentia inquiry which done on 3.11.2017 as he pretended because of its unconstitutionality, and because his client had administrate the CMC as a deputy of the head not incumbent , also he cannot be accounting because his directorate is not submitting to the monitory of the ICR, where it is related to the ICR but not in charge before it according to the text of article (103) of the constitution, and the FSC finds that the ICR has the right to inquire the officers of the independent commissions according to the procedures that related to the ministers, and it has the right of exempting them with absolute majority according to the text of article (61/8<sup>th</sup>/haa') of the constitution and article (67) of the ICR bylaw, as well as it finds the permission of in absentia inquiry in the ICR after informing the officer and not attending without presenting legal excuse shall the ICR be satisfied with, whereas that regards as an admission to what related to the interrogated, also what is meant by the phrase (officers of the independent commissions) which listed in article (61/8<sup>th</sup>/haa') of the constitution who takes on the administration of the commission incumbently or on behalf of their own, that is the text became

absolute and did not distinguish between the officers of these commissions if they were occupying their posts incumbently or behalf of their own, because the on behalf of his own exercising the powers which granted to the incumbent, and that is what the FSC went to in its decision number (37/federal/2017) issued on 4.18.2017, whereas the plaintiff did not attend the inquiry without presenting a legal reason hindering him from attendance in spite of assigning many dates to enabling him to attend, and the in absentia inquiry was done on its date, therefore the request of voiding the call upon to the inquiry decision and voiding the inquiry, its reviewing became in objective, adding to that, that the litigation of the plaintiff in the case is not needed anymore and became unaccomplished, where he lost his job title he relied on when he initiated the case after the voting of exempting him of his tasks in the ICR session number (24) on 4.11.2017, accordingly the claim of the plaintiff losses its legal support and should be rejected, therefore the FSC decided to reject the case of the plaintiff and to burden him the expenses and the advocacy fees for the agents of the defendant the legal officials (seen. taa'.yaa'. and haa'.meem.seen) and the barrister (yaa'.meem.al) a sum of one hundred thousand dinar divided between them. The decision issued publicly and unanimously on 5.8.2017.