

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 80/federal/media/2017



Kurdish text

The Federal Supreme Court (F S C) has been convened on 8.15.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-sami , Jaafar Nasir Hussein , Akram Taha Mohammed , Mohammed Qasim AL-Janabi , Mohammed Saib Al-nagshabandi , Aboud Salih Al-temimi , Michael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The request

The ICR/ General Secretariat/ Parliamentary office/ Committee affairs requested according to its letter No. (shin.lam/1/9/8422) on 8.7.2017 from the FSC what following: according to article (93/2nd) of the constitution, we hope to state your opinion of the listed articles below:

First: article (61/7th/jim) of the constitution stipulated on (jim- a member of the Council of Representatives, with the agreement of twenty-five members, may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry). The FSC previously had decided that if the inquiry was fulfilling its conditions, the Council may proceed the inquiry process according to the constitution, but some of sirs whom the inquiry is directed to them, in spite of their inquiry fulfilling its conditions, they propose to initiate a cases before your Honorable Court to challenge the inquiry procedures, and informing the ICR that they cannot attend the inquiry session, till your Honorable court make a decision in the presented challenges, which needs to clarify how effective is to present such cases on the continuity of the Council progressing in its monitory procedures according to article (61/7th/jim).

Second: article (61) of the constitution stipulated on (the Council of Representatives shall be competent in the following:... Second: monitoring the performance of the executive authority), clearly that text did not restrict this authority to the Federal authority, so, is it possible and according to article (61/2nd) of the constitution to direct the parliamentary questions to the Mayor or the Governorate Council President, as they represent the head of the executive authority in the Governorates, especially, the law of Governorates Incorporated into a Region No. (21) For 2008 (amended) for such monitory.

Third: article (61/alif) of the constitution stipulated on (the Council of Representatives shall be competent in the following:... Sixth: questioning the President of the Republic, based on a petition with cause, by an absolute majority of the members of the Council of Representatives). What is the interpretation of your Honorable court for the concept of questioning and what is the legal trace based on it.

Fourth: article 61/7th/alif stipulated on (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), so, is it possible to direct questions to the heads of bodies unattached to a Ministry or to the Independent Commissions' Heads, according to article (61/2nd) of the constitution which granted the right for the ICR to monitoring the Executive Power performance, or what the constitution granted the competence of monitoring the Independent Commissions, such as article (102 & 103 of the constitution, in addition to the ability of questioning the Independent Commissions' Heads according to article (61/7th/heh) of the constitution.

Fifth: according to the constitutional texts, what is the legal trace if the interrogated person did not answer the parliamentary question directed to him according to article (61/7th/alif) of the constitution?

Sixth: article (61/8th/heh) of the constitution stipulated on (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), so, does this meaning that the subject of relieving the Independent Commissions Heads never be done but after their questioning, and they must not be relieved but with this mechanism? Or the competence of the Council in relieving the Independent

Commission Heads is unrestricted with pre-questioning. Based on that, the Court has been convened this day morning and discussed the subject. After study and deliberation the Court made the following opinion:

The opinion

1- As for the enquiry listed in abovementioned (1st), and its subject, that the directed inquiry to the Prime Minister or the Ministers to account them on the issues within their authorities if it fulfilled all its conditions and the ICR went to proceed the inquiry process according to provisions of article (61/7th/jim) of the constitution, then the interrogated proposed to initiate a case before the FSC to challenge the inquiry procedures, and notifying the Council his incapability of attending the inquiry session, till a decision of his challenge made by the FSC, so, does presenting a case effect the continuity of the Council progressing in its monitory procedures according to article (61/7th/jim). The FSC finds, as long as the inquiry fulfilled all its conditions – as listed in enquiry form- the ICR goes on its monitory procedures according to its competence, which stipulated on in article (61/7th/jim) of the constitution, and the interrogated visit to the FSC to challenge the inquiry procedures is not a reason to delay the inquiry.

In this connection , the FSC returned to the judicial precedents of the FSC in this field, and it found, that it did not issues any decision to stop the inquiry process – in case of presenting such cases- before the court. After it made sure that all the formal conditions were available, this stipulated on in constitution and the bylaw of the ICR. Left the Council exercising its competences in discussing the objective matters of the inquiry process, according to provisions of articles (61/2nd) & (61/7th/jim) of the constitution.

2- As for the enquiry listed in abovementioned (2nd), about the specialty of the ICR of monitoring the executive power performance, and does this specialty applicable to direct the parliamentary questions to the Mayors or the Governorates Council Head, as he represents the Head of the executive authority in the Governorate.

The FSC finds by inducing the constitution's texts and the texts of Governorates Incorporated into a Region No. (21) For 2008 that article (61/2nd) of the constitution which granted the ICR the competence of monitory of the executive power performance was absolute, and this

absoluteness extends to the cadres of the Federal executive power and the local Government, on its head, the Mayor. Also the Court finds that article (2/3rd) of Governorates Incorporated into a Region stipulated on the specialty of the ICR by monitoring the Councils including the Governorates Councils.

Accordingly, the ICR may direct the parliamentary questions to the Mayor or the Head of Governorate Council.

- 3- As for the enquiry listed in (3rd) abovementioned, about interpreting the concept of questioning which the ICR specialized with, by direct it to the President of the Republic with a petition based on a cause with an absolute majority of its members implementing the article (61/6th/alif) of the constitution.

The FSC finds that this matter might be occurs in one of the cases stipulated on in item (baa) of clause (6th) of article (61) of the constitution, which is it: if he perjured the constitutional oath, or violated the constitution, or the high treason. The relieving should not take place but after the President of the Republic is convicted by the FSC and with one of the aforementioned cases.

- 4- As for the enquiry listed in (4th) abovementioned, about directing a questions to the Heads of the bodies unattached to a Ministry or to the Heads of the Independent Commissions according to article (61/2nd) of the constitution, which granted the right to the ICR to monitoring on the executive power performance and what the constitution gave it of monitory power on the Independent Commissions, such as the ones listed in article (102) & article (103) of the constitution. The enquiry listed a presumption of law on that matter, by the permissibility of questioning the Heads of the Independent Commissions according to article (61/7th/heh) of the constitution, but the correct is article (61/8th/heh)).

The FSC finds from reviewing the listed provisions in the constitution in articles (102-108) had listed the vocabulary of (independent commissions) and determined the relevance of part of it neither to the ICR not to the Cabinet, but it did not determine the relevance of the other part, and the FSC made in its judgment issued on 1.18.2011 by No. (88/federal/2010) a new standard, determines the relevance of the other part according to the nature of tasks which carries out by this commission, or what it law stipulates on, with a condition, that the ICR

must not go out of exercising this competence of its competences stipulated on in article (61/2nd) by monitoring the performance of the executive power exclusively. Based on that, and according to the provisions of article (61/8th/heh), the ICR is capable to direct questions to the Heads of the independent commissions. As for (the Heads of bodies unattached to a Ministry), the FSC enquire about the nature of these bodies and its specialties to answer you later on according of these specialties.

5- As for the enquiry listed in (5th) abovementioned, about the legal trace of the person whom the parliamentary question is directed to him according to article (61/7th/alif) of the constitution from attending the inquiry session. The FSC finds that the person who the parliamentary question is directed to him did not attend with justified excuse after he is informed with the determined date to answer the question, in this case this will be a confession of what ascribed to him about the question subject and abandoning of right of answer on that question, and this is what the Iraqi judiciary moved on, including the judgment issued by the FSC on 4.18.2017 No. (37/federal/2017).

6- As for the enquiry listed in (6th) abovementioned, about the Heads of the independent commissions in case of taking decision of relieving them, so, could it be after questioning them or the ICR has the right to relieving them without inquiry.

The FSC finds, that the relieving of the independent commissions' Heads obliged to be according to the procedures related to the Ministers, and their relieving must be achieved with absolute majority after questioning them according to article (61/8th/heh) of the constitution. Opinion is over.