



The Federal Supreme Court (F S C) has been convened on 9.9.2018 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-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (ain. sin. ain. sin.) his agent (ain. mim. beh.)

Defendant / President of the House of Representatives/ being in this capacity his two agents are human rights officers director (sin. ta. yah.) Assistant Legal Advisor (heh. mim. sin.).

Claim:

The agent of plaintiff claimed that article (49/5th) of the Constitution have been limited and exclusively the cases in which the members of the House of Representatives are replaced (resignation, dismissal and death). There are no other cases which allows for substitution and where there is no prejudice to the discretion of the text supplier the text may not be loaded with what is not in only article (1) paragraph (1) of the Law on the Replacement of Members of the House of Representatives No. (6) of 2006 and the article (15) of the bylaw of the House of Representatives, other cases, including working in the Council of Ministers or making them a reason to submit the resignation of the member of the House of Representatives reflected the constitutional text, which requires that the resignation is a subsequent move to transfer of the member of parliament to serve as a minister but wanted to address the vacancy in the House of Representatives to replace the member

another member of the same authority and not move to act as minister In other powers governed by the principle of separation of powers. And that the personality of the member of the House of Representatives (the place of consideration) in the electorate that his choice based on their own convictions, Since the elections in the Republic of Iraq are parliamentary legislative elections and not the presidency and the House of Representatives is formed by the vote of the people through the process of secret ballot directly and that the will of the people went to the selection of candidates to be members of the House of Representatives and not members of the executive to act as a minister is against the will of the people and aspirations and a major violation of the Iraqi constitution In that each deputy represents one hundred thousand of the people were intended by their vote to be their representative under the dome of the parliament and defending their rights, watching the work of the executive authority and not be an observer of the authority mentioned. The competence of the House of Representatives is completely different from that of the executive branch in terms of the legislation of laws and other competences stipulated by the Constitution And that the selection of ministers and naming them from the powers of the Prime Minister, according to the Iraqi Constitution and there is no basis to be chosen from among the members of the House of Representatives who were constitutional oath and then forced to resign from office in the legislature leaving hundreds of thousands of voters who chose them without representation within the parliament There is also no legal basis to make the presence of a member of the House of Representatives in parliament for a short period is a ring of the receipt of a ministry. And when the request of the prosecutor's agent to rule unconstitutional article (1) paragraph (1) of the law of replacement of members of the House of Representatives No. (6) of 2006 and article (15) of the bylaw of the House of Representatives. The defendant's agent, President of the House of Representatives/ being in this capacity , responded to the petition with the following: 1. The petition did not prove that any of the conditions set out in article (6) of the bylaw of the FSC No. (1) of 2005 in the petition. 2. The two texts contained in the

Replacement Law and the internal regulations of the House of Representatives referred to above are compatible with the constitutional text did not add a new ruling because appointing minister will be followed by his resignation from the membership of the House of Representatives and the vacancy of his set The resignation is one of the reasons for the end of membership in the House of Representatives it does not have added a new provision did not appear in the Constitution.

3. What is state in the paragraph (3) of the petition is based on opinions that are not supported by the text if the Constitutional legislator wanted to limit the work of the House of Representatives to membership of the Council only to make this clear and provide that the conditions of conditions to become Minister that the elect is not a member of the House of Representatives unless provided for in the Constitution, the prevention provided by the agent of the plaintiff shall be without base.

4. The agent of the plaintiff refers in a petition that the naming of ministers of the authority of the Prime Minister and no authority to be selected from among the members of the House of Representatives, but his claim violates the text of article (76/2nd) of Constitution, which state that ((The Prime Minister in charge nominate the members of his ministry within a maximum period of thirty days from the date of commissioning)) and that the mentioned text is absolute and that the absolute is being launched unless the evidence restricts it. Accordingly, any person who applies to him the conditions that he becomes Minister stipulated in article (77/2nd) of the Constitution, regardless of his status which includes the members of the House of Representatives because they are in general and absolute and did not exclude them from that text or evidence is considered. For the above reasons the defendant's agent requested to reject the case and to charge the plaintiff all expenses. After registration of the case in accordance with the provisions of paragraph (3rd), of article (1), of the bylaw of the FSC No. (1) of 2005. After completing the required procedures according to the paragraph (2nd) of article (2) of mentioned bylaw , the day 9/9/20120 was set as the date for consideration of the case in which the court was formed and attended by the plaintiff's agent (ain. beh.) and the two defendants' agents, the

President of the House of Representatives/ being in this capacity and began to argue immanence and public. The plaintiff's agent repeated the petition and requested for judgment of unconstitutionality of article (1), paragraph (1), of the replacement law for members of the House of Representatives No. (6) for the year 2006 and article (15) of the bylaw of the House of Representatives for the reasons given. The defendant's agents responded to what was stated in the response draft and requested to reject the case for the reasons we cited. The plaintiff's agents submitted an answer draft which handed over a copy of it to the defendants' agents and linked to the case file. The agents of the defendant respondent did not comment on what was stated in the answer draft provided today by the plaintiff's agent and where the case is completed for reasons of judgment, decided to end the argument and the decision had been made clear and public in the session.

The Decision :

For scrutiny and deliberated by FSC found that the plaintiff claim that the article (49/5th) of the Constitution limited and exclusively the cases in which the members of the House of Representatives are replaced (resignation, dismissal and death) but the defendant / being in this capacity under the paragraph (1) of the article (1) of the law of replacement members of the House of Representatives and the bylaw of the House of Representatives , added another case and considered it one of the reasons for the resignation (the work in the Council of Ministers) and by its legislation the above-mentioned two articles, may have violated the provisions of this article (49/5th) of the Constitution, in the absence of the plaintiff's conviction, his agent initiated challenge against articles (mim1) and (1) of the Law on the Replacement of Members of the House of Representatives No. (6) of 2006 and article (15) of the bylaw of House of Representatives before the FSC requested for unconstitutionality for the reasons contained in a petition. The Court finds that article (49/5th) of the Constitution which state on ((The House of Representatives shall enact a law dealing with cases of replacement of its members upon resignation, dismissal or death)). In implementation of

the constitutional text referred to above, the House of Representatives passed the law on the replacement of members of the House of Representatives No. (6) of 2006 clarified in cases termination of membership in the House of Representatives, including what stated of paragraph (1) of article (1) of it which is ((The member of the Council shall assume the position of Head of State or Cabinet or any other government office)) The defendant also included in article (15) of the bylaw of the House of Representatives did not require the Constitution to be the nomination of the Minister or the President of the Republic and other official positions from outside the House of Representatives article (76/2nd) of the Constitution stipulates that the ((Prime Minister-designate shall designate the members of his ministry within a period not exceeding thirty days from the date of the commissioning)). In article (49), paragraph 6, the Constitution prohibits the prohibition of "combining the membership of the House of Representatives with any other work or official position". Therefore, the assumption of a member of the House of Representatives official position outside the House of Representatives entailed by the provision of the Constitution to submit a resignation from the Council. The FSC finds that paragraph (1) of article (1) of the Law on the Replacement of Members of the House of Representatives No. (6) of 2006 and the article (15) of bylaw of the House of Representatives ((Challenged their unconstitutionality)) not to violate the provisions of the Constitution consistent with the constitutional texts referred to above. It was decided to reject the case and to charge the plaintiff expenses and attorney fees to the defendant's agents amount of (one hundred thousand dinars) and issued a judgment decisively and obligated based on the provisions of article (94) of the Constitution and the article (5/2nd) of the FSC No. (30) of 2005 unanimity on 9/9/2018.