

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 34/federal/media /2014



Kurdish text

---

The Federal Supreme Court (F S C) has been convened on 28.10.2014 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu AL-Temman and Mohammed Rajab Al-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff : (ha. nun. yeh. yeh.) his agent (sad. mim. ha.).

The Defendant : Speaker of House of Representatives- being in this capacity- his jurists (sin. ta. yeh.) and (ha. mim. sin.).

The Claim:

The prosecutor claimed before the FSC in the case No. (34/federal/2014) that the Speaker of the House of Representatives issued a parliamentary order of (359), which decided the following:

- 1- The position of Speaker of the House of Representatives is called the Secretary General of the House of Representatives and shall be as a minister and enjoy all the rights and privileges enjoyed by the minister.
- 2- The Secretary-General of the House of Representatives shall have two deputy deputy ministers (Deputy Secretary-General for Parliamentary Affairs) and (Deputy Secretary-General for Administrative Affairs) and enjoy all the rights and privileges enjoyed

by the Under-Secretary of State. 3- This order is enforced as of the date of its issuance). Then a second parliamentary order of (306) was issued on 3/10/2013, under which the following: (1- The appointment of Mr. (alif. nun. mim.) as Secretary-General of the House of Representatives and with the rank of Minister and enjoys all the rights and privileges granted to this position 2- The appointment of Mr. (beh. ain. beh.) as deputy secretary general for parliamentary affairs of the House of Representatives) and the degree of undersecretary of the Ministry (special high degree) and enjoys all the rights and privileges granted to this position. 3- Mr. (sad. jim. mim.) appointed to the post of (Deputy Secretary-General for Administrative Affairs of the House of Representatives) and with the rank of Under-Secretary (high privet post /alif) and enjoys the rights and privileges granted to this position. 4- The appointment of Mr. (sin. ain. mim.) as (Director General of the Public Relations and Protocols Department in the House of Representatives) and to a (higher post/beh) and enjoys all the rights and privileges granted to this position and since these two parliamentary orders were issued contrary to the Constitution and the law and the rules of procedure of the Council, so he initiated the challenge to them for the following reasons: 1- In this case, paragraph (2<sup>nd</sup>) of the legislative order No. (12) of 2005 valid stipulates that (the chief of the cabinet shall be in a special category (alif) and shall be accountable to the President of the Council when carrying out the work of the Divan, the opinion and finance) those related to ensuring the proper functioning of the work within the framework of the powers established by law and the powers delegated by the President of the Council and associated with the directors general, experts and directors of the competent sections of the Divan, since the post of the Chief of the Cabinet has been specified under this text in privet post, and since the two parliamentary decrees issued by the Speaker of the House of Representatives have been determined by the rank of chief of the cabinet (with the rank of minister), these two are in violation of

Legislative Order 12 of 2005. 2- Article (7<sup>th</sup>) of the National Assembly Law No. (3) of 2005, which is in force under Article (1) of the House of Representatives Law No. (50) of 2006, which is contained in Chapter (3) of the Law on the Renewal and Budget of the National Assembly it states that the National Assembly office is composed and that since the creation of the position of deputy chief of the cabinet is not mentioned in the national assembly, and since paragraph (3) of article (7) of the law specified the validity of the presidency, the number of departments and their powers is renewed and according to the requirements of the work. Since the position of deputy chief of staff is not one of the districts covered by paragraph (3), these two parliamentary issues are against the law. 3- Article (51) of the Constitution stipulates that (the House of Representatives shall have a bylaw for regulating the functioning of the work in it) paragraph (2<sup>nd</sup>) of article (147) of Bylaw of House of Representatives stipulates that (The Council's Office is managed by the Head of the Divan in a privet post and exercises his duties in accordance with the law and the powers granted to him by the presidency..) since the post of the Chief of The Divan is determined by paragraph (2<sup>nd</sup>) of article (147) above (privet post) and since the Chief of Divan has not been amended stipulated in accordance with the mechanism stipulated in article (148) of the Bylaw is not specified, therefore, the parliamentary orders that are challenged are violates to the bylaw of the Council and then it is void. 4- Paragraph (6<sup>th</sup>) of article (9) of the Bylaw that the presidency is exercising the following tasks (approve the organizational structure of the Divan's office, amended it, draw up administrative and financial policy for it, and inform the members of the Council about this) since the organizational structure of the Council has already been approved in the Interim National Council and was amended in the days of the National Assembly, and since any amendment to the organizational structure of the Council, whether by creating the higher posts of functionality or the departments and special formations of the Council

without informing the House of Representatives on this, is violated to paragraph (6<sup>th</sup>) of article (9) of the Bylaw of the Council. Therefore, the parliamentary orders are subject to appeal, which have been issued in violation of the law and the rules of procedure of the Council.

5- Where paragraph (7<sup>th</sup>) of article (9) of the Council's Bylaw, it stipulates that it exercises the following tasks (organizing the annual budget of the House of Representatives and presenting it to the Council for approval and supervising its implementation and conducting the transfers between appropriation sections) since the article (142) of the Bylaw of the Council stipulated that (the Council has a special budget to be determined in coordination with the competent financial authorities and included in the general budget) since the paragraph (4<sup>th</sup>) of article (93) of the Council Bylaw stipulates that the Finance Committee is responsible the following: (supervising the preparation of the budget of the House of Representatives) and since paragraph (1<sup>st</sup>) of Article (8<sup>th</sup>) of the National Assembly Act No. (3) of 2005 under Article (1) of the House of Representatives Law No. (50) of 2000 stipulated that the (The Finance Committee prepares the draft budget of the National Assembly in cooperation with the financial consultation of the association and after the completion of the project is presented to the President of the National Assembly, which in turn presents it to the members of the National Assembly for approval and approval) since there is no reference in the general budget of the state (the budget of the House of Representatives) for 2013, any indication of the competent rank of minister contrary to the law to the Chief of the Divan or the rank of undersecretary of the ministry assigned contrary to the law to the deputy Chief of the Divan. Since those Council personnel the amendment was approved by the Finance Committee and the members of the House of Representatives. Since the council's staff is devoid of these employment post and has not previously amended the council's staff and obtained the approval of the Finance Committee and the members of the House of Representatives on that amendment, the

parliamentary orders in question have been issued in violation of the law (6) article (14) from the Constitution of the Republic of Iraq it stipulated that (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.) since the article (16) of the Constitution state that (equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken) since the article (20) of the Constitution state that (Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office) since the paragraph (1<sup>st</sup>) of the article (22) of the Constitution (work is a right for all Iraqis in a way that guarantees a dignified life for them.) since (12<sup>th</sup>/alif) of article (9) of the Council's Bylaw state that (the President agrees with his two deputies in the presidency in supervising and supervising all employees and employees of the Council's cabinet and in making decisions concerning appointment and dispatch abroad in order to achieve the principle of balance and equal opportunities for all Iraqis in the functions of the state and in making decisions regarding promotion, transfer of service, retirement and regulations in accordance with the laws in force in the state) Since the parliamentary orders in question have been issued in violation of the articles of the Constitution and the rules of procedure referred to above, whether in the selection of candidates for these ranks or respect for the principle of equal opportunity, the approval of the representatives of the people has not been obtained to create these ranks or to choose the candidate selections. These orders have been issued in violation of the Constitution, the law and the Bylaw of the Council the FSC has been asked to rule that the parliamentary orders issued by the Speaker of the House of Representatives are invalid and canceled and charged with the costs of the lawsuit and the fees of the lawyers. After the Court followed the procedures set out in paragraph (3<sup>rd</sup>) of article (1) and

paragraph (2<sup>nd</sup>) of article (2) of the Bylaw of the FSC No. (1) of 2005, the argument was made and heard the statements and requests of the parties and the mutual regulations between the parties, and therefore where nothing remains to be said, the end of argument has been made clearly.

### The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff challenges of unconstitutional the decisions No. (359) and (360) issued from the Speaker of the House of Representatives/ being in this capacity on 3/10/2013 that mentioned before, under the first parliamentary order, he created administrative positions in the House of Representatives and he appointed the gentlemen named in the second parliamentary order No. (360) in the newly created positions No. (359) on 3/10/2014 and that the post was with the degree of minister and undersecretary and privet post and since the above two things were issued by the Speaker of the House of Representatives and not from the House of Representatives, he did not submit them to the House of Representatives for a vote on them, so the two orders in question are administrative orders and the consideration of their appeal does not fall within the jurisdiction of the court, which is defined by article (93) of the Constitution of the Republic of Iraq 2005 and the article (4) of FSC's law and on the basis of the above, this court is not competent in the case from the jurisdiction, which necessitates the dismissal of the case from this authority. Therefore, when the FSC decided to reject the plaintiff's claim from the non-jurisdictional point of view, with the fees and fees of the lawyer for the defendant/ being in this capacity jurists (sin. ta. yeh.) and (ha. mim. sin.), a sum of one hundred thousand dinars equal between them and the decision was issued immanence unanimously decisively and the decision had made clear public on 28/10/2014.