

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

Republic of Iraq  
Federal Supreme Court  
Ref. 42/federal/ 2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 6/5/2019 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, Hussein Abbas Abu Al-Temmen and Mohammed qassem Al-Janabi who are authorized in the name of the people to judge and they made the following decision:

The Request:

The Presidency of the Republic by its letter issued from the office of the President No.(Mim. Ra. Jim./1/57/1352) dated 5/5/2019 requested from the Federal Supreme Court, and stated:

(The President of the Republic office presents you with the best regards

The letter of his excellency the President of the Republic, Dr. Barham Salih, about the explanation of article (61/ 7<sup>th</sup>/ Alif), Please to review, and present the letter to the Head of the Federal Supreme Court, and to inform us.

With appreciation.

Sub/ the explanation of article (61/7<sup>th</sup>/ Alif) of the  
Constitution of the Republic of Iraq

The honorable Mr. President of the Federal Supreme Court

According to the provisions of article (93/2<sup>nd</sup>) of the constitution, please explain the provision of the article (61/7<sup>th</sup>/Alif) of the Constitution, and does the competence of the member of the Council of Representatives include to direct the question to the President of the Republic and his Vice-President, under the mentioned article (61/7<sup>th</sup>/Alif) of the Constitution, or its limited to the listed posts title contained in the constitutional article above and the article (50) of the bylaw of the Council of Representatives, noting that the (Presidency Council) has ended its existence after the end of the first session of the Council of Representatives after the validity of the Constitution according to article (138/1<sup>st</sup>) of constitution.

We ask the Federal Supreme Court to explain the constitutional interpretation of the mentioned article.

With appreciation.)

The Decision:

The aforementioned listed request placed under scrutiny and deliberation by the F.S.C. and it reached the following decision:

- Paragraph (7<sup>th</sup>) of article (61) of the republic of Iraq constitution for 2005, with its clause (Alif. Beh. Jim.) have been authorized the members of the council of representatives, as the case may be, to

direct questions, inquiries and interrogations to the listed posts in that article.

- Clause (Alif) of paragraph (7<sup>th</sup>) of article (61) of the constitution stated that (a member of the Council of Representatives may direct questions to the Prime Minister and the Ministers on any subject within their specialty and each of them shall answer the members' questions. Only the member who has asked the question shall have the right to comment on the answer.), this text stipulated the power of the member of the Council of Representatives to direct questions to each of the Prime Minister and the Ministers about a subject within their specialty, and by reading its basis and meaning we found that it determined the power of the member of the Council of Representatives to direct questions exclusively to the Prime Minister and the Ministers, and this power did not exceed to ask questions to the President of the Republic - the President of the State- (article 67 of the constitution), and to his Vice-President who are stipulated in article (69/2<sup>nd</sup>) of the constitution, and they take his place in the implementation of the provisions of the clause (Alif) of paragraph (7<sup>th</sup>) of article (61) of the Constitution, because the conditions of their appointment are the same conditions required in the appointment of the President of the Republic, and the requirement that they must obtain a university degree according to the provisions of article (2) of the Vice-President of the Republic code No.(1) for 2011, and that the Vice-President replace the president when he is absent and when his post is vacant according to the provisions of article (5) of the a Vice-President of the Republic code, in addition to that the paragraph the subject of the explanation did not mentioned the Vice-President of the Republic when mentioned the power of the member of the Council of Representatives to direct questions.

- According to article (50) of the council of representatives' Bylaw which was issued in the Iraqi official gazette No.(4032) on 5/2/2007, the power of the member of council of representatives to direct (written questions) has become limited to the Prime Minister and his deputies, ministers, heads of the independent bodies and heads of the departments that are not associate with a ministry, from the government members, and that after the end of the (Presidency Council) at the end of the first session of the council of representatives subsequent to the validity of the Constitution of the Republic of Iraq for 2005, and that according to article (138/1<sup>st</sup>) of constitution.
- It is not permissible to compare the position of the President of the republic and the position of Vice-President of the republic with the positions of President and members of the dissolved (Presidential Council) in the field of implementing the provision of clause (Alif) of paragraph (7<sup>th</sup>) of article (61) of constitution, and article (50) of the Bylaw of the council of representative, for the different of the legal positions, powers and conditions of appointment.

Accordingly, the Federal Supreme Court decides that:

The power granted to the member of the council of Representatives to direct the questions under the clause (Alif) of paragraph (7<sup>th</sup>) of article (61) of the constitution, and article (50) of the Bylaw of the council of representative, does not extend to and does not include the President and his Vice-President.

the court found that the plaintiff challenged by unconstitutionality of the decision of formation the general Judicial Committee which supervise the elections of the Bar association council under the judicial order No (226/office/2019) On 19/2/2019 that was issued by the first defendant/ being in this capacity, requesting to judge that its unconstitutional and all the decisions and the implications from the formation of this committee, and to annul its decision about the removal of the plaintiff from the post of the Bâtonnier of the Iraqi lawyers. The F.S.C. finds that the decision of forming the Judicial Committee which supervising the elections of the Bar Council is an administrative decision taken by the head of the Supreme Judicial Council/ being in this capacity, according to the jurisdiction of the Supreme Judicial Council to administrate the affairs of the Judicial bodies that stipulated in the article (90) of the Constitution, as for the removal the plaintiff from nomination for the post of (the Bâtonnier of the Iraqi lawyers) the code has set the path to appeal it before the appealing party. For the aforementioned, and whereas the jurisdiction of the F.S.C. are determined by article (4) of its code, and article (93) of the Republic of Iraq Constitution for 2005, which don't include the consideration of what the plaintiff requested in the case petition, therefore the case lake its legal substantiation which requires to be rejected. According to that the F.S.C. decided to reject the plaintiff's case against the first defendant/ being in this post for incompetence, and to reject the case against the second defendant for not having the legal personality of litigation. And to burden the plaintiff the expenses and advocacy fees for the agent of the first defendant amount of (one hundred

thousand Iraqi dinars). The decision has been issued decisively and unanimously according to article (94) of the Republic of Iraq Constitution for 2005, and issued publicly On 10/4/2019.

Over .