

(Translated from Arabic)  
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL



Republic of Iraq  
Federal Supreme Court  
Ref.140unifed141/federal/media/2018

Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 23.12.2018 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff in case (140/federal/2018) :

Prime Minister/ being in this capacity - his agent the legal advisor ( Ha. Sad).

The Plaintiffs in case (141/federal/2018):

1. The attorney (Kaf.Mim.Sad)
2. The attorney (Alif.Ain.Alif)
3. The attorney (Mim.Ain.Sad)

The Defendants:

Head of the Parliament / being in this capacity- his agents the legal officials the director (Sin. Ta. Yeh.) and the assistant legal advisor (Heh. Mim. Sin.).

### The Claim:

The agent of the Plaintiff/ being in this capacity claims before the F.S.C. in the case petition No (140/federal/2018) that the defendant/ being in this capacity has approved the code of the Council of Representatives (I.C.R) and its formations without passing the executive authority, and as that code includes constitutional violations in terms of formality and objectivity, contrary to what was settled by the constitutional judiciary in Iraq and the constitution and the general politics of the state. And these articles are:

1. Article (6/2<sup>nd</sup>) of the code pointed that the member of parliament (MP) consider as a representative of the public interest in all its aspects as he represent one hundred thousand people to the right of litigation before all judicial bodies, the defendant violated the text of the article (50) of the Constitution, in addition to that article(19/3<sup>rd</sup>) of the Constitution guaranteed the right of litigation for all when stipulate that ((litigation shall be a protected and guaranteed right for all)) and it is not within the jurisdiction of the (MP) to litigate and thus the code violated the text of article (61) of the Constitution which defines the jurisdiction of the I.C.R to legislation and supervision.
2. Article (7/2<sup>nd</sup>) of code violated the text of article (63/2<sup>nd</sup>) of constitution which limited the case of not litigate the MP for his opinions before the courts during the convening session, which means the opinions of the MP within the sessions of the I.C.R, and it is different from the phrase (during the parliamentary session) that was mentioned in the code, which means continuous four years, whether the opinions were within the I.C.R. or outside it, or within the I.C.R. sessions or outside it, or for reason related to the MP exercising his jurisdiction or not, this is on one hand, and on the

other hand, it contrary with the article (19/3<sup>rd</sup>) that stated the principle of litigation as a protected right and is guaranteed to all, also paragraph (6<sup>th</sup>) of it guaranteed everyone the right to be treated fairly in the judicial proceedings.

3. Article (11/4<sup>th</sup>) of the code considered the MP who did not perform the constitutional oath to be absence from the session and this violates the principle of the general utility functioning and disturb the government work in case that the included of the mentioned description is member of the executive authority, especially when delaying the formation of the government.
4. According to the provisions of article (13/1<sup>st</sup>) of the code subject of appeal, the speaker, his deputies, and the members of the Council shall be referred by republican decree to retirement according to the calculation formula that is mentioned in the unified pension code No(9) for 2014, or any code replaced by it, and under paragraph (2<sup>nd</sup>) of the same article, the pension service for who is included by paragraph (1<sup>st</sup>) of this article is (15) years if it is less than that, if he paid one monthly pay of pension deduction which is (25%) of his salary for the duration added to his service, and anyone who has not attained the age of (50) years shall be granted half the pension rights of his peers in the years of service if they are less than that, until paragraph (3<sup>rd</sup>) in the same article. The ratification of such provision contradicts with the general policy of the state, which approved the principle of equality in the conditions of retirement, and the distinction of retirement provisions of the MPs from other categories covered by the unified pension code, as well as its conflict with the policy of the state, and it's also contravenes the anti-corruption convention No(35) for 2007, that Iraq is obliged in accordance with the provisions of article (8) of the constitution to respect its international obligations, according to that the I.C.R. has

violated constitutional text that is obligatory in implementation, and also the implementation of the mentioned text cause financial implications.

5. According to article (15) of the code draft, the council's communications and correspondence when exercise its legislative, supervisory and representational duties according to the constitution, this code and the bylaw, shall be considered as official communications and correspondence, and obliged the relevant parties to respond to it within a specified period, and the MP is allowed to conduct correspondence and inform the president by it when exercise his legislative and supervisory work, and considered the refrain from implement what listed in paragraph (1<sup>st</sup>) of this article, as a failure to comply the legal duty, which require the application of the appropriate penalties that mentioned in the constitution and the valid codes including article (329) of the Iraqi penal code, and that the constitution has defined the duties of the I.C.R. in the legislative and supervisory duties on the performance of the executive authority, therefore the consideration of all communications that are issued by the I.C.R. and its members in the framework of exercising the legislative, supervisory and representational work, as violation to the constitution.
6. Article (17/7<sup>th</sup>) of the I.C.R. code, authorized the issuing of legislative decisions, also the constitution authorized the I.C.R to issue decisions within numbers of articles such as article (52) paragraph (2<sup>nd</sup>) of constitution which authorized the appeal upon the decisions of the I.C.R. before the F.S.C., and article (59) paragraph (2<sup>nd</sup>) of it which ruled that the decisions in the I.C.R. shall be made by simple majority, and article(61) paragraph (5<sup>th</sup>) which authorized making decisions about the appointment of a number of job titles, in addition to other articles of the constitution, since the constitution

did not give the I.C.R the power to issue legislative decisions that may have the force of code, so it has violated the Constitution in this point, as confirmed by your honorable court by the decision No (57) for 2011.

7. Article (19) of the code draft obligate the party that submitted it to assign an expert to clarify the contents of the submitted draft to clarify what is required to be clarify to the council whether in the general sessions or the sessions of the competent committees, we point out that the legislation is submitted either by the Council of Ministers or the Presidency of the Republic, and that any other party is not authorized to do so, and in case there are amendments to the draft it is requires to be presented it to the executive authority that submitted it.
8. Article (30/2nd) of the code draft obligate to inform the Prime Minister and the appointed ministers to attend the I.C.R. to present the subject for discussion within one month from the date of submission of the request, whereas the text of article (61/7<sup>th</sup>/Alif) of the constitution was absolute and did not specify a specific date for the Prime Minister or the Ministers to meet the request which means restricting the constitutional text that is absolute.
9. Article (33/2<sup>nd</sup>) of the code draft didn't authorize the referral of the debriefed to retirement, or to accept his resignation, or to be dismissal or taking any action that prevented him from being responsible during the interrogation period, we point out that the debriefed may be in an organizational position (employee) therefore the failure to refer him to retirement affects his employment rights as it consider an interference with the functions of the executive authority, taking into consideration that the assignment to retirement may be for health reasons, which means depriving him of one of his natural rights to be assigned to retirement.

10. Article (35/4<sup>th</sup>) establish a specific mechanism about how much the I.C.R. is satisfied with (the answers of the debriefed) and the mechanism that is specified in the code is contrary with the constitution in article (61/8<sup>th</sup>) which mentioned a specific mechanism to withdraw confidence, including the mechanism proposed by the code above, that according to paragraph (8<sup>th</sup>) of it the council of representatives may withdraw confidence from one of the ministers by an absolute majority.
11. Article (44) which granted the I.C.R. the power to approve the appointment of the president and members of the Federal Cassation Court and the President of the General Prosecution and the president of the judicial oversight body and the special posts owners in violation to the proposal of the Supreme Judicial Council in respect of judicial titles and the Council of Ministers in respect of special posts violating be that the articles (61/5<sup>th</sup>) and (80/5<sup>th</sup>) of constitution, your esteemed court has confirmed that in its decision No (43/federal/2009).
12. Article (48) of the code draft granted the speaker of the I.C.R. and his deputies together the authority of the council of ministers and the prime minister regarding the implementation of the valid legislation regarding to the administrative work on the employees, and the formations of the council, and in particular the creation of formations, and the modification of staffing, and the appointment and promotion and upgrade the staff, and their referral to retirement, and grant them thankfulness letter, and regularity of the official time, and amended the structure of the council, and notify the Ministry of Finance about it, which is issued by the signature of the speaker of the I.C.R., we point out that the valid service laws has set the mechanism of promotion and bonus and the assignment to retirement as well as upgrade, the law of the generation of

administrative formations No(12) for 2011 specifies the mechanism for generating these formations, which is the jurisdiction of the Prime Minister in regard the formations at the level of a department or less. Accordingly, the subjects that related to executive matters are out from the functions of the legislative authority, and contradict the principle of separation of powers that stipulated in article (47) of constitution.

13. Article (50/1<sup>st</sup>) of the code mentioned that the council has a number of consultants in specialized offices within the formations of the council, we clear that the council did not specify the number of consultants, which opens the door wide in determining their numbers, which is contrary to the general policy of the state in reducing the high level posts numbers not to expand it, also burden the state treasury financial burdens without obtaining government approval.

14. Article (50/3<sup>rd</sup>) stated a new mechanism for the appointment of consultants that contradicts the constitution where according to it the consultants are appointed by a parliamentary order and with the approval of the council on the proposal of the speaker in accordance with his deputies, it consider the appointed consultants in the council which appointed by a republic decree prior to the validity of this law, as consultants for executive purposes, note that the constitution has set a mechanism for the appointment of owners of the special posts, which is a proposal from the council of ministers and the approval of the I.C.R., And that the post of consultants consider as special posts according to the decision of the Revolutionary leadership Council (dissolved) No(1077) for 1982, and that the I.C.R. has violated the constitutionally defined mechanism, then article (50) is contrary to the constitution, and also the retroactive effect of the appointment adds financial burdens on

the state treasury without obtaining the approval of the state, and the decision of your court supported that.

15. Article (51/1<sup>st</sup>) stipulated that the council has a general secretariat consisting of offices, general directorates and divisions, and the order of determining its formation mechanism, personnel and positions' grades was related to instructions issued by the Speaker, it is no secret to your honorable court that any texts that have implications must be approved by the government, also the granting of this power to the I.C.R. is a clear violation to the principle of separation of powers, as it is considered the ((definition of organizational structures, formation of the general directorates)) among the jurisdiction of the executive authority.
16. The paragraphs (2<sup>nd</sup>, 3<sup>rd</sup>) of article (51) granted the I.C.R. the power to appoint the secretary-general of the I.C.R. and his deputies without paying attention to that the special posts must be proposed by the Council of Ministers, which also apply to the general directors as their appointment shall be under the approval of the Council of Ministers, note that granting the I.C.R. that authority is a clear violation for the principle of separation of powers, also the legalization of the previous appointments to the law issuance has financial implications on the state treasury, as well as its violation to the constitution.
17. Article (52/2<sup>nd</sup>) of the code, obligated that the speaker of the I.C.R. and his deputies shall have assistance consultants on high level posts (Beh) which consider as clear violation for the constitution and its contrary to the general policy of the state regarding the reduce of the high level posts not to expand it.
18. Article (54) stated the principle of appointment in the council on the basis of representation of the components of the people, in which a constitutional violation that the constitution did not include



reference to the principle of balance between the components of the people except in the article (9) of it which stipulate that (the balance between the components of the Iraqi people is in the Iraqi armed forces and security services only), this constitutional text did not include the appointments in the I.C.R. .

19. Article (56) granted the employees of the council to enjoy the legislative holiday in accordance with instructions issued by the speaker in coordination with his deputies. Here, it must distinguish between the members of the council and the worker in it among the employees, it consider the employees that mentioned in the description above as public employees with legal positions that are not different from any other legal positions of other employees, and that their discrimination from others violates the principle of equality that stipulated in article (14) of the constitution, and that the constitution did not include granting the employees in it a legislative holiday.
20. Article (57) granted the counselors of the parliamentary committees the rights that the advisors in the office of the president and his deputies enjoyed by it, which is violation for the principle of separation of powers, and consequent financial burdens on the treasury.
21. Article (58) of the code, considered the decisions and orders that issued prior to its validity by the speaker and his deputies, to be correct in respect of rights, privileges, retirement, appointment and extension of service, which is violation for the principle of separation of powers, and binding the State with large amounts of money, and also contrary to the general policy of the State.
22. Article (59) mentioned granting the I.C.R. the power to include the budget of the council, and it would be included as single number within the general budget of the state, and that is clear violation to

the provisions of article (62/1<sup>st</sup>) of the constitution which state that the Council of Ministers submit the draft of the budget law and the closing account to the I.C.R. for approval.

23. Article (64) of the code granted the speaker of the I.C.R. in coordination with his deputies and by the council approval, to determine what is specify for the speaker and his deputies and the MP, to enable them to perform their legislative, supervisory and representative duties, and what the employees receive from the allocations, which is clear violation for the anti-corruption agreement that ratified by Iraq according to code No(35) for 2007, that the I.C.R. may not determine for himself rights and privileges without standing on the capability of the government to respond to such rights and privileges, on the other hand, the government has approved within its government platform not to approve an categorical projects that distinguish between employees.
24. Article (65) of the code prohibits the person covered by the provisions of this code from combining the post of the council with any other post or work, the text states that lecturing and membership of scientific councils do not consider as another post, considering that the law of discipline of state employees and the public sector No(14) for 1991, has been specify the included by the aforementioned law in detail, as for the work of the members of the I.C.R. we point out that paragraph (6<sup>th</sup>) of article (49) did not authorized to combine between the membership of the I.C.R. and any work or other official position, Accordingly, the mentioned provision in the mentioned article is contrary to the constitution.
25. Article (66) obligated the national pension commission to create a division to complete the pension transactions for who is included by the provisions of this code, and that the mentioned text is contrary to the policy of the state in reducing the administrative structures

and not to expand them, as well as its approval lead to financial obligations to the public treasury, as a result of the creation of appointments within the created division, and applies to the creation of the medical unit in the council as defined in article (67) of the code.

26. Article (68/1<sup>st</sup>) of the code requires the establishment of a system that the representatives of the federal and non-federal authority are corresponds to its provisions to determine the priorities. We point out that this has been processed within the ceremonial order No(4) for 2016, and the issued instructions to determine the priorities of officials.

27. The provisions of the code refer to the commitment of members of the I.C.R. to the law and the bylaw, note that the constitution is the reliable in the work of the I.C.R., therefore the reference to the bylaw in addition to the constitution is violation to the constitution, as the bylaw may contain articles that is contrary to the constitution.

28. Article (73) of the code mentioned that this code shall be implemented from the date of its issuance. It is not a secret what the implementation of the text would lead to from financial burden that overstrain the public treasury of the state.

For the aforementioned reasons the plaintiff's agent requested the F.S.C. the following:

1) To issue a decision to suspend the implementation of the code the subject to appeal until the decision is issued in the lawsuit, because of the financial effects and the waste of public funds, and the fear of inability to recover the public funds after spend it, and the return of the procedures to be implemented to what it was before the implementation of the code as it became effective after its issuance from the Presidency of the Republic according to article (73) of it

which mentioned that this code shall be implemented from the date of its issuance.

- 2) To judge that articles (5/1<sup>st</sup>), (6/2<sup>nd</sup>), (11/4<sup>th</sup>), (13), (15), (17/7<sup>th</sup>), (19), (30/2<sup>nd</sup>), (33/2<sup>nd</sup>), (35/4<sup>th</sup>), (44), (48), (50/1<sup>st</sup> and 3<sup>rd</sup>), (51/1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup>), (52/1<sup>st</sup> and 2<sup>nd</sup>), (53), (54), (56), (57), (58), (59), (64), (66), (67), (68) and (73) of the code is unconstitutional, and to delete the statement of (the membership of the scientific councils) that mentioned in article (65) of the code and to delete the statement of (the bylaw) wherever mentioned in the code the subject to appeal.
- 3) To issue a judgment to burden the defendant the expenses of the case and advocacy fees.
- 4) His client retains the right to make new organized cases when the subject of the case is considered according to the provisions of article (66) from the Civil Procedure Law No(83) for 1969.

The agent of the defendant respond to the case petition with his answering draft dated (5/8/2018) requested in it the following:

- 1- the agent of the plaintiff indicates in paragraph (2<sup>nd</sup>/1) of his draft, that article (6/2<sup>nd</sup>) of the code the subject of the appeal (which made the member of the council representative of the public interest and granted him the right to litigate before all judicial commissions as a representative of one hundred thousand people), is contradict with article (50) in the meaning of (19/3<sup>rd</sup>) of constitution, and its violated article (61) of constitution which determine its jurisdiction. We clear that article (50) of constitution has included the stipulation on the constitutional oath that performed by the member of the I.C.R., and the agent of the plaintiff did not indicate the face of the contradiction. Also article (6/2<sup>nd</sup>) the subject of the appeal is a reliable implementation of the text of article (49/1<sup>st</sup>) of the constitution, and that the appearances of this representation is to defend the public interest and to represent the people before the

judicial committees, therefore the case of violating the text the subject of appeal to article (19/3<sup>rd</sup>) of the constitution is rejected, and the decision of the F.S.C. No(106/federal/2013) on (20/1/2014) support that, and this right is not contradict with article (61) of the constitution because the jurisdiction of the member of the I.C.R. extends to his representative jurisdiction of the people according to article (49/1<sup>st</sup>) of constitution.

- 2- The plaintiff's agent claims in paragraph (2<sup>nd</sup>/2) of his draft that article (7/2<sup>nd</sup>) of the code the subject of appeal has violates article (63/2<sup>nd</sup>) of the constitution by listing the statement (during the parliamentary session) and not the statement (during the convening session) that stipulated in the constitutional text, this notice is inaccurate, and that article (7/2<sup>nd</sup>) used the statement (during the convening session) which is the same statement that is listed in the text of article (63/2<sup>nd</sup>/Alif) of constitution, the agent of the plaintiff also claimed that the mentioned article (7/2<sup>nd</sup>) is contradict with the guarantee of the right to litigation and fair treatment in the judicial proceedings according to article (19/8<sup>th</sup> and 6<sup>th</sup>) of constitution. We clear that this claim is rejected because the text of article (7/2<sup>nd</sup>) of the code is a replica to the text of article (63/2<sup>nd</sup>/Alif) of constitution, and that is the reason to reject the case.
- 3- The agent of the plaintiff claims in paragraph (2<sup>nd</sup>/3) of his draft that article (11/4<sup>th</sup>) of the code the subject of appeal (which rule to consider the MP who didn't perform the constitutional oath without a legitimate excuse, to be absence from the session) that it violates the principle of the functioning of the general utility and disturb the work of the government if the convicted MP to be absence is a member of the executive authority. The agent of the plaintiff did not indicate the point of violation to the constitution, which requires to reject the case by the competent authority ...etc.

4- The agent of the plaintiff in paragraph (2<sup>nd</sup>/4) of his draft challenged the text of article (13) with its three paragraphs of the code the subject of appeal, that is particular about the pension of the I.C.R., he show that this article contradicts the general policy of the state, which approved the principle of equality in the conditions of retirement, and its contrary to the anti-corruption convention No(35) for 2007 on the basis that the members of the council are not allowed to establish privileges for themselves, and that the article has financial implications. About paragraph (1<sup>st</sup>) of article (13) which stipulate that the speaker of the I.C.R., his deputies and the members of the council shall be assigned to retirement according to the calculation formula that is listed in the unified pension law No(9) for 2014, this text doesn't include any privileges for the speaker of the I.C.R. and his deputies and the members of the council, but like the opposite of that, it subject all the aforementioned to the same calculation formula that any citizen is subject to when assigned to retirement, therefore this paragraph is literal implementation for the principle of equality in the conditions of the assignment to retirement, that the agent of the plaintiff demands to be implemented, and that the text is identical to article (14) of constitution which equalize between the citizen and did not differentiate between them for any reason, therefore the case is rejected. As for paragraphs (2<sup>nd</sup> and 3<sup>rd</sup>) of article (13) which stipulate that the MP is assigned to retirement if his service is less than fifteen years, or he is less than fifty years old, however, the text obligate the first category to pay all the monthly pension deduction in one payment of which is (25%) of the salary for who is covered by its provisions, for the duration added to their service, it also stipulate to granted half the pensions rights for the second category (2<sup>nd</sup> and 3<sup>rd</sup>) until they reach fifty years of age. The mentioned

paragraphs do not represented in any way a burden on the government, but on the contrary, they represent a rich resource of funding for the pension fund, where the members of the council had to pay all the pension deduction in one payment for the years if their service is less than fifteen years, while those who have fifteen years of service receive half of what their peers receive if they are not fifty years of age, until they reach it, and it does not burden the government any money. And that the National Pension commission deducts pension deduction from the salaries of the members of the I.C.R., if the claim of the plaintiff's agent is correct that they don't deserve the pension, so what is the reason for the pension deduction in originally? We suggest that the honorable court refer the plaintiff's claim to an economist expert to clarify the validity of this case according to what we clarified to the honorable court above. Article (63/1<sup>st</sup>) of the constitution stipulated that (a law shall regulate the rights and privileges of the speaker of the Council of Representatives, his two deputies, and the members of the Council of Representatives.) and this text is basically correct for what the law of the House of Representatives subject to appeal has included, so the privileges is with a constitutional basis.

- 5- The agent of the plaintiff challenged article (15) of the I.C.R code which is specified for the communications of the I.C.R. and its correspondents, and he shows that the council has two jurisdiction legislation and supervision, and that the bylaw of the council has organized the subject of communications of the council committees without its members, and that the consideration of all communications (including the communications of the members) as official communications is violation to the constitution, but he did not specify where the violation is, and specifically with any constitutional text, and that the honorable court does not pay

attention to unproductive cases and does not consider if there is no violation of the legal text by a specific constitutional text. The I.C.R. and its members have a representative jurisdiction based on the article (49/1st) of the constitution, and that has been approved by the F.S.C. in paragraph (1) of this regulation, and that the constitution did not limit the jurisdiction of the I.C.R. to the council and its committees only, but granted the members of the I.C.R. by themselves a specific jurisdiction as representing the people (article 49/1st) of constitution and others, therefore the claim of the plaintiff's agent is contradict to the text of the constitution and the spirit of the parliamentary system that approved it.

- 6- The agent of the plaintiff claimed that article (17/7<sup>th</sup>) of the code subject of appeal, granted the I.C.R. the right to (issue legislative decisions), and he claimed that it is unconstitutional for the I.C.R. to issue legislative decisions that have the power of a law, because that was not stipulated in the constitution, cited by the decision of the F.S.C. No(57/federal/2011), while article (17/7<sup>th</sup>) of the code subject of appeal did not stated the statement (have the power of a law), and that this statement is an addition from the plaintiff's agent. The constitution stipulated the jurisdiction to enact decisions for the I.C.R. in addition to the jurisdiction of enacting laws according to article (138/5<sup>th</sup>) of the constitution, which is an inherent right that it is not a violation when it listed within the transitional provisions, because what has been copied of those provisions is limited to the Presidency Council, which the I.C.R. sends the laws and decisions that it makes to it, as for the inherent right there is no problem on it. That the plaintiff's agent claim that the decision of the F.S.C. No (57/federal/2011) on (10/8/2011) has deprived the I.C.R. the right to issue legislative decisions, which is incorrect cited because the decision has stipulated literally that (the council of Representatives



can not issue by itself decisions that the executive authority is competent to it issuance).

- 7- The agent of the plaintiff claims that article (19) of the code subject of appeal compel the party who submitted the code draft to assign an expert to clarify the contents of the draft, at the request of the I.C.R. and that affects the jurisdiction of the party that submitting the drafts which is the Presidency of the Republic or the Council of Ministers, and that the amendment of the drafts requires it to be presented to the executive authority. We clear that the legal text subject of the appeal does not contradict with any constitutional text and that the role of the expert is limited only to clarify its contents, therefore the text subject of the appeal does not contradict with any constitutional text.
- 8- The agent of the plaintiff claims that article (30/2<sup>nd</sup>) of the code subject of appeal is unconstitutional just because it has set a period of thirty days for the presence of the Prime Minister or the ministers for the session which include a general subject for discussion. We clear that the constitution has assigned the I.C.R. to perform great tasks that is beneficial to the interest of the State and the people, and compel it to organize the work in it, note that it is relatively long and appropriate period of time, especially that the presentation of a general subject for discussion is limited to (clarify the policy and performance of the Council of Ministers or one of the ministries) as stipulated in article (63/7<sup>th</sup>/Beh) of the constitution, the constitution has set a period of seven days only to discuss the questioning the Prime Minister or the Ministers according to article (63/7<sup>th</sup>/Beh) of the constitution therefore the determination of the aforementioned period is appropriate.
- 9- The agent of the plaintiff claims that article (33/2<sup>nd</sup>) of the code subject of appeal don't authorize the referral of the debriefed to

retirement, or to accept his resignation or any action that prevented him from being responsible, and that is contrary to the fact that the debriefed is in an organizational position, and interference in the work of the executive authority. We clear that the F.S.C. is not concerned with the evaluation of the points of views about the laws, rather than that it is concerned to examine the constitutionality of those texts only, and that the text does not contradict with one of the constitutional text which requires to reject its appeal for lack of jurisdiction, and that the text the subject of appeal is from the regulatory texts that fall within the legislative jurisdiction of the I.C.R. and its supervisory duty, and to be superseded of the legal texts that preceded it, and one of those text is the text of the law of retirement as an expression of the legislative will after the I.C.R. that supersedes its former will, which is what the F.S.C. has ratified in its decision No (43/federal/2017) on (2/6/2017).

10-The agent of the plaintiff claims that article (35/4<sup>th</sup>) of the code the subject of appeal contrary to article (63/8<sup>th</sup>) of the constitution in the mechanism drawn up to withdraw confidence, anyway, article (35/4<sup>th</sup>) of the code the subject of appeal did not deviate from the constitutional path to withdraw confidence, but it added regulatory procedures for the I.C.R., and does not concern the government in any matter. The F.S.C. has already decided in its decision No (51/federal/2009) on (12/10/2009), that it has no jurisdiction to interfere in the regulatory procedures, which is the jurisdiction of the speaker of the I.C.R.

11-The agent of the plaintiff claims that article (44) of the code the subject of appeal has granted the I.C.R. the power for the appointment of the president and members of the Federal Cassation Court and the President of the General Prosecution and the president of the judicial oversight body and the special posts owners, without

the proposal of the Supreme Judicial Council and the Council of Ministers as stipulated in article (61/5<sup>th</sup>) and (80/5<sup>th</sup>) of constitution. We say that article (44) was limited to stipulate the jurisdiction of the I.C.R. in the field of the appointment of these categories without stipulating the mechanism of that appointment, and that the failure to mention the proposal party to appoint those categories is based on the provision in the Constitution, as the plaintiff's agent did not prove his claim, therefore his argument is rebutted.

12-The agent of the plaintiff claims that article (48) of the code the subject of appeal (which granted the speaker of the I.C.R. and his deputies the authority of the council of ministers and the prime minister regarding administrative work and the creation of formations of the council), violate the valid service laws, and the law of the generation of administrative formations No(12) for 2013, which has a financial impact, and contradict the principle of separation of powers that stipulated in article (47) of constitution, and that the budget law for 2018 is under the issuance from the President of the Republic and that it granted the Council of Ministers that authority, and that applies to article (49) of the code under appeal. We response to that, that the article the subject of appeal did not come up with anything new, and it listed the articles (7/1<sup>st</sup>) and (8/4<sup>th</sup>) of the National Association code No (3) for 2005, article (3) of the I.C.R. code No (50) for 2007, and articles (9/12<sup>th</sup>) and (147/1<sup>st</sup>) of the I.C.R. bylaw that basis on the provision of the constitution for 2007. The claim that the article under appeal is violating the service laws and the administrative formations generation law, are required to reject the appeal because the court lake the jurisdiction to examine the extent of the intersection of the legal texts, or to oppose one another, and that the articles the subject of appeal are faithful implementation to the principal of separation

of powers, and its independence from one another, note that the budget law doesn't include issuance record of the President of the Republic, and that what was published in the official Gazette on (2/4/2018) before (110) days from the date of the establishment of this federal case by the plaintiff's agent on (22/7/2018), and the court is not concerned in studying the extent of contradiction between the texts and the laws among each other.

13-The agent of the plaintiff claims that article (50/1<sup>st</sup>) of the code the subject of appeal did not specify the number of consultants in the I.C.R. which allows for the appointment of an unspecified number of them, which is contrary to the general policy of the State. We clear that there is no contradiction between what included in the aforementioned text, with the general policy of the State, contrariwise, the paragraph (1<sup>st</sup>) of article (5) of the code which stipulated that (the council has a number of consultants with specialized offices within the formations and the personnel of the council), And has included a limit for the maximum number of consultants not exceeding the planned personnel, and that within the statement (within the formations and the personnel of the council) which makes the increase in the number of consultants in the council impossible while making it possible to reduce this number in the future, because there are no additional financial implications.

14- The agent of the plaintiff claims that the I.C.R. has adopted a new mechanism for the appointment of consultants, contrary to the constitution, as the constitution set the mechanism for the appointment of owners of special posts that is represented by a proposal from the Council of Ministers and the approval of the I.C.R., he also indicated in this paragraph to what the retroactive effect of the appointments add of the financial burden on the state

treasury without obtaining the approval of the State, we show about that the following:

A. Regarding the mechanism adopted by the code to appoint consultants from the first part of paragraph (3<sup>rd</sup>) of article (50) of the code which stipulated that (the consultants shall be appointed by a parliamentary order and the approval of the council, on the proposal of the President and in coordination with his deputies, and a republican decree shall be issued about it), we clear that the mechanism that included in article (80/5<sup>th</sup>) of constitution for the appointment of people with special posts is required to be considered as a general rule in the appointment of all those who considered to be holders of special posts within the executive authority not to exceed that to other authorities such as legislative and judicial authority, as the statement (people with private level posts) is general terms that are intended to be particular, so what the council approved in the code about the appointment of the consultants by a parliamentary order on the proposal of the President and his deputies and the approval of the council, , and the issuance of a republican decree, is consistent with what has been decided by the honorable F.S.C. in its decision No (19/federal/2017) on (11/4/2017), therefore the argument of the plaintiff's agent is groundless.

15-The agent of the plaintiff claims that article (51/1<sup>st</sup>) of the code the subject of appeal which stipulated that the council has a general secretariat consisting of offices, general directorates and divisions, and left the order of determining it formation mechanism, personnel and position's grades, to instructions issued by the (Speaker), he claimed that this is an article that it implementation will cause financial implications that must be approved by the government, and that to grant the I.C.R. this jurisdiction is violation for the

principle of separation of powers, on the basis that the determination of the organizational structures and the formation of general directorates are from the jurisdiction that is assigned for the Council of Ministers. This claim is incorrect and has not been proven with evidence by the plaintiff's agent, because the creation of this is in accordance with the code and the bylaw articles (7/1<sup>st</sup>) and(8/4<sup>th</sup>) of National Association code No (3) for 2005, article (3) of the I.C.R. code No (50) for 2007, and articles (9/12<sup>th</sup>) and (147/1<sup>st</sup>) of the I.C.R. bylaw for 2007, and the claim of affecting the principle of separation of powers is incorrect as the text the subject of appeal is faithful implementation for the principle of separation of powers, because the I.C.R. did not decide to organize the structure of another authority so he would claim that it violated the constitution, rather its competence of the council.

16-The agent of the plaintiff claims that article (51/2<sup>nd</sup>) of the code the subject of appeal which stipulate that (the secretaries-general and his deputies shall be appointed according to parliamentary order and under the approval of the I.C.R....), has granted the I.C.R. the jurisdiction to appoint the secretaries-general of the I.C.R. and his deputies without requiring a proposal of the Council of Ministers to that, in violation to the principle of separation of powers, also the legalization of the previous appointments lead to financial implications on the state treasury. We indicate that the appointment of the secretary-general of the I.C.R. in the same level of Minister and the appointment of two deputies of the secretaries-general at the level of undersecretary of the ministry was based on the powers of the I.C.R. to appoint its staff according to the articles (7/1<sup>st</sup>) and (8/4<sup>th</sup>) of National Association code No (3) for 2005, and articles (9/12<sup>th</sup>) and (147/1<sup>st</sup>) of the I.C.R. bylaw for 2007, and it represents a violation for the principle of separation of powers because these

posts belong to independent authority from the Council of Ministers according to article (47) of the constitution, also the claim that there are financial implications on the appointment of the aforementioned posts, we show that not all what cause a financial implications represent burden to the treasury that cannot afford, especially if we compare the interests that achieved by the existence of these leadership positions in the council, the appointment of secretary-general deputies of the I.C.R. happened under the approval of the I.C.R. on the federal general budget Law for 2015, and a republic decree was issued of their appointment No(39) on 5/5/2015, and paid to the occupants of those posts their salaries and allocations without claiming to burden the State treasury what can't afford, since the date of their appointment and their legal positions has stabilized accordingly.

17- The agent of the plaintiff claims that article (51/3<sup>rd</sup>) of the code the subject of appeal which stipulate that (the general director shall be appointed by parliamentary order in accordance between the speaker and his deputies, and the general directors shall consider...), has granted the I.C.R. the jurisdiction to appoint the general directors in it without requiring the approval of the Council of Ministers. We clear on that the agent of the plaintiff mention the statement ((The two paragraphs (it had been corrected an Arabic to another term in the same meaning) (2nd, 3rd) of article (51) of the I.C.R. code granted it the power to appoint the secretary-general of the I.C.R. and his deputies without paying attention to that the special posts must be proposed by the Council of Ministers, which also apply to the general directors...)), we first clear that it does not apply to general directors, as the general directors is (high level post) and not special posts, and that the constitution did not include a specific mechanism for the appointment of general directors with

(high level posts (Beh)) in it, also the agent of the plaintiff did not mentioned the constitutional text which require the approval of the Council of Ministers on the appointment of general directors in the I.C.R., so the honorable court is not concern in examining this argument, therefore the case must be rejected from this respect. The claim that the text the subject of appeal affects the principle of separation of powers is out of question, and the mentioned principle is an argument against the plaintiff's agent and not an argument for him, it's from the requirements of the independence of the powers and the separation between them that to be competent to appoint its employees by the mechanism determined by the law, especially that the constitution did not mentioned a mechanism for the appointment of the general directors in the I.C.R., a binding law that was issued by the I.C.R. has stipulated that according to article (60/2<sup>nd</sup>) and (61/1<sup>st</sup>) of constitution, within the limit of the general directors the subject of appeal only, which is obligatory to be implement and its supersedes the civil service law, and cannot be challenged for unconstitutionality.

18- About article (52/2<sup>nd</sup>) of the code the subject of appeal, and as an answer to the case petition we show that the legislator granted the speaker of the I.C.R. and his deputies, assistant consultant at high level posts (Beh), that is included within the legislative options of the legislative authority according to the text of article (61/1<sup>st</sup>) of the constitution, in accordance with the legal position of the speaker of the Council and its deputies and the consultant who are working in their offices, and the nature of tasks assigned to them. this appointment is through the financial allocations in the I.C.R. budget without any additional financial implications, and it is according to the provisions of article (51/1<sup>st</sup>) of the code of the I.C.R. and its formations No(13) for 2018.



- 19-The agent of the plaintiff claims that the appointment in the Council on the basis of representing the components of the people under the article (54) of the code the subject of appeal violates the constitution, on the basis that the constitution did not require that condition except in article(9) of it, we show that the absence of a constitutional text contradicts with the legal text the subject to appeal, is enough to reject the argument for lack of jurisdiction.
- 20-The agent of the plaintiff claims that the employees of the I.C.R. enjoy the legislative holidays according to instructions issued by the speaker according to article (56) of the code the subject of appeal, which violates the equality of the employees of the Council with the rest of the employees of the State, which was not stipulated in the Constitution. We respond by that the equality is between people of similar circumstances only, and the employees of the Council that their work is features by special nature consistent with the specificity of the work of the I.C.R. and its presidency, committees and members, and that is an organizational administrative matters, which is the jurisdiction of the Speaker of the I.C.R..
- 21- The agent of the plaintiff claims that article (57) of the code the subject of appeal which stipulate that the consultant of the Council committees shall enjoy the guaranteed rights of the consultant of the office of the speaker of the Council and his two deputies, and that violates the principle of separation of powers and cost the treasury. This claim is out of question because this matter concerns the I.C.R. only without affecting other authorities. As for the claim that it cost the treasury, which the agent of the plaintiff did not prove and is also rejected.
- 22-The agent of the plaintiff claims that article (58) of the code the subject of appeal violate the principle of separation of powers and binding the State large amounts of money and contrary the general

policy of the State. While the text is a proper implementation for the principle of separation of powers because it is specified for the Council only and no other authorities, and does not violate the general policy of the State, and that the decisions are issued by the Presidency of the Council according to the valid legislation and in light of the financial allocations specified by the responsible authorities in the State, therefore the case is also rejected from this point for not violating the constitution.

23-The agent of the plaintiff claims that article (59) of the code the subject of appeal, the include of the budget of the council as single number within the budget of the state is violation to article (62/1<sup>st</sup>) of constitution. The budget of the I.C.R. is approved by the approval body for the general budget of the state, which is the I.C..R., and the budget of the Council subject to the procedures of approving the state budget, so there is no violation to article (62/1<sup>st</sup>) of the Constitution.

24-The agent of the plaintiff claims that article (64) of the code the subject of appeal violate the anti-corruption agreement and the potential and policy of the government. We answer that the appeal include only paragraph (Alif) of the mentioned article, and does not include paragraph (Beh) of it, and that the court is not competent to examine the existence of a conflict between the code and the international conventions, therefore it's also rejected appeal.

25- The agent of the plaintiff claims that article (65) of the code the subject of appeal which allowed those who included by this code (to give lectures and membership of scientific councils) as it contrary to article (49/6<sup>th</sup>) of Constitution, While the mentioned article does not violate article (49/6<sup>th</sup>) of the Constitution, and the claim is rejected for that.

26-The agent of the plaintiff challenged article (66) of the code the subject of appeal which stated that the national pension commission create a division to complete the pension transactions for who is included by this code, and also to create medical unit for the council according to article (67) of the code. While the creation of the two divisions in the Council did not state that the National Pension commission will appoint new employees, and that the requirements of work in the Council requires otherwise, and it is not a violation to the Constitution.

27-The agent of the plaintiff challenged article (68/1<sup>st</sup>) of the code the subject of appeal which stated the establishment of a system for the priorities, and that has been stipulated within the ceremonial order No(4) for 2016. The agent of the plaintiff didn't indicate the constitutional text that the challenged text contradict with, and the code has the superiority upon the regulations that issued by the government without controversy, so it is not right to challenge before the F.S.C. this challenge, because it lade the jurisdiction to consider the appeals which is not related to the extent of the code constitutionality.

28- He challenges that the members of the I.C.R. are obligated by the constitution in their work, and are not by the bylaw because it may include constitutional violations, without listing the constitutional text. We answer that the bylaw of the I.C.R. has been imposed by the Constitution by issuing it according to article (51)of it, therefore it is binding to the Council and an argument upon all regarding what the Council choose of workflows in it, in which the Constitution authorized him to do, this claim is also not a violation to the Constitution.

29-The agent of the plaintiff claims that article (73) of the code the subject of appeal stipulate on the implementation of the code from the time of its issuance which cause financial burden that overstrain the treasury. We comment that the article the subject of appeal is in accordance with article (129) of constitution, and that his

aforementioned claim is because the honorable court issued a decision to suspend the implementation of the paragraphs that are the under appeal.

Therefore the agent of the defendant request to reject the case and to burden the plaintiff all the expenses and the advocacy fees, the court set a date for the argument, on that date the court has been convened, attended for the plaintiff his agent the legal advisor ( Ha. Sad) under his official power of attorney that is linked to the case petition, the agents of the defendant/ being in this post also attended under their official power of attorney that is linked to the case petition, the public in present trial initiated, the agent of the plaintiff repeated what listed in the case petition and requested to judge according to it, the agents of the defendant repeated what listed in the answering draft and requested to reject the case and to burden the plaintiff all the expenses. It was noted that there was a case No (141/federal/2018) was submitted by the plaintiffs the attorneys (Kaf.Mim.Sad) and (Alif.Ain.Alif) and (Mim.Ain.Sad) against the Speaker of the I.C.R. /being in this post, the plaintiffs themselves attended on the day of the argument, and they are attorneys from the class (Jim) according to the identities that issued by the Bar association, which was reviewed by the Court. The agents of the defendant attended and initiated the public in present trial, the plaintiffs repeated what listed in the case petition and requested to judge according to it and to burden the defendant the expenses and the advocacy fees, the agents of the defendant repeated what listed in the answering draft and requested to reject the case and to burden the plaintiffs the expenses and the fees. The court noted that the case No (140/federal/2018) included appeals against several articles from the code of the council of representatives and its formation No(13) for 2018, and within these appeals are the appeals of the plaintiffs in the case No(141/federal/2018), in order to save time and effort and according to article (75) of Civil Procedure code No (83) for 1969, it was decided to unify the case (141/federal/2018) and the case No(140/federal/2018), and to consider the last as the

original because it was precede in taking legal action, and initiated the public in present trial, in the present of the agents of the two cases parties, they repeated what listed in their draft and request to judge according to what listed in it. The court scrutinize the case petition and the defendant's answers and the responds to these answers, and decided that there are some points that need to be clarified by the agents of the defendant which is:

1. The reasons of appeal to article (5).
2. Article (6/2<sup>nd</sup>) mentioned the right of litigation for the MP, what is the right to litigation? and in any fields.
3. The court inquires about article (11/4<sup>th</sup>).
4. Article (17/7<sup>th</sup>) about the concept of the legislative decisions listed in article (17/7<sup>th</sup>).
5. Article (33/2<sup>nd</sup>) the subject of referring the debriefed to retirement does it mean in absolute way?
6. Article (48) the administrative actions, have financial implications on the treasury of the state or not?, also articles (50) and (51) the same question.
7. Who prepare the budget of the I.C.R.? and whether it is prepared by the executive authority or the I.C.R. who prepare it.
8. What is the concept when the budget is included under number one (1).
9. Determining what is specified for the speaker, his deputies and the employees from allocations, as it did not specify the maximum limit. The court scrutinize the code and the appeals against it, and decide to the introduce the Minister of Finance as a third person in this case according to article (69/4) provisions of the Civil Procedure code, to find out the financial aspects that contained in the code, and the position of the Ministry of Finance from it. In the session dated (9/12/2018) the agent of the plaintiff and the plaintiffs in the unified case has attend, The agents of the defendant doctor (Sad. Beh) the general director of the legal department also attended, and the director (Sin.Ta), and the assistant legal advisor (Heh. Mim.), and attended for the third person the minister of

finance/being in this post the legal officer (Sin.Alif) by the power of attorney of the ministry of finance. And initiated the public in present trial, it found that the defendant agents submitted draft that included the discussed point in the previous session which dated (4/12/2018), the parties of the case were asked about what they have on the mentioned draft, the agent of the plaintiff answer that he repeat what listed in the appeal draft and what listed in their draft that dated 3/12/2018, the attorney abstract what was listed in the draft and their objection to the validity of the privileges of the MPs to the former MPs from the previous session, they focused on the subject of the retirement, the defendants' agents responded to the court's inquiry that the referral of the debriefed to retirement for reasons related to the public interest was not proved by the article (33/2<sup>nd</sup>) of the code the subject of appeal, and was set for reasons of public interest. In respect of the privileges of the speaker and his deputies and the members of the council and the safeguards that determined it, they all stated that it is the same safeguards that apply to the counterparties in the executive authority, and that is determined by the personnel that has been ratified by the Ministry of Finance. The Speaker of the council has attended the session with his agents, and intervene and commented that the intended by the one number is that the budget of the I.C.R. is prepared according to the approved computational assets including the parts and chapters and complete details, but it shows as one number which is the result of the parts and chapters and there is no withdrawal from the approved framework of the budgets preparation, as the case in the preparation of the budget of the federal judiciary authority. The agents of the defendant comment that the code has assigned the council to issue instructions to facilitate its implementation and clarify its provisions, and all the financial aspects are related to what listed in the personnel code that is assigned to all the state with its three authorities, and there is no fear that the personnel will exceed the financial obligation of the code. The agent of the third party the minister of finance submitted answering draft dated on (9/12/2018)

and was linked to the case petition. The agents of the defendant clear that in the intention of the I.C.R. to issue a code urgently to amend the article the subject of retirement. The court reviewed the explanatory draft submitted by the plaintiffs in the unified case (141/federal/2018) dated on (9/12/2018) and it was linked to the case files. The agent of the plaintiff submitted a clarification to the court in his draft that dated (2/12/2018) about his appeal against article (5/1<sup>st</sup>) of the code the subject of appeal, he clear that the mentioned article violated article (63/2<sup>nd</sup>) of the constitution which limited the case to not prosecute the member of the parliament (MP) before the courts for his opinions during the convening session because the opinions of the MP within the Council meetings differ from the statement (during the parliamentary session which is mentioned in the code) which means four continuous years, whether it is outside the Council or within, and whether in the sessions of the I.C.R. or outside, and for reasons related to his competence or not. And its violated article (19/3<sup>rd</sup>) which stipulated the principal of litigation as protected and guaranteed right for all. The court reviewed the written answering draft for the draft of the defendant that dated on (30/9/2018) and it was linked to the case petition. It also reviewed the final draft submitted by the defendant's agents dated on (11/12/2018) they informed in it that their client waiver to defend the article (13/2<sup>nd</sup> and 3<sup>rd</sup> of the code the subject of appeal) and declare to the honorable Court that these two paragraphs will be subject to amendment by the Council, so that the retirement of the members of the Council is governed by the same texts that govern the retirement of the State employees in accordance to the unified general Pension law No(9) for 2014 or any other law that replace it. The court reviewed the explanatory draft submitted by the plaintiff's agent on 17/12/2018 and it was linked to the case file. The agents of the case parties repeated what listed in their drafts and their statements and requested to judge according to it. The court decided to the exclude the third party the minister of finance form the case after inquiring from him about what is necessary to make a decision

in the case. And where nothing left to be said the argument is closed and the decision is issued publicly.

### The Decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff the Prime Minister/ being in this capacity has challenge in the case No(140/federal/2018) the articles (5/1<sup>st</sup>), (6/2<sup>nd</sup>), (11/4<sup>th</sup>), (13), (15), (17/7<sup>th</sup>), (19), (30/2<sup>nd</sup>), (33/2<sup>nd</sup>), (35/4<sup>th</sup>), (44), (48), (50/1<sup>st</sup> and 3<sup>rd</sup>), (51/1<sup>st</sup> ,2<sup>nd</sup> and 3<sup>rd</sup>), (52/ 1<sup>st</sup> and 2<sup>nd</sup>), (53), (54), (56), (57), (58), (59), (64), (66), (67), (68) and (73) to be unconstitutional, he also challenged that the statement (the bylaw) to be unconstitutional wherever it mentioned, also the statement (the membership of scientific councils) that was mentioned in article (65) of the code the subject of the appeal which is the code of the council of representatives and its formations No(13) for 2018, he also requested in his case petition to suspend the implementation of the provisions of the aforementioned articles until a decision is taken in the case, and to burden the defendant the speaker of the I.C.R./being in this post the expenses. The plaintiffs in the unified case No(141/federal/2018) requested to judge by repealing article (13/1<sup>st</sup>) of the mentioned code for violating the provisions of article (61) of constitution. The court placed the plaintiffs requests , and the answers of the defendant to the received appeals under scrutiny and deliberation in light of the constitution provisions and the relative laws, and come to the following according to the appeals order:

1. The appeal against article (5/1<sup>st</sup>) of the code which authorized the MP during the parliamentary session to give his opinion that not to conflict with the provisions of the constitution and the right of freedom expression of opinion and thought, and not to be



prosecuted for that for the reason of violating the provisions of articles (63/2<sup>nd</sup>) and (19) of the constitution regarding the expression that mentioned in it. The F.S.C. found that the intended by the term convening session is the parliamentary session and there is no violation in listing this expression for the constitution or any difference in the content.

2. The appeal against article (6/2<sup>nd</sup>) of the code which granted the MP the right to litigate before all judicial commissions as a representative of one hundred thousand people. The F.S.C. found that the text subject of appeal violated the provision of article (61) of constitution which stipulated the authorities and the jurisdiction of the I.C.R. which is code legislation and supervision on the performance of the executive authority, as for practicing the litigation before judicial bodies, it is outside the jurisdiction of the members of the I.C.R., because it is right that is reserved for the plaintiff of right, the public prosecution, and the Integrity commission according to the powers stipulated in its laws.
3. The appeal against article (7/2<sup>nd</sup>) of the code which related to the subject of immunity enjoyed by the MP during the convening session, the plaintiff objected on an expression contained in it which is (during the convening session) because as he claims it differ from the phrase during the parliamentary session that contained in article (63/2<sup>nd</sup>) of the Constitution. The F.S.C. found that there is no contradiction between the two expressions, and no violation for the provisions of the articles (63/2<sup>nd</sup>) and (19/3<sup>rd</sup>) of the Constitution.
4. The appeal against article (11/4<sup>th</sup>) of the code which considered the MP who did not perform the constitutional oath to be absence from the session. The F.S.C. found that this text violate the provision of article (50) of the constitution which obliges the MP to perform the

constitutional oath by the due process, before practicing his duties, and before its performance he remains just a winner in the general election process, and does not gain the capacity of MP if he fails from attending the meetings before performing the constitutional oath.

5. The appeal against article (13) of the code which included the provisions of referring the speaker of the council and his deputies and the MPs to retire, which are distinctly different from the provisions contained in the unified pension law No(9) for 2014, and create a distinction between those who subject to its provisions, in addition to that, what is stated in the article subject of appeal costs the state financial burden, therefore this text violates the provision of article (14) and (62/1<sup>st</sup>) of constitution.
6. The appeal against article (15) of the code which authorize the MP to conduct correspondence with the relevant parties in the framework of exercising his duties and set a period for answering them. The court finds that the text of the article subject of appeal its content does not exceeds from being organizational matter and does include violation to the provisions of the Constitution.
7. The appeal against article (17/7<sup>th</sup>) of the code which included the jurisdiction of the I.C.R. (to issue legislative decisions). The court found that the constitution stipulated the jurisdictions of the I.C.R. in article (61/1<sup>st</sup>) which is the legislation of the federal code, and did not stated the authorization to issue legislative decisions, except what the Constitution stated in its places, to authorize it to issue number of decisions within the articles contained in the Constitution, such as article (52/2<sup>nd</sup>), and those provided in article (61), therefore the text of the article (17/7<sup>th</sup>) of the code is not supported by the Constitution.

8. The appeal against article (19) of the code which included obliging the party submitting the code draft to assign an expert to clarify its contents at the request of the council. The F.S.C. finds that this text is an organizational text, and does not include violation to the provisions of the constitution, and its purpose is to clear the texts of the submitted draft.
9. The appeal against article (30/2<sup>nd</sup>) of the code which determent period of one month from the date of submission the clarification request by the Council of Ministers or one of the ministries. The F.S.C. finds that the appeal against this article is not supported by the Constitution, because it is an organizational text to ensure the proper functioning of the I.C.R. .
10. The appeal against article (33/2<sup>nd</sup>) of the code which didn't authorize the referral of the debriefed to retirement, or to accept his resignation or dismissal him or any action that prevented him from being responsible during the questioning period. The F.S.C. finds that this text is to ensure the public interest and not to open the way to evade responsibility, and its set for limited period which is the period of questioning, and if it contradicts with a text in the pension law its considered amended to that text as much as related to the debriefed, and does not include violation to the provisions of the constitution.
11. The appeal against article (35/4<sup>th</sup>) of the code which related to the I.C.R. satisfaction with the answers of the debriefed according to the mechanism that is stipulated in this article. The court found that this text is an organizational text to ensure the proper functioning of the procedure in the questioning subject, and dose not contain violation to the constitution.
12. The appeal against article (44) of the code which mentioned the power of the I.C.R. to approve the appointment of the posts listed in

it, and the appellant criticize that the posts that is related to the members of the federal judicial authority must be proposed by the Supreme Judicial Council and the Council of Ministers in respect of special posts. The F.S.C. found that this obligation is stipulated in the Constitution and its provisions has the supreme in the implementation according to article (13) of the Constitution, and obliges the I.C.R. to implement the provisions of the Constitution in such a case. Therefore there is no contrary to the provisions of the Constitution within this text.

13.The appeal against article (48) of the code which granted the speaker of the I.C.R. and his deputies, together the authority of the council of ministers and the authority of the prime minister regarding the implementation of the valid legislation in relation to administrative work on the employees and the formations of the council. The F.S.C. reviewed the proceedings of the session that dated (9/12/2018) and found that according to the statement of the defendant's representatives that the practice of this power is subject to the annually approved personnel which belongs to the I.C.R. from the Minister of Finance, and as long as it is so, there is a ruling to determine the movement in this field, in addition to that it is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between article (48) of the code and the provisions of the Constitution.

14.The appeal against article (50/1<sup>st</sup>) of the code mentioned the number of the consultants in the specialized offices within the formations and the personnel of the council. The F.S.C. found by reviewing the proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that the practice of this power regarding the number of the consultants is subject to the annually approved personnel which belongs to the I.C.R. from the Minister of Finance, and as long as it is so, there is a ruling to

determine the number of the consultants in this field, in addition to that the text the subject of appeal is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between the provision of article (50/1<sup>st</sup>) of the code with the provisions of the Constitution.

15. The appeal against article (50/3<sup>rd</sup>) of the code which is related to the appointment of consultants in the council by a parliamentary order and the approval of the I.C.R. and the issuance of a republic decree about it. The F.S.C. found by reviewing the proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that the practice of this power in this regard is subject to the annually approved personnel by the Minister of Finance, and as long as it is so, there is a ruling to determine that, in addition to that the text the subject of appeal is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between the provision of article (50/3<sup>rd</sup>) of the code with the provisions of the Constitution.

16. The appeal against article (50/1<sup>st</sup>) of the code regarding the administration formation of the I.C.R. of offices, general directorates and divisions by instructions issued by the Speaker of the council. The F.S.C. found by reviewing the proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that this formation is subjected to the annually approved personnel of the council by the Minister of Finance, and as long as it is so, there is a ruling to determine that, in addition to that the text the subject of appeal is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between the provision of article (51/1<sup>st</sup>) of the code with the provisions of the Constitution.

17. The appeal against article (51/2<sup>nd</sup> and 3<sup>rd</sup>) of the code regarding the appointment of the secretary-general of the I.C.R. and his deputies under the approval of the I.C.R. by proposed from the speaker and his deputies and the directors-general, and the issuance of a republic decree in both cases. The F.S.C. found by reviewing the

proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that this is subjected to the annually approved personnel of the council by the Minister of Finance, and as long as it is so, there is a ruling to determine that, in addition to that the text the subject of appeal is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between the provision of article (51/2<sup>nd</sup> and 3<sup>rd</sup>) of the code with the provisions of the Constitution.

18. The appeal against article (52/2<sup>nd</sup>) of the code regarding the power of the speaker of the I.C.R. and his deputies to have assistance consultants by the mentioned number in the article. The F.S.C. found by reviewing the proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that this is subjected to the annually approved personnel of the council by the Minister of Finance, and as long as it is so, there is a ruling to determine that, in addition to that the text the subject of appeal is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between the provision of article (52/2<sup>nd</sup>) of the code with the provisions of the Constitution.

19. The appeal against article (54) of the code which stated that the appointment in the council for the administrative staff is on the basis of the efficiency and specialization and taking into account the balance between the components of the Iraqi people. The F.S.C. finds that this text is to ensure the proper functioning of the I.C.R. and is a proper implementation for the provisions of the fundamental principles of the Constitution of the Republic of Iraq for 2005, and this article does not conflict with its provisions.

20. The appeal against article (56) of the code which related to how the employees of the council enjoy the legislative holiday in accordance with instructions issued by the speaker of the council in coordination with his deputies. The Court finds that the text is an organizational subject of the Council's jurisdiction according to the

provisions of article (47) of the Constitution and does not conflict between its provisions and the provisions of the Constitution.

21. The appeal against article (57) of the code which related to that the consultant of the Council committees shall enjoy the rights of the consultant of the office of the speaker of the Council and his deputies. The F.S.C. found by reviewing the proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that this is subjected to the annually approved personnel of the council by the Minister of Finance, and as long as it is so, there is a ruling to determine that, in addition to that the text the subject of appeal is a proper implementation for the provisions of article (47) of the Constitution, and there is no conflict between the provision of article (57) of the code with the provisions of the Constitution.
22. The appeal against article (58) of the code which related to validity of the orders and decisions that issued prior to the validity of the code the subject of appeal according to the bylaw paired with decrees issued by the President of the Republic. The F.S.C. found by reviewing the proceedings of the session that dated (9/12/2018) and under the statement of the defendant's representatives, that what issued was subjected to the table of annually approved personnel by the Minister of Finance, all in its time, and in consistent with the provisions of article (47) of the Constitution, and there is no violation for article (58) of the code with its provisions.
23. The appeal against article (59) of the code which related to the preparation of the Council budget. And by resorting to the proceedings of the session that dated (9/12/2018), the court finds from the statements of the speaker of the council before it, that the budget of the Council is prepared according to the followed assets including the parts and chapters and other branches, and consultation with the relevant committees, and the result of that showed as one number within the general budget of the state, and by referring to the provisions contained in article (60) of the code subject of appeal, that the computation of the I.C.R. subject to the

audit of the federal financial supervision office, and the Finance Committee is obligated to submit final accounts within the specified period, therefore there is no conflict between the provisions of article (59) of the code with the provisions of the Constitution.

24. The appeal against article (64) of the code which related to what is specify for the speaker and his deputies and the MPs, to enable them to perform their legislative, supervisory and representative duties, and what his employees receive from the allocations, but to be paired with the accordance between the speaker of the council and his deputies and under the approval of the council, and to determine the nominal salary for those who covered by the code provisions the subject of appeal by the maximum of the nominal salaries granted to their peers in the Council of Ministers and the Presidency of the Council of Ministers. The F.S.C. found by reviewing the article the subject of appeal that as long as its provisions are committed on what the members of the Council and their pairs in the executive authority receives, therefore it is not a violation to the provisions of the Constitution.

25. The appeal against article (65) of the code which related to prohibit the combining between the post of the council with any other post or work. The F.S.C. finds that this text is not a violation to the constitution, and it's an implementation for the provisions of parliamentary responsibility.

26. The appeal against article (66) of the code which related to the creation of a division in the national pension commission to complete the pension transactions for who is included by the provisions of the code the subject of appeal. The F.S.C. found that the text of this article is an organizational matter, and doesn't include violation to the provision of the constitution.

27. The appeal against article (68/1<sup>st</sup>) of the code which related to the establishment of a system to determine the priorities between the Presidents and their deputies in the federal authorities. The F.S.C. finds that the subject of determining the priorities between the mentioned posts title in the article the subject of appeal specializes



in it the concerned ministry which is the federal ministry of Foreign affairs, in accordance with the international and national contexts and customs, and come out from the jurisdiction of the I.C.R. that stipulated in the constitution, and intersect with the provisions of article (47) of it.

28. The appeal against article (73) of the code which stipulated on the work by the provisions of the code of the council of representative and its formation No (13) for 2018 by the time of its issuance. The F.S.C. found that the text the subject of appeal does not violate the provision of the constitution, and consistent with the provision of article (129) of it.

29. The submitted appeal that obligate the deletion of the statement (the bylaw) and the statement (the membership of scientific councils), have no bases in the constitution.

For the aforementioned, and after the F.S.C. has reviewed the articles of the code of the council of representative and its formation No (13) for 2018, that was appealed for being unconstitutional in the cases (140/federal/2018) and (141/federal/2018) the unified. The F.S.C. decided the following:

First: to judge that the articles (6/2<sup>nd</sup>), (11/4<sup>th</sup>), (13), (17/7<sup>th</sup>) and (68/1<sup>st</sup>) are unconstitutional, and to repeal them for the reasons listed when reviewing them earlier.

Second: to issue a decision to reject the case of the plaintiff the Prime Minister/ being in this capacity regarding the appeals against articles (5/1<sup>st</sup>), (7/2<sup>nd</sup>), (15), (19), (30/2<sup>nd</sup>), (33/2<sup>nd</sup>), (35/4<sup>th</sup>), (44), (48), (50/1<sup>st</sup>), (50/3<sup>rd</sup>), (51/1<sup>st</sup>), (51/2<sup>nd</sup> and 3<sup>rd</sup>), (52/2<sup>nd</sup>), (54), (56), (57), (58), (59), (64), (65), (66) and (73) of the code of the council of representative and its formation, and also to reject the appeal that concern the statement (the bylaw) and the statement (the membership of scientific councils) for the reasons listed when reviewing them earlier. And to remove the suspension of its implementation that issued by this court decision dated on 23/7/2018, and to notify the competent authorities about that.

Third: to burden the two parties the relative expenses and relative advocacy fees amount of one hundred thousand Iraqi dinars distributed according to law. And the decision issued unanimously and decisively according to the provisions of article (94) of constitution and article (5/2<sup>nd</sup>) of the F.S.C. bylaw No(30) for 2005, and issued publicly on 23/12/2018.