



The Federal Supreme Court (F S C) has been convened on 10.30.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mikael Shamshon Qas Georges, Hussein Abbas Abu Altemmen and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff: Minister of Trade/under-secretary/ being in this capacity – his agent the legal official (zin.shin.ha) director of legal department/ under-secretary.

Defendant: Speaker of the ICR / being in this capacity – his agents the legal officials as a director (sin.ta.yeh) and the legal assistant consultant (heh.mim.sin).

Claim

The agent of the plaintiff claimed, that the defendant/ being in this capacity had directed his two letters numbered (shin.lam/1/9/1090 & shin.lam/1/9/6358) to the office of her client, requesting according to these letters to answer the questions, facts and points related to the inquiry which presented by the representative (ain.nun.jim), so, she initiated a case for the following reasons: first: the bylaw of the ICR draw a legal path and legitimate for the inquiry requestor to get his evidences, substantiations and documents by sending a written letter and legit correspondences to the person whom going to be inquired, and informing the ICR Presidency with that according to article (50) of the ICR bylaw, while the inquiry request violated provision of article which stipulated on (each member may question members of the Presidency Council, the Prime Minister, his deputies, ministers, deputy ministers, or other members of the government or leaders of independent commissions, and offices in writing, with notification of

the Presidency Commission, regarding any matters that are within their specialization, or to ask about any subject the member has no knowledge about, or to verify any event he came to know about, or to know what the government intends to do regarding a particular issue). Whereas the interrogator gained the priors and the documents illegally which draw by the law, which makes the inquiry decision lacking to its legality and constitutionality and required to be cancelled, and their Ministry proposed to initiate the penalty case against the representative ain.nun according to its letter No.(21361 on 8.6.2017) before AL-Karkh second investigation court. Second: article (58) of the ICR bylaw which obliges that the inquiry has not a personal interest or personal targeting, and there are many judicial cases between interrogator and inquired person. These cases and quarrels which are permanent and well known by the media (which I listed) violates the aforementioned article which judged with (the inquiry request shall be presented written to the Speaker of the council signed by the inquiry requestor with approval of (at least twenty five members on it, clarifying in general the inquiry subject and clarifying the matters inquired about and the violation which committed by the person whom the inquiry is directed to. As well as what the inquired has of means support what he went to, and the inquiry should never contains any matters violates the constitution or the law or any improper phrases or it is related to a matters within the government's authorities, or in its presentation a private or personal interest for the interrogator, as well as the inquiry request should not presented in a subject that the ICR had took a decision about it if there are not any new facts justifies that). Third: article (58) of the ICRA bylaw which he clarified in it the evidences and substantiations which the inquiry requestor presented had violated the bylaw, because the evidences and substantiations must be strict and specific as for space and time. This matter what the FSC went to in its decision No. (41/federal/2012 on 7.8.2012) which listed that the questions were in general, ambiguity and unintelligibleness, and it did not includes a specific facts had a violation to the constitution or the law or there is a specific physical or moral damage based on it because of this violation or a legal violation, as well as it did not includes the violation to whom the inquiry were directed to, and this decision implemented with the case of her client completely, which requires to cancel the inquiry request. Fourth: the inquiry request listed a questions and enquiries not

within the specialties of the inquired and the inquiry request sets on who issued the order or the decision. As for the cabinet decision No. (251 for 2016) which includes excepting the Ministry of trade from contracting means which stipulated on in governmental contracts executions instructions No. (1 for 2014), so, this decision should not asked to her client/ being in this capacity because it was issued from the cabinet and signed by the general secretary of the cabinet and her client's office is an executive office to these decisions which regards applicable. Fifth: the inquiry in its first stages must be signed from (25) members of the ICR members, and the request basically based on signatures does not belong to some representatives, and her client initiated a case in AL-Karkh investigation court whereas it directed its letter No. (599/office/2017 dated on 7.31.2017) to article the sayings of the mentioned representatives in the inquiry to clarify if the signatures belongs to them or not. Sixth: the papers and the documents which attaches with the inquiry request not develops to the level of evidences which confirms the existence of a legal violations and not valid to be a reason for inquiry, and that what the FSC went to in its decision (39/federal/2015) and requested, first: to issue an obligatory urgent order to stop the inquiry process till taking decision about the forged signatures and ending this subject. Second: to judge with unconstitutionality of inquiry request because of not availing of article (61/7th/jim) provisions of the Republic of Iraq constitution, and provisions of two articles (50 & 58) of the ICR bylaw and cancelling inquiry request which listed in the two letters numbered (shin.lam/1/9/1090 & shin.lam/1/9/6358 dated on 1.29.2017 & 6.5.2017) because of its unconstitutionality and its violating to the provisions of articles abovementioned. Third: to burden the defendant the expenses and advocacy fees. After registering this case at this court according to clause (3rd) of article (1) of the FSC bylaw, the answer of the defendant/ being in this capacity was received, and he requested to reject the case whereas inquiry process of the plaintiff/ being in this capacity occurred the ICR session dated on 8.17.2017 and voting on satisfaction of the council with the answers. Therefore, the case of the plaintiff has no substantiation anymore. After completing the required procedures in the case according to clause (2nd) of article (2) from the same order. The day 10.30.2017 was set as a date for pleading, and on that date the court was convened. The agent of the plaintiff and the

agents of the defendant attended, and the public in presence pleading proceeded and both case parties repeated their sayings, and the court completed its investigations. Whereas nothing left to be said, the end of pleading made clear and the judgment recited publicly.

The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff challenges that the defendant/ being in this capacity directed two letters to her client's office requesting in these letters to answer the questions, points and the facts related to the inquiry based on the request of the representative (ain.nun.jim) and this procedure violates the constitution because the ICR bylaw draw a legitimate legal path for the inquiry requestor to get his evidences, facts and documents with a written letter and a jurist approvals to whom would be interrogated according to article (50) of the ICR bylaw, as well as article (58) of the same bylaw obliged that the interrogator has not a personal interest in the inquiry. The inquiry request included a questions and inquiries not within specialties of her client and there were a forged signatures, the interrogator pretended that she signed among (25) representatives whom requested inquiry, the evidences, papers and documents which the representative attached to the inquiry request never developed to an evidences which confirm existence of violations. She requested to judge with unconstitutionality of inquiry request and cancel it because unavailability of article (61/7th/jim) provisions and provision of articles (50 & 58) of the ICR bylaw. The FSC finds that the inquiry request which challenged had been issued by the ICR according to article (61/7th/jim) of the constitution, and the plaintiff attended to the ICR and was inquired in the session of the ICR dated on 8.17.2017, and the ICR was satisfied with answers. Therefore, reviewing the request of cancelling the ICR decision of inquiring the plaintiff is not applicable and the case is ineffective after the inquiry process was done, and its results appeared. 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 amount of (one hundred thousand Iraqi dinars) equally between them. The decision issued unanimously and decisively according to article (94) of the constitution and made clear on 10.30.2017.