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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 trade (deputy) / 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 trade (deputy) / being in this capacity previously informed by the letter of the ICR number (shin.lam/1/9/1090) on 1.29.2017 and (shin.lam/1/9/3219) on 3.20.2017 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 (93/3<sup>rd</sup>) of the constitution for the following reasons: 1- article (61/7<sup>th</sup>/jim) of the constitution obliged 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 axis of the inquiry subject had been decided by the Iraqi judiciary with a peremptory decisions and the investigation about it had been closed because there is no financial damages may affect the public fund or considerable administrative violations. As an implementation of (separation between powers) principle and practicing the judicial power for its role, which stipulates on in articles (47 & 87 & 88) of the constitution, and for justice and equity reasons, and the practicing of the ICR of its true monitory role, it shouldn't to review the inquiry subject when the judiciary took a decision about it, especially there are no new facts arises to justifying its processing after a decisive judgment issued in this concern, and what a new arises is the continuous statements of the interrogator representative in the media and outside the parliament's dome, which was not out of a personal targeting and it was not desiring the public benefit. 3- 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 trade. 4- The directed questions to the interrogated characterized with ambiguity and it was lacking for the legal substantiations or the administrative violations, which makes it incompatible with the legal and constitutional conditions which stipulated on in the constitution and the ICR bylaw abovementioned, whereas this subject may effect in the possibility of appealing or not the procedures of granting the confidence to the interrogated, where the propounded questions of the inquiry of the trade Minister, (the rice) contract, did not regard that the determining of direct call upon is not includes the power of the Minister but the power of the Prime Minister according to the last reformations package. And the date of exception from governmental contracts execution instructions was achieved before the Ministerial assignment of the interrogated , which means it was in the past government contract, as well as, it did not regards the questions – inquiry subject – that the rice quantity, subject of the main question was released with a judicial decisions which became final, and mentioning this question in this way and what it includes

of ambiguous public matters, it is targeting to misleading the public opinion and the representatives to collect the required signatures to inquire the Minister of trade (deputy). 5- Article (84) of the ICR bylaw not allows to intervene in the procedures and matters propounded on the judiciary, so it is prior to not breach these matters that propounded on the FSC. 6- article (24) of companies' law number (22) for 1997 stipulated on (regulation of general companies administration) and granted the powers for its boards of directors and take the decisions that related to their work according to the provisions of the law, which is it obligatory to be enforced, except what listed in article (25) of the aforementioned law which obliged to review the decision made by the board of directors on the Minister, for example (the subject of the cereal quantity, its quality or prices), and that is what the interrogator representative listed in her questions (challenge subject). Therefore it is out of the post specialty or out of the interrogated (plaintiff) powers, that matter violates the inquiry conditions which regard a violation to the provisions of the constitution and the law.7- as for the question related to the mills, its installment must be accomplished according to the industrial investment law number (20) for 1998, and the government is not committed to any legal obligation of grinding the items of the ration card in these mills, as well as the economical affairs committee in the ICR previously agreed to import and grind the cereals in the private mills for the domestic production and to filling the domestic markets needs. 8- the interrogated administrate the Ministry of trade as a deputy not with a full powers like the powers of the Ex-Minister (the incumbent) whose the ICR approved his assignment according to the constitution, which unbalancing the truth of the litigation as well as unbalancing the necessary conditions for the truth of the inquiry, which stipulated on in article (58) of the ICR bylaw (the decision of the FSC number (37/federal/2017) on 4.18.2017) according to what aforementioned, and the violation of the inquiry to the conditions and the mechanisms which included in article (61/7<sup>th</sup>/jim) of the constitution and article (58) of the ICR bylaw - as the plaintiff claims- his agent requested: 1- to judge with unconstitutionality of the inquiry request (challenge subject) and to cancelling it and void it, which concern his client (Minister of trade (deputy)/ being in this capacity) which listed in the letters of the ICR abovementioned, which enforces him to attend before the ICR for inquiry. 2- and basing on what listed in clause (8) aforementioned, the agent of the plaintiff requested to introduce the Prime Minister/ being in this

capacity as a third party in the case to enquire him about the truth of the granted powers to the interrogated (Minister of trade (deputy)) if it was the same powers that granted to the incumbent Minister. 3- for the significance of the case's subject, he requested to provide him with a letter address to the ICR confirms the constitutional challenge against the inquiry subject, the agents of the defendant/ being in this capacity replied the case's petition: that the request of inquiry is meeting the conditions which article (61/7<sup>th</sup>/jim) of the constitution obliged, and the agent of the plaintiff did not clarify how the aforementioned request violates the constitutional text, therefore his case is without a substantiation. And the aforementioned request is not violating article (58) of the ICR bylaw and the aforementioned article stipulates on a conditions 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 violation which should interrogate about, therefore there is no substantiation for the case of the plaintiff from this respect. And the confirmation on the degree of conformity on inquiry conditions to the article (61/7<sup>th</sup>/jim) of the constitution and article (58) of the ICR bylaw, that matter returns to the ICR within its specialties of monitoring the executive power by propound the violation and its substantiations and the answer of the interrogated about it and his responsibility of these matters, accordingly the subject will be an interrogation or 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 or questioning and what traces based on it, 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 and formal conditions, and evaluation of the inquiry subject and its aspects returns to the members of the ICR while processing the inquiry, accordingly the agents of the defendant requested to reject the case. After registering the case at this court according to clause (3<sup>rd</sup>) of article (1) of the FSC bylaw number (1) for 2005, and after completing the needed procedures according to clause (2<sup>nd</sup>) of article (1) from the aforementioned bylaw, and after the agent's of the defendant/ being in this capacity answer on the petition of the case, the day 5.29.2017 was assigned as a date to review the case and on that day the court convened, the agents of the two parties attended, the agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it and he added that he presented a draft attached with

a letter from the legal department of the general secretariat of Council of Ministers number (3783) on 5.3.2017. The court reviewed it and it was attached to the file of the case, the agent of the defendant answered that he reviewed the agent of the plaintiff's and its attachment, and he like to make clear that the attorney issues by the Prime Minister for each Minister assigned to administrate another Ministry in addition to his one, and what listed in the letter of the general secretary of Council of Ministers is a general matters and it has no traces on the route of the inquiry, in addition that the FSC has a decision indicates that the deputy is like the incumbent number (25/federal/2017 & 30/federal/2017). 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 trade (deputy)/ being in this capacity previously informed with the letters of the ICR numbers (shin.lam/1/9/1090) on 1.29.2017 and (shin.lam/1/9/3219) on 3.20.2017 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 and the judgment of the FSC, he proposed to challenge it according to the provisions of article (93/3<sup>rd</sup>) of the constitution where article (61/7<sup>th</sup>/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) as well as the axis of the inquiry subject was resolute by the Iraqi judiciary with a final decisions, and the investigation in this matter was closed because there is not financial damages affected the public fund or even a considerable an administrative

violations might rely on and valid to be a basis for the inquiry request, accordingly and to what listed in the petition of the case of other reasons, the agent of the plaintiff requested to: 1- to judge with unconstitutionality of inquiry request (the challenge subject) and to cancelling it and to void it which concern his client (Minister of trade (deputy)) being in this capacity, which listed in the ICR abovementioned two letters, which adjudges his attendance before the ICR for inquiry. 2- Basing on what listed in clause (8) from the petition of the case, the agent of the plaintiff requested to introduce the Prime Minister/ being in this capacity as third party in the case to enquire him about the truth of the granted powers to the interrogated (Minister of trade (deputy)) if it was the same powers that granted to the incumbent Minister or not. 3- For the significance of the case's subject, he requested to provide him with a letter addressed to the ICR confirms the constitutional challenge against the inquiry subject. The FSC finds that the presented request to the ICR was to inquire the plaintiff (Minister of trade (deputy)) being in this capacity, was presented by more than a 25 members of the ICR and informing the aforementioned was by an order from the Speaker of the aforementioned council and carried out by the Secretary General of the aforementioned council and that never unbalancing the formality according to the administrative contexts, therefore the inquiry had the formality stipulated on in article (61/7<sup>th</sup>/jim) of the constitution and article (58) of the ICR bylaw. Objectively, the evaluation of what reclined against the Minister of trade (deputy)/ being in this capacity of matters and violations and how in conforms with the provisions of article (61/7<sup>th</sup>/jim) of the constitution and article (58) of the ICR bylaw, so the frame of reference of that returns to the ICR members by propounding the violation and its substantiations and the answers of the in charge Minister about it, and how responsible is he about these matters and according to that the subject might be an inquiry and what resulted from it of traces or question or enquiry and what resulted from it as well, so the attendance of the Minister before the ICR is a constitutional obligation shall be executed as long as there is a case completed its reasons and the phrase (to account them in the affairs within their specialty) listed in article (61/7<sup>th</sup>/jim) includes in addition to the assigned Minister incumbently the Minister that assigned to administrate another ministry as a deputy if he had been granted the full powers that granted to the incumbent, and because he is a Minister and the ICR approved his assignment according to the constitution, and that is what the

constitutional judgment in Iraq settled on in a number of its decisions thereof (the decisions of the FSC number 37/federal/2017 on 4.18.2017 & 30/federal/2017 on 5.8.2017), therefore the claim of the plaintiff has lost its legal substantiation. The court decided to reject it, 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 (5/2<sup>nd</sup>) of the FSC law number (30) for 2005 and article (94) of the constitution and made clear on 5.29.2017.