

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 78/federal/media /2016



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20.12.2016 headed by the Judge Madhat Al-Mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu AL-Temman, and Mohammed Rajab Al-kubisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff / Minister of Finance/ being in this capacity his agent (shin. sin. sin.).

The Defendant/ Speaker of the House of Representatives / being in this capacity the two jurists (sin. ta. yeh.) and (heh. mim. sin.).

The Claim:

The agent of the plaintiffs claimed before the FSC in the case No. (78/federal/2016) that the defendant want to include paragraph (convinced) of the answers of the interrogation session of his client the plaintiff Minister of Finance/ being in this capacity on the day Saturday, 27/8/2016 at the request of the interrogated MP (heh. ra. jim.) and because the decision issued by the defendant to answer the request of the MP questioned included a clear and explicit violation of the rules of the Constitution and the rules of procedure of the House of Representatives according to the following:

- 1- The paragraph on the inclusion of the subject of conviction on the answers of the respondent (plaintiff) was contrary to the Constitution on the basis of the provisions of article (61/7th/jim), which states that (The member of the House of Representatives, with the unanimous of twenty-five members, directs an inquiry to the Prime Minister or ministers to hold them accountable for matters that fall within their jurisdiction and the discussion of the interrogation takes place at least seven days after its submission.).
- 2- Discussions in the House of Representatives at its session on Saturday included the discussion of article -61- of the bylaw of the House of Representatives, which stipulates (if the discussion ends by convincing the House of Representatives of the point of view of the interrogated, the matter is terminated, otherwise the questioning may lead to the withdrawal of confidence in the interrogator in accordance with the procedures. contained in the bylaw), and here it should be noted that what this article of the bylaw treat is completely different from what paragraph (61/7th/jim) of the Constitution treat. The bylaw of the House of Representatives treat to the subject (Post-debate for the minister interrogated) while describing the specific discussion in accordance with the Constitution, the duration of the date was set at least seven days after its submission, as we noted to your esteemed court that the interrogation session ended on Thursday, 25/8/2016, at around 9 p.m. and that Friday, which coincides with a public holiday, and Saturday, 27/8/2016, was voted no unconvinced in the morning is proof that the decision to amend the statement of conviction of the answers of the interrogator (plaintiff) was violate to the Constitution in accordance with article above.
- 3- We would like to clarify to the court esteemed that the atmosphere in which the vote was conducted on the conviction of the answers has been flaw by a number of legal breaches, where it took place in a charged, tense and tangle of hands with the withdrawal of a

number of deputies from the session, in addition, asking the question was contrary to the customary parliamentary contexts and customs, which assume innocence and objective good will, in addition to the presidents of some blocs in the House of Representatives, a proposal to postpone the voting session on the conviction of the answers of the interrogated (plaintiff) to give them sufficient time to evaluate those answers, this was not done in the session and on the basis of the above reasons and what your esteemed court considers other significant reasons, the agent of plaintiff asked the FSC after the necessary procedure to judge that the decision of the House of Representatives issued on 27/8/2016 in the third election session / third legislative year / 1st Legislative Term / 15th Session providing him with a letter to the House of Representatives that makes him feel the subject of the case and the defendant's charges and expenses. The two agents of the defendant/ being in this capacity answered the petition with an answer draft submitted to the court on 27/9/2016, requesting the FSC to reject the case, with the plaintiff charging all its expenses and the fees of the lawyers for the following reasons: 1- The agent of plaintiff claims in paragraph (1) of the draft that the inclusion of the subject of conviction in the answers of his client interrogated is violate to the text of article (61/7th/jim) of the Constitution on the basis that the interrogation should be discussed that it should not be done until at least seven days after his submission. Thus, the agent of plaintiff is based on a text that has nothing to do with the subject of the challenge in the first place, the constitutional article states that (A member of the House of Representatives, with the unanimously of twenty-five members, shall be interrogation to the Prime Minister or ministers for accountability in matters that fall within their jurisdiction and the interrogation will not take place until at least seven days after its submission). It is clear from the text that it concerns the article that should separate the application of the interrogation request and the discussion of the interrogation, which

is seven days, which has nothing to do with the period between not being not convinced with the interrogation and the **minister's the confidence, which is also seven days. But this issue is regulated by article (61/8th/alif) of the Constitution and not the text on which the agent of plaintiff was based and therefore his plea is not originally productive in the case. 2- The agent of the plaintiff is based on paragraph (2) of the petition of the article (61) of the House of Representatives' bylaw as different from what article (61/7th/jim) of the Constitution has mentioned. The agent of the plaintiff is again based on an unrelated text, the article on the subject of challenge to the bylaw is article (63) and not others, and comparing article (61) of the bylaw with article (61/7th/jim) of the Constitution is unsubstantiated, as each has a specific provision. Article (61/8th/alif) of the Constitution should have been compared with article (63) of the House's bylaw to discover that they are perfectly consistent and identical texts in their ruling so the text of article (63) which state on ((The House of Representatives withdraws confidence from one of the ministers by an absolute majority and is considered resigned from the date of the withdrawal of confidence and may not withdraw confidence from the Minister only at his will or request signed by fifty members after discussing an interrogation addressed to him and the House does not issue its decision on the application until at least seven days after the date of its submission)) It is a text that literally corresponds to the text of article 61 of the Constitution and therefore the prosecutor's argument is unproductive and has nothing to do with the subject of the challenge. 3- The agent of the plaintiff's claim that the session of interrogation is over on Thursday 25/8/2016 and the vote no unconvinced done on Saturday 27/8/2016 this is violate the Constitution, and we clarify to the court that the period as described by the regulation by the organizational and work – related matter in the House it doesn't fall within the jurisdiction of the court esteemed it has already been judged in the case No. (51/federal/2009) on 12/9/2009. The FSC

has no power to interfere the organizational matters of the House's work. 4- The agent of the plaintiff's claim that the atmosphere in which the vote was conducted on the conviction of the answers has been flawed by a number of legal breaches, he didn't clarify on the Constitutional text which doesn't allow for an atmosphere a charged, tense and tangle of hands with the withdrawal from the session should have been. Submission of deferral requests was not accepted by the House and what happened does not violate the Constitution. On the appointed day of argument the court was formed the plaintiff's agent the attorney (shin. sin. sin.) under general agency tied to the case file and also the two agents of the defendant/ being in this capacity the two jurists (sin. ta. yeh.) and (heh. mim. sin.) under their private agency tied to the case file and initiated with the immanence and public argument. the plaintiff's agent repeated the petition and requested a judge, with the defendant charging the expenses and the fees of the lawyer, and the defendant's agent repeated the draft of answering to the petition filed with the presented to the court on 27/9/2016, they added that the plaintiff had based his claim on the period stipulated in the Constitution, where he claimed that the subject of conviction that it was not applied to him for the prescribed period. In the interrogation and the constitution is a difference between the interrogation process that ends with either conviction or incompetence and that the bylaw did not specify the duration of this and leave it to the House. The plaintiff's agent responded that did not find a satisfactory answer from the defendant about the content of his client's petition his request to establish the conviction seven days after the conclusion of the argument. The agents of the defendant presented editorials draft to the court on 24/10/2016 discuss the subject of the stipulated period in the article (61/7th/jim) of the Constitution that the mentioned period in the Constitution it's in their understanding as stated in their response to the court , the esteemed court may explain the mentioned period in if it is

intended to be followed by a request for interrogation until interrogation as stated in their statements and drafts or what followed completion interrogation pending voting on conviction. The plaintiff's agent also considers pursuant to article (93/2nd) of the Constitution as for the previous parliamentary experience of interrogating the defense minister which resulted in withdraw, the interrogation of the mentioned person was carried out by a session No. (8) on 1/8/2016. The conviction was voted on at session No. (12) on 15/8/2016 put confidence in the minister and withdraw it in the session No. (14) on 25/8/2016 no minister had previously withdraw confidence after being interrogated during the current course. The plaintiff was interrogated at session No. (14) on 25/8/2016 voted on conviction at session No. (15) on 27/8/2016 confidence was withdraw from the plaintiff in the session No. (17) on 21/9/2016 and they requested to reject the case and charging the plaintiff expenses , the plaintiff's agent answer on what is stated in answering date 26/10/2016 clarifying that the defendant repeat his defense based on the Constitutional article (61/8th/alif) of the Constitution which relates to the Constitutionally conditional period for a withdraw while subject of the case is focused on the violation of article (61/7th/jim) of the Constitution and that the defendant was unable to deny the objective and logical interpretation compatible with the provisions of the Constitution and the bylaw of the House of Representatives and the principle of justice and fairness provided by the constitutionally granted period of not less than seven days referred to article (61/7th/jim) of the Constitution is both for the House of Representatives in order to scrutinize and audit the answers, documents and facts that were provided and discussed by the minister interrogated in the interrogation session or granted to a person to the official of the interrogator, knowing that the House of Representatives may need a long time beyond weeks and even months to reach the subject of conviction or not the answers of the official interrogator, which is

what complies with provision of article (61/7th/jim) of the Constitution. The defendant's agent did not enhance his answers with precedents that were customary in the House of Representatives relating to the conduct of the debate in the interrogation and then the vote on the non-conviction within less than a week of the date of the vote and concluded that the decision in challenge had violated the formal aspects of the constitutionally required periods for the purpose of voting on the conviction of his client's answers and as a result influenced the objective aspects of the convictions on the answers of the interrogation, which necessarily led to an incorrect decision by the defendant for his unconstitutionality and repeated his previous arguments and requested the ruling that the decision taken by the defendant on 27/8/2016 was unconstitutional to not be convinced of his client's answers and to cancel all the consequences of it. The Court was briefed on the answer of in a letter from the House of Representatives (Legal Chamber) No. (78/federal/2016) on 29/11/2016 about the precedents that took place in the House of Representatives in the field of interrogating ministers and heads of independent bodies, how they were interrogated, the duration sought for the interrogation process and the decision that taken by the House of Representatives after the interrogation as well as the stage of conviction and non-conviction and whether there is a constitutional text where the letter contains a detailed table containing the information requested by this court and the cases of interrogations that took place in the three sessions in the House of Representatives whether it concluded by withdraw or did not conclude, including the terms of the interrogation or the plaintiff's dismissal. The date of the request for the interrogation of the plaintiff was submitted on 18/2/2016 and with regard to the court's inquiry into the conviction and the duration that separates them and withdraw the interrogator, the work was carried out in the House of Representatives on the subject in accordance with the details

described in the letter and was carried out in accordance with the provisions of articles (61/7th/jim) & (61/8th/alif) of the Constitution. The court did not find that the details contained in the letter were examined, which supported the plaintiff's claim on the subject. The plaintiff's agent repeated the petition and the explanatory drafts and requested the rule under it, as the defendant's agents repeated their statements and previous requests and requested a rule under which, and where there is nothing left, the end of argument has been made clearly, the decision had made clear public.

The Decision :

After scrutiny and deliberation by the FSC found that the plaintiff is challenging his client's petition on the inclusion of the subject of conviction on the answers of the interrogator (plaintiff) on Saturday, 27/8/2016, as violate to the Constitution based on the provisions of article (61/7th/jim) of it, which stipulates that (The member of the House of Representatives, with the consent of twenty-five members, shall be interrogation to the Prime Minister or ministers for accountability in matters that fall within their jurisdiction and the discussion of the interrogation shall take place at least seven days after its submission.). The FSC finds that the period stipulated in article (61/7th/jim) of the Constitution is departed for its clarify to the period between the application of the interrogation request and its acceptance and the fact that the interrogation actually occurs and the interrogator may not attend the interrogation process before the end of this period at a minimum in order to enable him to prepare to answer the questions contained in it, request for interrogation with the documents of the answer and do not go to the conviction of the members of the House of Representatives answers of the interrogator or not, the appreciation of this is up to the members of the House of Representatives, in general, the members or the House of Representatives shall not be constitutionally bound by any period of the conviction or not. Thus, the plaintiff's case is not based on a bond of the Constitution or the law, which must be rejected, so the

court decided to rule to reject it, with the plaintiff charging the expenses and the fees of the lawyer to the defendant's agent / being in this capacity the two jurists (sin. ta. yeh.) and (heh. mim. sin.) amount of 100,000 dinars divided between them and the decision was issued immanence with unanimously decisively and its made clear publicly on 20/12/2016.