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The Federal Supreme Court (F S C) has been convened on 20.1.2019 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, Michael Shamshon Qas Georges, Aboud Salih Al-Temimi and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The appellant: (ain.ain.ah) – his agent the barrister (beh.kaf.sin).  
Appellant (against): the decision of Al-Sadr civil status Court dated on (25.11.2018) in the case No. (1996/shin/2018).

### The Claim

The plaintiff before the civil status Court in Al-Sadr city in the case No. (1996/shin/2018) that the defendant (ain.ain.ha) is her divorcee according to divorcement decision No. (13829) on (26.11.2017) and she has from marital bed the child (mim) born in 2009. She pretends that her divorcee took the child by force, and embosomed him without any right in spite that she has the custody stipulations. Therefore, she requested after taking the required procedures to judge by her custody for the child, and to burden him the expenses. During the session dated on (25.11.2018) and in the Sharia case above-mentioned, the agent of the defendant/the appellant/ had challenged the unconstitutionality of article (57) of valid civil status law according to article 4<sup>th</sup> of the FSC's bylaw, and according to article (41) of the Republic of Iraq Constitution for 2005. He added that his client is ready to present this challenge, and the Court granted him a respite to show the challenge draft. The Court decided in the same session above-mentioned on (25.11.2018) to reject the request because it irrelevant to the case subject. On the

session dated (16.12.2018) the agent of the defendant presented a cassation challenge against the decision issued by civil status Court in the session dated on (25.11.2018), it is dated on (13.12.2018) and captioned to the FSC. The Court decided to send the cassation draft to the FSC to trying his challenge of rejecting the decision for the reasons listed in the cassation draft.

### The Decision

During scrutiny and deliberation by the FSC, the Court found that the cassation decision had been issued by the appellant attendance on (25.11.2018) and he challenged it before the cassation Court, as well as he paid the fee on (13.12.2018). This matter means that the challenge had been presented out of the legal period stipulated in article (216) of the civil procedure law No. (83) In 1969. Whereas the specified periods to present the challenges are definite, and not taking these periods in consideration will take the right from the appellant in challenging these decisions according to provisions of the article (171) of the aforementioned. For these reasons the case must be rejected. Therefore, the Court decided to reject the cassation challenge formally, and to burden the appellant the cassation fee. The decision has been issued unanimously and decisively on 20.1.2019.