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The Federal Supreme Court (F S C) has been convened on 26.5.2013 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

### The Request

The Ministry of Higher Education and Scientific Research (Legal and Administrative Department) with its letter No. (Qaf/1/44) dated 27 March 2013 requested from the FSC to explain the ruling of Article (63/Alif) of the Constitution and the extent to which it conflicts with the decision of the judiciary about travel ban based on legal justifications, as article (63/Alif) stipulates that (a member of the Council of Representatives shall enjoy immunity for statements made while the Council is in session, and the member may not be prosecuted before the courts for such) and the Ministry expressed its opinion on this, which texts: 1. The source of immunity for members of the Iraqi Parliament is stipulated in article (63) of the 2005 Constitution in item (Alif) of article (2<sup>nd</sup>) of article (63) and stipulates that (a member of the Council of Representatives shall enjoy immunity for statements made while the Council is in session, and the member may not be prosecuted before the courts for such). Under this immunity, the member of the ICR does not ask for any statement or opinion expressed, embraced or authorized during discussions (inside the Council), but this is not absolute, considering that there are some opinions that may go beyond the limits of expression, as stipulated in the valid constitution in accordance with the text of sections (Beh.Jim.) of paragraph (2<sup>nd</sup>) of article (63) on the following (A Council of Representatives member may not be placed under arrest during the

legislative term of the Council of Representatives, unless the member is accused of a felony and the Council of Representatives members consent by an absolute majority to lift his immunity or if he is caught in *in flagrante delicto* in the commission of a felony) (Jim) (A Council of Representatives member may not be arrested after the legislative term of the Council of Representatives, unless the member is accused of a felony and with the consent of the speaker of the Council of Representatives to lift his immunity or if he is caught *in flagrante delicto* in the commission of a felony). We have witnessed a number of cases of the dropping of immunity from some Representatives during the current electoral term, as well as the arrest and execution of criminal proceedings on the Representative if he is a commissioned in a crime, which is known as paragraph (Beh) of article (1) of the Iraqi valid Code of Criminal Procedure No. (23) Of 1971 that (the crime must be witnessed if seen during its perpetration, or after perpetrating it within a short time or he chased the victim or the people followed the criminal with yelling or the criminal found after a while carrying a sharp tools or guns, luggage, papers or any other material which indicates that he perpetrated the crime or a partner in it. Any other marks or trail may found will confirms this). Therefore, the immunity range is limited by not arresting the Representative during the legislation term and protecting him for the statements he makes during the convening sessions (inside the Parliament dome) and it ends with the witnessed crime, not going over it. This matter means that the Constitution didn't hindered taking more preventive measures which approved by the law (which doesn't conflicts with the immunity). 2- The Constitution limits immunity to (non-execution of arrest only) i.e. procedural matters involving the arrest of the Representative and his deposit by arrest between four walls and authorized below the continuation of the litigation procedures and even the civil implementation of the fund in the event of a debtor and so on (the constitution never mentioned the prohibition of travel) and the meaning of the rule that the apparent of the text is an argument). So, it's not permissible to say that travel banning is conflicts with the Constitution because the legislator didn't indicates to it, it's only indicated to inhibit arresting the Representative only, considering that the travel ban is a preventive measure which guarantees the justice is served by the judicial power to avoid the exploitation of the Representative for the matter of immunity and fleeing from justice abroad or to run from justice or

responsibility, especially if the Representative was innocent and keen on the people's interest which he represented. He can defend his innocence at the court by clues and proofs. Thus, there isn't any text in the constitution or the law inhibits taking the guarantor preventive measures to make the justice serves towards the Parliament Member who enjoys the immunity because the immunity is limited only on (prohibition of arresting) it's also doesn't inhibits its (issuance). As well as, the immunity stands at the frontiers of protecting the Representative for his opinions inside the Parliament's dome only. 3- Travel ban considered a guarantee to make justice served by inhibiting the Representative from (escape) and waiting for the people's justice against who used the immunity to violate the law. Moreover, the benefits of travel ban is to urge the Representative to defend himself before the judiciary, not to neglect the judiciary decisions and choose escaping abroad which may waste the people's right which he damaged or took it. 4- Article (142) of civil procedure law No. (83) for 1969 stipulates ((the plaintiff has the right to issue a decision from summary justice to inhibit the defendant from travelling if he has a serious reasons may let the defendant escaping from the lawsuit, and if the court was sure from this matter can charge the defendant to choose who represent him legally in the lawsuit until it becomes final. If the defendant didn't follow this order, the court can issues a decision to inhibit him from travelling after the plaintiff presents a bail to guarantee the plaintiff from being aggrieved). Therefore, the Member of the ICR who's a decisions of arresting issued against him or a criminal complaint or a civil lawsuit, the parliamentary immunity doesn't protect him from travel ban. Accordingly, and for the aggrieved rights shall be taken in consideration and not to be wasted. 5- There is a contradiction in the provision of article (63/1) which included his immunity during the convening term with the ambiguity of the phrase (his opinions' statements) and the provision of paragraph (Beh) his enjoying of immunity and not to be arrested during the legislation term, whereas some behaviors of the Representatives may goes out of the drawn legal frame according to the constitution and the ICR's Bylaw. 6. The lack of constitutional or legal provisions dealing with the subject of travel bans for some representatives or officials alike is a legal loophole that many criminals have carried out under the pretext of opposing travel bans with parliamentary immunity, where they were able to escape outside Iraq and get rid of the punishment, including but not limited to

representative Mohammed al-Dayani, the representative Mashaan al-Jabouri, former minister Hazem al-Shaalan, former minister Ayham Al-Samarrai, Vice President Tariq al-Hashimi and the representative Adnan al-Dulaimi. 7. The travel ban is nothing more than a measure that precedes the lifting of parliamentary immunity from the representative, does not contradict it, does not include in its contents, and is a guarantee to fulfil the public right and to say otherwise that it threatens public and private rights negatively, especially in Iraq, as it is new to democracy. 8. The travel ban does not represent pressure on the will of the representative in parliament or specifically for his freedom at all, because his freedom is protected for a number of reasons: Alif- he has the privileges of a minister in terms of monthly salary, protection, diplomatic passports and all other privileges. B- He cannot be arrested during the duration of the election cycle. C- He has full freedom to move and move within the Iraqi state in all its governorates. Dal. He has the freedom to appoint lawyers and provide evidence of his innocence. Heh- The immunity granted to the representative does not represent a shield against him from justice, so it is a reason to violate the law or interfere with the rights of people, their lives, their money and the interest of the state, and should not be a reason to protect corruptors or terrorists, but it must be an element that motivates the representative to properly address the responsibility and represent the people in parliament wisely, responsibly and strongly in professional performance and resolution and does not balance the two things unless he (travel ban) or (prohibition of escape) in exchange for immunity for the representative who violates the law in the name of and protected by immunity. 9- Parliamentary immunity should not be (absolute) but should be at certain limits in such a way that it does not make it a weapon that some use to attack people's rights and money and violate the law repeatedly, yet it follows the law (protects it with immunity), which is contrary to the spirit of justice adopted by the Constitution and Islamic law. As a member of parliament often addresses certain feelings among the electorate, he renews his stay in parliament and prolongs his enjoyment of parliamentary immunity. Although the list of violations of the law may be prolonged and prolonged without any solution before the judiciary to achieve justice and then the worst is achieved, which is to flee out of the country and this particular injustice, as immunity should stand at the limits of the travel ban, which may generate hope in the souls of the

weak and oppressed that the day of justice must come even long overdue. 10- It is necessary to have measures that will ensure the proper use of parliamentary immunity in accordance with what these procedures desired to be, the most important of which is the prohibition of travel, especially if the body that decides this procedure is judicial to move this issue away from political tensions may be possible and the judiciary will be the body that takes final decision in this concern. Accordingly, we request from your esteemed court (to interpret the subject of parliamentary immunity and the extent to which it conflicts with the travel ban as we have provided above) and to your esteemed court with the utmost respect and appreciation. The above request was put under scrutiny and deliberation by the FSC, and the court reached the following decision:

### The decision

During the scrutiny and deliberation of the FSC, it was found that the request received by this court from the Ministry of Higher Education and Scientific Research is related to a request of interpretation for the parliamentary immunity and how it conflicts with the travel ban according to the detail listed in the interpretation above-mentioned. By scrutinizing the request, the court found that there is a legal litigation in the subject (inquired about) which requires to present it as a lawsuit tried by the FSC to take a decision about it, according to the provisions of article (1) of the FSC's Bylaw No. (1) For 2005. Therefore, the court decided to reject the request. The decision has been issued unanimously on 26.5.2013.