



The Federal Supreme Court (F S C) has been convened on 6.20.2017 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 (ain.teh.mim).

Defendant / the General Director the Head of the excusive body of the communication and media commission/ being in this capacity/his agent the official (mim.ra.alif).

Claim

The agent of the plaintiff claimed before the FSC in case No. (50/federal/2017) that the hearing committee which belongs to the CMC previously issued its decision No. (19/hearing/2013) on 1.29.2014, which included imposing a license suspension penalty against AL-Baghdadia channel which belongs to his client company for four months from the date of its issuance, and the decision has been challenged before the (challenge council) which belongs to the CMC which issued the decision No. (3/challenge/5 unified/2014) on 4.20.2014 that 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 the abovementioned article determined its powers neither by overturning the hearing committee nor by approving it, and the issued decision by approving the challenged decision regards final and in this decision the challenge council has overturned the hearing committee decision and issued a new decision was not mentioned before. A case initiated before Al-karradah first instance court against the decision issued by the challenge council, and the court's decision issued in case No. (1228/beh/2016) on 6.19.2016, and the judgment was vetoed according to the decision of federal cassation court No. (3335/3336/civil commission/2016) on 8.14.2016 because of non-jurisdiction of the instance court to reviewing this case, that the decision issues from the challenge council regards final, and the agent of the plaintiff claims that his client's interest has been actually damaged by issuing the decision of closing AL-Baghdadia and its offices and confiscate its assets, which will lead to ruining of these devices because of not using and the other severe financial loses, and his client according to the abovementioned cassation decision will not be able to initiate a case and challenging the decision of challenging council in spite of its exceeding to its powers which determined in order No. (65) For 2004, because the decision issued from it regards final, and that violates the Iraqi valid constitution for 2005 for the following reasons: 1- the decision issued by the challenging council according to the order No. (65) For 2004 section (8) unpropitious works clause (6) regards final which it is unchallengeable and that violates what article (100) of the constitution included (it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision). 2- Violating clause (6) of section (8) of order No. (65) For 2004 of the Iraqi valid constitution, it is prohibiting the court from hearing the cases because it is a private law, and that violates the text of article (19) clause (3rd) (litigation shall be a protected and guaranteed right for all) as for what listed in the text of article (2 clause beh and clause jim) of the Iraqi constitution, whereas the constitution regards the higher in Iraq and it is prohibited to enact a law conflict with it and any legal text conflict with it regards void,

according to the text of article (13/1st & 2nd) of the Iraqi valid constitution, therefore, the agent of the plaintiff requested from the FSC to judge with unconstitutionality of clause (6) of section (8) of order (65) for 2004 (valid), because it is violates the constitution and cancelling it and to burden the defendant all the expenses and fees. After registering this case in the FSC and paying its duty, the defendant/ being in this capacity was notified by the petition of the case and its documents, and requested to answer him about it, so he answered it according to the answering draft dated on 5.29.2017 which presented by his agent the legist official (heh.mim.sin) who requested according to his draft to reject the case and to burden the plaintiff all its expenses and the advocacy fees, because the decision (subject of the case) issued initially from a committee then it was challenged before the challenging council which headed by justice and this matter never intersect with the constitution, the decision in challengeable before the determined body in the law or the order (case's subject) according to what agent of the plaintiff clarified. This on one hand and on the other that the text (subject of the challenge) mentioned (in case that the appeal council approved the decision it will regarded final) and the situation here that the challenging council did not approve the decision which concerns the plaintiff and issued a different decision, and that makes it challengeable, therefore the text (challenging subject) never intersect or violates the constitution's texts as the plaintiff pretence, and according to provisions of article (2/2nd) of the FSC bylaw No. (1) For 2005, a date for the pleading was set, and on the set day, the agent of the plaintiff attended the barrister (ain. mim) as well as the agent of the defendant has attended the legist official (heh.mim.sin). Public in presence pleading proceeded, 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 of the case and the advocacy fees. The agent of the defendant repeated what listed in his answering draft which presented to the court and requested to reject the case and to burden the plaintiff all the expenses and advocacy fees. 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 agent of the plaintiff in his case's petition claims unconstitutionality of clause (6) of section (8) of order (65) issued from the coalition provisional authority, and he request to cancel it, in pretence that it is violating article (100) of the Iraqi constitution for 2005 and the article (challenge subject) stipulate on (the decisions of the general director and the hearing committee remains obligatory and valid till the appeal committee take a decision in the challenges, and the appeal committee is allowed after hearing the plea presented by the parties in specific times to approve or overturning or send the decision back or the viewed order before the general director or hearing committee, the decision regards final when the appeals council approve it). The FSC finds that the challenge council (appeal council) which formed according to the order (65) issued from coalition provisional authority which formed from three members headed by a justice, whereas this council is specialized in reviewing the challenges presented to it for the decisions issued by the general director of the CMC or the decisions issued by the hearing committee in the aforementioned commission, therefore the issued decisions by the general director of the CMC or issued by the hearing committee in the CMC is not immunized from challenging, and the appeal council is a reference for the challenging in these decisions, therefore the decision issued from the council in accordance with article (100) of the Iraqi constitution for 2005, as for exceeding of the challenging council for the powers that granted to it according to the law as the plaintiff claimed, reviewing such matters is not one of the FSC specialties which stipulated on in article (93) of the constitution and article (4) of its law, based on that, the case of the plaintiff loses its constitutional substantiation and must be rejected for the aforementioned reasons. The FSC decided to judge by rejecting the case of the plaintiff/ being in this capacity and to burden him the expenses and the advocacy fees for the agent of the defendant the legist official (heh.mim.sin) amount of one hundred thousand Iraqi dinars. The decision was issued unanimously, in presence and final and made clear on 6.20.2017.