

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.5 /federal/media/2016



Kurdish text

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The Federal Supreme Court has been convened on 14/2/2016, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

**The Request:**

ICR/office of the vice president has requested according to its letter No.(198) on 17/8/2015 the answer on the inquiries of some Constitutional texts that listed in the letter of the representative (Alif. Beh.) No.(138) on (16/8/2015), the text is: ((because of the Constitutional legislator didn't broach to the details of the competences of the Federation Council and how it exercises its authorities and proceeding its legislative role, but he settled for what listed in the article (48) from the Constitution which has stipulated ((The federal legislative power shall consist of the Council of Representatives and the Federation Council. )) and what listed in the article (65) from the Constitution that stipulated ((A legislative council shall be established named the "Federation Council," to include representatives from the regions and the governorates that are not organized in a region. A law, enacted by a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it.)). And because the ICR with reference to legislating the law of the federation council, we need to know the competences that shall be granted to the federation council, especially for what related to the role of the federation council in the

preservation of the balance between provinces and the governorates that not organized in province and to defend its interests because it represents the second council of the legislative authority in the federal countries. For the above, You are kindly requested to approach the FSC to explain some Constitutional texts that related to the competences of the ICR and we please from your respected court to knowledge us to its Interpretative opinion about the Constitutional articles, items, clauses which are below:

1- the article (60) the item (2<sup>nd</sup>): Proposed laws shall be presented by ten members of the Council of Representatives or by one of its specialized committees.

The question is: did the Constitutional legislator mean in this article that the presentation of proposed laws is an exclusive jurisdiction for the ICR or one of its committee or it came to determine the ICR authorities and the federation council can present proposal through its members or committee which may be convened to proceed its legislative role that listed in the article (48) from the Constitution.

2- about the articles, items, and clauses below of the article (61) The Council of Representatives shall be competent in the following: First: Enacting federal laws. Second: Monitoring the performance of the executive authority. Third: Electing the President of the Republic. Sixth: A. Questioning the President of the Republic, based on a petition with cause, by an absolute majority of the members of the Council of Representatives. B. Relieving the President of the Republic by an absolute majority of the Council of Representatives after being convicted by the Federal Supreme Court in one of the following cases: 1- Perjury of the constitutional oath. 2- Violating the Constitution. 3- High treason. Seventh: A. 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. B. At least twenty-five members of the Council of Representatives may raise a general issue for discussion in order to inquire about a policy and the performance of the Council of Ministers or one of the Ministries and it shall be submitted to the Speaker of the Council of Representatives, and the Prime Minister or the Ministers shall specify a date to

come before the Council of Representatives to discuss it. Eighth: A. The Council of Representatives may withdraw confidence from one of the Ministers by an absolute majority and he shall be considered resigned from the date of the decision of withdrawal of confidence. A vote of no confidence in a Minister may not be held except upon his request or on the basis of a request signed by fifty members after the Minister has appeared for questioning before the Council. The Council shall not issue its decision regarding the request except after at least seven days from the date of its submission. Eighth: Beh.2- The Council of Representatives may withdraw confidence from the Prime Minister based on the request of one-fifth of its members. This request shall not be submitted except after an inquiry directed at the Prime Minister and after at least seven days from the date of submitting the request. 3- The Council of Representatives may decide to withdraw confidence from the Prime Minister by an absolute majority of the number of its members. The Council of Representatives may question independent commission heads in accordance with the same procedures related to the Ministers. The Council shall have the right to relieve them by absolute majority. Ninth: A. To consent to the declaration of war and the state of emergency by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister. B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.

The question: did the legislator mean to grants these authorities to the ICR exclusively or it listed for determination of the ICR authorities and the ICR can shares with the Federation council in exercising those authorities or some of it through enacting the law of federation council according to the article (65) from the Constitution.

The article (63) (2<sup>nd</sup>): A. 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. B. 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 abso-

lute majority to lift his immunity or if he is caught in flagrante delicto in the commission of a felony.

The question: did the legislator mean to grants those privileges to the ICR members exclusively or the council can grants similar privileges to the members of the federation council by the law of the federation council... with all appreciation. The request had been placed under scrutiny and deliberation by the FSC and it reached the following decision:

**The Decision:**

During the scrutiny and deliberation by the FSC, the court found that the ICR request focuses on the explanation of the articles (60, 61 and 63) from the Constitution of republic Iraq for 2005, and How these materials relate to the law of the federation council if he was issued, the FSC finds that for the first request (that the presentation of proposed laws is an exclusive competence for the ICR or one of its committee or it came to determine the ICR authorities and the federation council can present proposal through its members or committee.) the FSC sees that what listed in the article (60) from the Constitution has listed exclusively for the ICR currently, and the law of the federation council if he was issued, will include the cometences of the council. As for what related to the second request about what listed in the article (61) from the Constitution which concerns the competences of the ICR, the FSC finds that these competences listed exclusively for the ICR as it listed in the Constitution, as for the federation council its competences depends on its law if he was issued, it determines it. Finally for what related to the third request the explanation of the article (63-2<sup>nd</sup>) from the Constitution which addressed the enjoyment of the ICR member by the impunity and does that privilege listed exclusively for its members or the members of the federation council can be covered by the impunity too, which was granted for the ICR members, the FSC sees that what listed in the above article is exclusive right for the ICR members currently and the law of federation council, if he was issued, will determine the impunity according to the Constitution. The decision was issued unanimously on 14/2/2016.