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The Federal Supreme Court (F S C) has been convened on 2.7.2017 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 / Speaker of Board of Commissioners for the Independent High Electoral Commission / being in this capacity/ his agent the legal official (raa'. noon .een) the Director of legal affairs department.

Defendant / the Prime Minister/ being in this capacity/ his agent (haa'.sad) (Assistant legal Adviser).

### Claim

The agent of the plaintiff claimed that the General Secretariat of the Cabinet has issued its letter No. (28665) on 10.24.20, which included the approval of the Prime Minister to reappointing each of (baa'.kaf.een.noon) and (haa'.een.meem.kaf.baa') to their posts as (General Director) at Alnajaf election office, and a (General Director) at Baghdad election office/ Alkharkh, and excluding them from limitation procedures, which issued including the reformation bundle, according to the office order issued according to the letter of the Cabinet No. (meem.raa'.waw/74/13423) on 9.17.2016. The plaintiff was not satisfied to that decision as he comprehend it is violates the law of Independent High Electoral Commission No. (11) For 2007, this issued according to the provisions of article (102) of the constitution. The agent of the plaintiff proposed to challenge the decision for the following reasons: 1- it violates the provisions of article (4/9<sup>th</sup>) of the Commission abovementioned, accordingly that the competence of the commissioners' board (authenticate on the administrative electoral structure

and the assignment of the high employments). 2- It violates the provisions of clause (jeem) of article (5) of the Commission's law aforementioned, which stipulates on ((the Secretary General of board of commissioners', the two assistant of election administration head, Deputies of commissioners, Directors of offices, Directors of territory commission and Directors of Governorates offices shall be in post of General Director, nominated by the board of commissioners, with majority of its members and to be assigned according to the law)). 3- The matter abovementioned conflict with the decision of the FSC No. (88/federal/2010), which included inability of any power to interfere in decisions and the procedures of the independent commissions and its technical business for elections, because the constitution granted it financial and administrative, as an immunity for it, which may affects on its decisions and occupation procedures. 4- The independency of independent commissions was assured by the view which presented by (commission of consultants of the cabinet), about the engagements of the independent commissions, which a copy of it is attached to the file of the case, which accredited according to decision of the cabinet No. (168) for 2015. The two parties repeated their sayings; the court ended the pleading and issued the following decision:

### The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff/ being in this capacity, challenging the decision made by the head of customs commission/ being in this capacity by opening a custom outlet at Alsafrah region, and on a part of the tract No. (272/8) county (29) Wadi AL-Abair in Diyala, which situating on the road connects Kirkuk and Baghdad, claims that the defendant did not return to council of governorate in this decision, and pretending that this decision is a specialty of the governorate council exclusively. The FSC finds from scrutinizing the case petition and the pleas listed in, that the described tract belong to the state's real estates, and opening or installing a monitory and custom verification point was with an order issued by the Prime Minister, according to its letter No. (9142) on 7.19.2016, and the defendant/ being in this capacity executed that order. The FSC that the order which sent to the defendant/ being in this capacity, represent, in its legal regulation, an administrative decision, obligatory for the defendant/ being in this capacity, which has not the juristic personality, if he had, he would be a litigant, according to article (4)

of civil procedure law No. (83) For 1969. Based on that, as the challenging of the administrative decisions, the law had made special way to challenge it, and the contact where the challenging goes to, which is it not the FSC. Therefore the court decided to reject the case of the plaintiff/ being in this capacity of the competent authority, and the lack of adversarial. The plaintiff will borne the expenses and advocacy fees of the agent of the defendant, which is a sum of one hundred thousand dinar. The decision issued unanimously and made clear on 2.7.2017.