



The Federal Supreme Court (F S C) has been convened on 5.29.2017 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 / Minister of planning/ being in this capacity/ his agent the barrister (shin.sin.al).

Defendant / The Speaker of ICR/ being in this capacity/ his agent the legal official (heh.mim.sin).

Claim

The agent of the plaintiff claimed that his client Minister of planning/ being in this capacity previously informed by the letter of the ICR number (shin.lam/1/9/1090) on 1.29.2017 to attend before the aforementioned council to inquire him by the representative (ain.nun) and because the aforementioned inquiry violates the constitution and the bylaw of the ICR, he proposed to challenge it by relying on provisions of article (93) of the constitution for the following reasons: 1- article (61/7th/jim) of the constitution forced the necessity that the inquiry must includes a conditions listed in article (58) of the ICR bylaw, which is it: the inquiry must be in matters that within the interrogated Minister's specialty, the –inquiry subject- must be determined and the matters that he is inquired about, the inquiry must includes the facts and the main points which digested by the inquiry and the matters inquired about, determining the manner of the legal and constitutional violation that committed by the Minister, the inquiry should not includes inappropriate phrases, its presentation must not be for private or personal benefit for the interrogator, where the judgment of the

FSC settled on the necessity of the conditions availability in the inquiry requests and the unconstitutionality and voidance of every inquiry violates it (decision 35/federal/2012 on 4.30.2012). 2- The inquiry questions did not include what proves trespassing on the public funds and the state's benefits, and it was possible to direct these questions as a parliamentary question and the interrogator representative did not relies on approved report issued from an official monitory body, such as fund monitory divan or the commission of integrity or the office of the public inspector in the ministry of planning. 3- The directed questions to the interrogated characterized with ambiguity and it was lacking for the legal substantiations or the administrative violations, that the ministry of planning is committed to the tasks stipulated on in article (3/3rd) of its code number (19) for 2009, not among it (setting a plan for the ration card), as well as the question related to the restoration of guarantee letters was not determined in any contract or guarantee letter number or its date, and the judicial decisions which these questions issued according to it, is out of power and specialty of the interrogated Minister, and violates article (61/7th/jim) of the constitution and article (58) of the ICR bylaw. 4- The name of the company that granted contrariwise the category or renewal conditions was not determined, and that violates the requirements of the inquiry. 5- As for what listed in clause (7th) of the inquiry questions, that the instructions of registering and categorizing the contractors' number (1) for 2015 issued by the competences of the Minister of planning abovementioned, and the exception of mechanism conditions came by a decision from the cabinet number (148) for 2016, and implementing of the aforementioned decision never forms a legal violation, especially is it issued according to the security circumstances, which the country is passing through. 6- As for clause (7th) the plaintiff did not clarify the commercial name of the company and the number of the letter that related to the listing, there is no letter delivered to the ministry of planning concern the name of (general transportation) company and this wondering has a deception for the public opinion to collect needed signatures for the inquiry. 7- There is a personal benefit should be exist for the interrogator started with a previous quarrel between the two inquiry parties occurred at the grand hall of the ICR in 2013 by the humiliating assault in that time by the interrogator to the interrogated, and what follows that of media statements (reading and heard). According to what aforementioned, and because of the violation of the inquiry to the conditions and mechanisms,

which provided in article (61/7th/jim) of the constitution and article (58) of the ICR bylaw - as the plaintiff claims – his agent requested the following: 1- To judge with unconstitutionality of the inquiry request and to cancelling it, which related to his client (Minister of planning/ being in this capacity) which mentioned in the letter of the ICR number (shin.lam/1/9/1090 on 1.29.2017). 2- To provide him with a letter addressed to the ICR confirms the constitutional challenge to the inquiry subject. The agents of the defendant / being in this capacity replied the petition of the case: the request of the inquiry fulfilled its conditions which article (61/7th/jim) of the constitution required, and the agent of the plaintiff did not clarify how the aforementioned text violates the constitution, therefore his claim is without support. And the aforementioned request not violating article (58) of the ICR bylaw and the article that pointed to stipulates on conditions was availed in the inquiry request, because the request is attached to the subject of the inquiry and the matters inquired about, its reasons, substantiations and the violations which should be inquired about, therefore no support for the claim of the plaintiff from this side. And the confirmation about how many these conditions conforms to article (61/7th/jim) of the constitution and article (58) of the ICR bylaw, the evaluation of that returns to the ICR within its competences of monitoring on the executive power by propounding the violation and its substantiations and the answer of the interrogated about it and how responsible he is about these matters, accordingly the subject will be inquiry or seek for information and what based on that of trace. The attendance of the interrogated before the ICR is a constitutional obligation should be executed, as long as there are a cases completed its reasons and formal conditions, and the evaluation of inquiry subject and its scopes returns to the members of the ICR when the inquiry takes place, according to what aforementioned, the agents of the defendant requested to reject the case. After registering the case at this court according to clause (3rd) of article (1) of the FSC bylaw number (1) for 2005, and completing the necessary procedures according to clause (2nd) of article (2) of the aforementioned bylaw and the answer of the agent of the plaintiff on the petition of the case, the day 5.29.2017 assigned as a date to review the case, on that date the court was convened, the agent of the plaintiff the barrister (shin.sin.al) attended as well as the legal official (heh.mim) as an agent for the defendant/ being in this capacity, the public in presence pleading proceeded, the agent on the plaintiff repeated what listed in the petition of

the case and requested to judge according to it, the agent of the defendant answered and repeated what listed in the answering draft and requested to reject the case, the agent of the plaintiff commented, that on 5.25.2017 the ICR hosted his client and directed a question to him, which is it the axis of the inquiry, and he replied elaborately, and he think that the formal aspect of the inquiry is not available anymore, the agent of the defendant answered and said that the answer of the plaintiff during his host never obstructing his inquiry and there was no decision issued to cancel the inquiry, and he requested to reject the case. The agents of both parties repeated their sayings. Whereas nothing left to be said, the court ended the pleading and the decision made clear.

The decision

After scrutiny and deliberation by the FSC. The court found that the agent of the plaintiff claims that his client Minister of planning/ being in this capacity previously informed with the letter of the ICR number (shin.lam/1/9/1090) on 1.29.2017 to attend before the ICR to inquire him by the representative (ain.nun), and because the aforementioned inquiry violates the constitution and the bylaw of the ICR he proposed to challenge it according to the provisions of article (93/3rd) of the constitution where article (61/7th/heh) of the constitution obliged that the inquiry should includes the conditions listed in article (58) of the ICR bylaw, which is it: the inquiry should be within the specialties of the interrogated Minister. The -inquiry subject- should be determined and the matters interrogated about. The inquiry should includes the facts and the main points which digested by the inquiry and the matters interrogated about. Determining the aspect of the legal and the constitutional violation which committed by the Minister, the inquiry should not containing inappropriate phrases. Its presentation should not be for a private or personal benefit for the interrogator. The judgment of FSC settled on the necessity to these conditions being available in the inquiry requests, and unconstitutionality and voidance of every inquiry violates it (decision 35/federal/2012 on 4.30.2012) and the inquiry questions was not includes what prove trespassing on the public fund of the state's benefits. The directed questions to the interrogated characterized with ambiguity and its lacking for the legal substantiations or the administrative violations. Also the name of the company which granted contrariwise the categorizing and renewal conditions was not determined, that is also

violates the requirements of inquiry, and the instructions of registering and categorizing the contractors number (1) for 2015 issues with a competences of the Minister of planning/ being in this capacity, and according to article (13) of planning law. Also the inquiry includes a personal benefit for the interrogator started in previous quarrel between the inquiry parties. Accordingly, and for the violation of the inquiry to the constitution and the aforementioned bylaw of the ICR and for other reasons includes the petition of the case, the agent of the plaintiff requested: 1- To judge with unconstitutionality of the inquiry request and cancelling it, which concerns his client (Minister of planning/ being in this capacity) which mentioned in the letter of the ICR number (shin.lam/1/9/1090) on 1.29.2017. 2- To provide him with a letter addressed to the ICR confirms the constitutional challenge on the inquiry subject. The FSC finds that the presented request to the ICR to inquire (plaintiff Minister of planning/ being in this capacity) presented by more than a twenty five member of the ICR members, and informing the aforementioned person was with an order from the speaker of the council and executed by the general secretariat of the abovementioned council, which never unbalancing the formality according to the administrative contexts, therefore the needed formality in the request of the inquiry was availed which stipulated in article (61/7th/jim) of the constitution and article (58) of the ICR bylaw. The frame of reference returns to the members of ICR from propounding the violation and its substantiations, and the answer of the responsible Minister about it and the scope of his responsibility on these matters , accordingly the subject might be an inquiry and what traces based on it or question or clarification, so the attendance of the Minister before the ICR is a constitutional obligation must be executed as long as there is a case completed its reasons, constitutional and legal substantiations. Based on that, the court decided to reject the case of the plaintiff and to burden him the expenses and the advocacy fees for the agent of the defendant the legal official (heh.mim.sin) amount of one hundred thousand Iraqi dinars divided between them. The decision issued decisively and unanimously according to the provisions of article (5/2nd) of the FSC law number (30) for 2005 and article (94) of the constitution and made clear on 5.29.2017.

