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The Federal Supreme Court (F S C) has been convened on 5.6.2018 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 Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Speaker of the ICR/ being in this capacity – his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

The Defendant: the Prime Minister/ being in this capacity – his agent the legal consultant assistant (ha'.sad).

### The Claim

The agent of the plaintiff claimed before the FSC in the case No. (61/federal/2017) that the defendant (the Prime Minister/ being in this capacity) issued ceremony order No. (4) For 2016 – which published in the Iraqi gazette by Ref. (4420) on 10.17.2016. This order included priority of the Republic's President then the Prime Minister then the Speaker of the ICR then...- we proposed to challenge unconstitutionality of this order because it is related to mores and international dealings in countries that its regimes are resembling the parliamentary regime in the Republic of Iraq which approved by the Constitution. Also articles (47,78,67) should be token in consideration when issuing aforementioned order, also compatible with mores and international regulations related. This matter is what the FSC's decision No. (23/federal/2011) indicated to take in consideration mores and international dealings in the countries that its regimes are

resembling the parliamentary regime in Iraq. For example the arrangement of precedence in Germany puts the President first, then the Bundestag (Council of Representatives), then the chancellor (Head of the government). For aforementioned reasons, the agent of the plaintiff requested to judge by unconstitutionality of ceremony order No. (4) For 2016 because it is violates provisions of article (1) and article (47) of the Constitution. Also he requested to burden the defendant all the judicial expenses. The agent of the defendant (the Prime Minister/ being in this capacity) answered the petition of the case by answering draft dated on 6.11.2017 that the challenge subject is not including the FSC's competences, because it concentrated on trying of how ceremony order is compatible with provisions, mores and international regulations, and constitutional articles (47, 78, 67) are not related to determining precedence according to the court's decision which listed by the plaintiff. His client issued aforementioned order as exercising of his powers which stipulated in article (80/3<sup>rd</sup>) of the Constitution. The objection of the plaintiff forms a violation to the principle of separation of between powers which stipulated in article (47) of the Constitution. He clarified that there is a committee had been formed in the General secretariat of the Cabinet by a divan order headed by a representative from the republican presidency and the General secretariat of the Cabinet. Also a representative from the Ministry of foreign affairs, Ministry of justice and Ministry of transportation, and a representative from the ICR was added by a recommendation from the committee. This committee assigned to prepare State of Iraq ceremonies' law, and it directed as implementation of aforementioned court's decision and according to mores and international dealings in countries which it regimes resembling the parliamentary regime in the Republic of Iraq. In accordance to what listed in direction of the Ministry of foreign affairs which has competence in protocol affairs in the State that listed in the decision aforementioned. It mentioned that there is no enactment in Iraq or order depend on approved primacies. Also it can't be compared with the order of precedence arrangement in the State which mentioned by the agent of the plaintiff, because it considered a different case and an exception in the world. Previously the plaintiff admit before honorable Court by his request that articles (1 & 75/1<sup>st</sup> & 4<sup>th</sup> & 67 & 79 & 50) of the Constitution were not clear about

precedence which approved by the State of Iraq between the Speaker of the ICR, President of the Republic and the Prime Minister which stipulated in decision 23/federal/2011. The agent of the defendant added that article 67 of the Constitution regarded the President of the Republic is the President of the State, and a symbol of nation's unity. He represent its sovereignty. Therefore, he must be the first in positions. Also article 78 of the Constitution considered the Prime Minister is the direct executive official of general policy, including exterior and diplomatic policy of the Iraqi State. This matter requires to introduce him in position after the position of the Republic's President. As for the Speaker of the ICR, article (61) of the Constitution clarified it. This article showed the competences of the ICR by enacting and overseeing the executive power performance and else. Even parliamentary immunity which stipulated in article (63) of the Constitution and granted to all the ICR members. While the Constitution didn't pointing to present the precedence of the ICR's Speaker on the Prime Minister in field of ceremonies. Claiming of article (1) of the Constitution violation to ceremony order is rejected, because this article included description of the regime in Iraq and if the text desired to mean precedence, it will be according to this text to put the Speaker of the ICR before the President of the Republic. This matter contradicts with article 67 and article 78 of the Constitution which indicates clearly on arrangement of the President of the Republic and the Speaker of the ICR in the ceremony order. Also the plaintiff can't claims that challenged unconstitutional order violates article (47) of the Constitution, because it stipulated on separation between powers and the phrase (legislative, executive and Judiciary) which this article stipulated on, is just a counting for powers in Iraq and it can't be approved as a precedence for powers in the ceremony order. Therefore, the agent of the plaintiff requested to reject the case for incompetence, and for the subject as well. He also requested to burden the plaintiff the expenses and advocacy fees, because his client followed the procedures according to provisions of the law when enacted ceremony order. After registering this case at this Court, and completing required procedures according to the bylaw of the FSC No. (1) For 2005. The Court called upon the case parties for argument on 8.3.2017, and the agents of the two parties attended. The agent of the plaintiff repeated what listed in the petition of the case, and he

clarified that his client is litigating in aforementioned protocol in the case by put the Prime Minister before his client, and he challenges this arrangement. The agent of the defendant repeated what listed in the answering draft, and he requested to reject the case for the reasons listed in it. The Court scrutinized the case's documents, and it found that ceremony order No. (4) For 2016 even it was issued by the cabinet, but the Ministry of foreign affairs is concerned about what listed in it, in what relate to posts' arrangement. And to stand on basis which approved by the Ministry of foreign affairs in arrangement, and did it depended on international conventions or according to texts in the Constitution and the law. Therefore, the FSC decided to introduce the Minister of foreign affairs as a third party in the case to enquire him according to provisions of article (69/4) of civil procedure law No. (83) For 1969. The Ministry of foreign affairs answered by its letter No. (145 dated on 1.14.2018) that there is no agreement or international treaty arranging precedence between the posts of the Prime Minister and the Speaker of the ICR in each State. Also there is no permanent form in precedence should be approved or take as a measure or standard for research subject. The regimes in the States are different they added, because all States takes precedence of the executive power President before legislative power President but in rare cases is the opposite. Each State arranges its private ceremonies by a law corresponds with its regime, and it also has the right to put precedence order which concern its officials. Some States may relies on more than an order in precedence for its officials depending on occasion and its nature. This mean they put the Prime Minister before the Speaker of the ICR in some of it, and the opposite in some others. This is what applicable for example in France and Egypt. Whereas the FSC in previous decision decided to delay trying in the case, because there was a decision to form a committee from six experts in the State to set instructions about precedence. Whereas the work of this committee didn't take its legal paths to issue instructions. Therefore, the Court decided to resume trying the case, and by shown facts before it, and accordingly the Court decided 5.6.2018 as a date for argument. On this day, the case's parties attended in aforementioned date and public in presence argument initiated. Whereas the Court has used the purpose of introducing the Minister of foreign affairs/ being in this capacity to the case as a third party while he clarified the

opinion in the case's subject. The Court decided to remove the third party (Minister of foreign affairs/ being in this capacity) from the case. Later on, the Court enquired the agents of the defendant if they have anything to add on their previous sayings, they answered by no. whereas the case became complete to take a decision in it. The Court decided to make the end of the argument clear, and the decision were recited publicly in the session. The decision was recited publicly in the session dated on 6.21.2018.

### The Decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff the Speaker of the ICR- being in this capacity had challenged the petition of his case a time before the defendant the Prime Minister – being in this capacity. He challenged unconstitutionality of ceremony order No. (4) for 2016, and his agent clarified during the argument session dated on 8.3.2018 that his client challenge is restricted about what aforementioned order imposed by put the Prime Minister in the lead during official occasions before the Speaker of the ICR. He requested to make arrangements on the contrary of that by let the Speaker of the ICR before the Prime Minister in these occasions, and also he requested to amend ceremony order according to that. He added, that what takes place in some States including Germany. The plaintiff/ being in this capacity depended on the provisions of articles (1) and (47) of the Constitution as a substantiation for his case, and the Court stood on the way of seniority in ceremony arrangement with States which its regimes are similar to the regime in Iraq under provisions of the Republic of Iraq Constitution for 2005 by returning to the Ministry of foreign affairs which concerned by ceremony procedures. Whereas the Ministry clarified in its letter dated on 1.14.2018 that there is no agreement or international treaty regulates precedence between the posts of the Prime Minister and the Speaker of the ICR in ceremony field. Also there isn't a permanent form in precedence to rely on in this field, and most States takes precedence of the executive power's Head before the Head of the legislative power in ceremonies but in rare cases. Each State arranges ceremonies with what corresponds with its regime. Therefore, the Court returned to what the plaintiff relied on in the

petition of his case as a substantiation for his challenge which they are articles (1) and article (47) of the Constitution. To know how valid they are to approve the request of the plaintiff/ being in this capacity to judge by unconstitutionality of legislative ceremony order (challenge subject). The Court found that article (1) of the Constitution stipulates ((the Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq)). By reading the text of this article, the Court reached that there is no relation in the precedence order between the posts of the Prime Minister and the Speaker of the ICR in its contents in field of ceremonies. Then, the Court returned to article (47) of the Constitution which texts ((The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers)). By reading this article, the Federal Supreme Court found it counted the formations of Federal powers in Iraq, and affirmed the principle of separation between it, and what this article listed when mentioned Federal powers in Iraq it aimed to count these powers whereas it used between a power and another (legislative, executive and Judicial) (waw) as and. The (waw) as and in approved Arabic language grammar equalize between what become before it and after it, and they become in one level even if names were different. Preferring one of these names on the other shall be without preference in approved Arabic language grammar, and (waw) letter which listed between a name and another hierarchal or preference. Accordingly, when the plaintiff relied in his case on article (47) of the Constitution as a substantiation for his challenge doesn't promote to evidence to respond to his challenge. Therefore, the case of the plaintiff/ being in this capacity is not relying on any reason from the Constitution, and what legislative order of ceremony No. (4) For 2016 listed in hierarchal between mentioned posts in it came as a coherence with all ceremony order in State that its regimes are similar with political regime in the Republic of Iraq. The hierarchal which listed in the ceremony order aforementioned relied on tasks which assigned to each one of it as a governor for this hierarchal between posts listed

in aforementioned order. This matter finds its substantiation in clause (2<sup>nd</sup>) of article (58) of the Constitution which put the Prime Minister before the Speaker of the ICR in what related to extend legislative session of the ICR. Based on that, the Court decided to: reject the case of the plaintiff/ being in this capacity unanimously, and to burden him the expenses and advocacy fees for the agent of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars. The decision issued decisively and binding according to provisions of article (94) of the Constitution and article (5) of the Federal Supreme Court No. (30) For 2005. The decision made clear on 5.6.2018.