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The Federal Supreme Court (F S C) has been convened on 7.12.2017 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 / the Minister of agriculture/ being in this capacity/ his agent the legal consultant/ the General Director of legal affairs department (waw.ain.ra.sin) and the legal adviser (sin.mim.mim).

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

### Claim

The agent of the plaintiff (Minister of agriculture/ being in this capacity) claimed the ICR previously issued the two letters numbered (shin.lam/1/9/782 on 1.23.2017 and shin.lam/1/9/3778 on 4.4.2017) the first letter included (to inform the Minister of agriculture/ being in this capacity with the inquiry request, which presented by the representative (zin.theh.kaf.ta) and the inquiry questions), and the second abovementioned letter included determining of inquiry date on 4.29.2017. Whereas the two aforementioned letters and the inquiry questions violated the provisions of article (58) of the ICR bylaw and article (61/7<sup>th</sup>) of the constitution, the plaintiff proposed to challenge them formally and objectively according to the provisions of article (93) of the constitution and for the following reasons: article (58) of the ICR bylaw had determined the conditions of the inquiry, which it was not availed in all questions that directed to the interrogated, whereas the

aforementioned article stipulated on that the inquiry request shall be presented written to the Speaker of the ICR and signed by the inquiry demander, with agreement of 25 members at least, clarifying in it (the inquiry subject) and the matters inquired about, the major points and the developments which the inquiry digests, and the reasons which the inquiry presenter relies on, as well as the violation of it, and what the interrogator have of substantiations support what he goes to and the inquiry should not including a matters violates the law and the constitution or improper phrases and the inquiry should not be related to matters that interfere in the competence of the government or in its presentation there is a private or personal benefit for the interrogator, and the inquiry request should not presented in a subject that the ICR previously took a decision about, if there is no new developments emerged, which justifying that. Moreover article (61/7<sup>th</sup>/jim) of the constitution stipulated on (A member of the Council of Representatives, with the agreement of twenty-five members, may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry) so abovementioned article conditioned that the inquiry should be within specialties of the interrogated exclusively. Formality and as pretended is not available in the two aforementioned letters directed to the interrogated, because the two letters and according to the provisions of article (58) of the ICR bylaw should includes the approval of the ICR presidency, and issues with the signature of the Council's Speaker, but the two aforementioned letters issued with a signature of the Secretary General of the ICR, and this regarded a clear violation to the constitution and the ICR's bylaw. Objectively the inquiry questions included (ten axes which pointed to in the petition of the case, the agent of the plaintiff claimed it was not including and violation committed by the interrogated Minister/ being in this capacity, and according to what aforementioned the agent of the plaintiff requested the following: 1- issuing an order to halt the inquiry till a decision in case is token. 2- cancelling the decision of the inquiry because of its unsoundness and its violation to the constitution and the ICR bylaw. The agent of the defendant/ being in this capacity answered the petition of the case, that the inquiry request fulfilling the conditions required in article (61/7<sup>th</sup>/jim) of the

constitution, whereas the agent the plaintiff did not clarify how the aforementioned request violates the constitution's text?. Therefore his claim has not a substantiation of the law and the aforementioned request does not violates 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 inquiry subject and the matters inquired about, its reasons, substantiations and the violations should be inquired about. Therefore there is no substantiation for the plaintiff from this respect and confirming about how article (61/7<sup>th</sup>/jim) conforms with the inquiry request and article (58) of the ICR bylaw, so that matter refers to the ICR within its specialties of monitoring the executive power by broaching the violation and its substantiations and the answer of the interrogated about it, and how responsible is he about these matters, and according to that the subject might be an inquiry or questioning and what traces based on that. The attendance of the interrogated before the ICR is a constitutional obligation should be executed as long as there is a cases completed its reasons and formal conditions, evaluation of inquiry subject and its scopes refers to the members of the ICR while inquiry is processing. Accordingly the agent of the defendant requested to reject the case. After registering the case according to clause (3<sup>rd</sup>) of article (1) of the FSC bylaw number (1) for 2005, and after completing the required procedures according to clause (2<sup>nd</sup>) of article (2) of the aforementioned bylaw, and after the agent of the defendant/being in this capacity answered the petition of the case, the day 5.29.2017 was set as a date to review the case, and on that day the court convened. The two agents of the plaintiff attended both of the General Director of legal affairs department (waw.ain.ra.sin) and the legal adviser (sin.mim.mim); as well as Mr. (heh.mim) attended as an agent of the defendant. The public in presence pleading proceeded, the two agents of the plaintiff repeated what listed in the petition of the case, and the pleading postponed till 6.5.2017 for the determined reasons in the minutes of 6.5.2017 session, and on 6.5.2017 the court convened, the two agents of the plaintiff the Minister of agriculture/ being in this capacity attended, and the agent of the defendant attended as well. The public in presence pleading proceeded, the agent of the defendant answered that his client sent the inquiry documents to the interrogated and that should be done before the inquiry. The two agents answered that notifying with the documents of

the inquiry requires to be with the questions, the court scrutinized the defend of the defendant and the defends of the agents of the plaintiff, and it found that meant synchronizing is attaching the documents with the questions before the determined date of the inquiry not less than seven days, so there is not necessity of attaching the documents into the questions but it must be with it during the inquiry process and before seven days. The court decided to postpone the pleading till 7.12.2017 and on that day the court convened, the two agents of the plaintiff attended and the agent of the defendant as well. The public in presence pleading proceeded same as previous, the agent of the defendant presented the letter number (6356) on 5.6.2017 which directed to the Ministry of agriculture which reports that the concerned Minister had been informed with the documents and the special clues of his inquiry, the aforementioned letter has been attached to the file of the case, therefore the two agents of the plaintiff answered that these documents should be presented with the inquiry in advance, and informing of the documents came consequentially to the inquiry request, that means the formality of the inquiry is differed, and objectively the listed questions in inquiry not concerning the Minister, and it is possible after completing the formality presenting the inquiry, and both parties repeated their sayings . Whereas nothing left to be said, the end of the pleading made clear, the decision issued publicly.

### The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff claims that the ICR previously issued the letters numbered (shin.lam/1/9/782 on 1.23.2017 and shin.lam/1/9/3778 on 4.4.2017) the first letter included to inform his client (Minister of agriculture/ being in this capacity) with the inquiry request which presented by the representative (zin.theh.kaf.ta) and the questions of the inquiry, and the aforementioned second letter included determining of inquiry date 4.29.2017. Whereas the aforementioned letters and the inquiry questions violated the provisions of article (58) of the ICR bylaw and article (61/7<sup>th</sup>/jim) of the constitution, so he proposed to callenge them formally and objectively, and as follows: where article (58) of the ICR bylaw had determined the conditions of the inquiry which were not availed in all of the questions of the interrogator

representative (zin.theh.kaf.ta), whereas the aforementioned article stipulated on that the inquiry request should be presented written to the Speaker of the ICR and signed by the inquiry demander with agreement of twenty five members at least clarifying in it generally ((the subject of the inquiry and the matters inquired about, the points and the main developments which digested by the inquiry, and the reasons which the inquiry presenter rests on and violation committed by whom the inquiry is directed to, and the substantiations that confirms what the interrogator went to, and the inquiry should not contain a matters violates the law or the constitution or improper phrases, as well as the inquiry should not be related to a matters within the government's competences or there is a private or personal interest in its presentation, and the inquiry request should not be presented in a subject that the ICR previously took a decision about it, if there is not a new developments emerged which may justifying that)) and article (61/7<sup>th</sup>/jim) of the constitution stipulated on (a member of the Council of Representatives, with the agreement of twenty-five members, may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry). Therefore the aforementioned article conditioned that the inquiry must be within the specialties of the interrogated exclusively. The formality, and as the agent of the plaintiff claims is not available in the two aforementioned letters which directed to the interrogated, because the two aforementioned letters shall includes the approval of ICR presidency and issues with a signature of the council's Speaker, but the abovementioned letters issued with a signature of the General Secretary of the ICR, and that considers a clear violation to the constitution and the bylaw of the ICR. Objectively, the inquiry questions included (ten axes) (which pointed to in the petition of the case clearly) that his client Minister of agriculture/ being in this capacity did not commit any violation requires to inquire him by the ICR. Accordingly and according to what reasons that the petition of the case included, the agent of the plaintiff requested: 1- issuing an order to stop the inquiry till a decision issues about the case. 2- Cancelling the decision of the inquiry because of its unsoundness and violation of the constitution and the bylaw of the ICR. The FSC finds that the presented

request to the ICR to inquire the plaintiff (Minister of agriculture/ being in this capacity) were presented by more than a twenty five members of the ICR, and informing the plaintiff was by order issued by the presidency of the ICR, and executed by the General Secretary of the ICR and that does not unbalancing the required formality, according to the administrative contexts which related to this matter. As well as it does not unbalancing this formality if not attaching the documents was not synchronizing with the questions of the inquiry and what meant by synchronizing is to attach these documents with questions before the determined date of the inquiry, not less than seven days according to the provisions of article (58) of the ICR bylaw, therefore the required formality stipulated in article (61/7<sup>th</sup>/jim) of the constitution and article (58) of the ICR bylaw had been availed in the inquiry request. Objectively the assessment of what matters and violations ascribed to the Minister of agriculture/ being in this capacity and how is it matching with the provisions of article (61/7<sup>th</sup>/jim) of the constitution and article (58) of the ICR bylaw, its reviewing refers to the ICR members by presenting the violation and its substantiations, and the answer of the responsible Minister about these matters and how responsible is he about it, accordingly the ICR take its decision. The attendance of the Minister before the ICR is a constitutional obligation must be executed, as long as there is an inquiry, its reasons had been completed, and its legal and constitutional substantiations had been availed. Based on that, the court decided to reject the case of the plaintiff and to burden him the expenses and advocacy fees of the agent of the defendant/ being in this capacity legal official (heh.mim.sin) amount of (one hundred) thousand Iraqi dinars. 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 7.12.2017.