

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 8/federal/media /2016



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9.8.2016 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 Sulaiman Abdullah Abd al-Samad who authorized in the name of the people to judge and they made the following decision:

The Plaintiff / (mim. ra. dad. jim.) membership of the House of Representatives
his two agents (jim. ha. dad.) and (alif. sad. ha.)

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

The Claim :

The agents of the plaintiff claimed that the FSC in case No. (8/federal/2016) that the Iraqi House of Representatives on 9/9/2013 in its ordinary session No. (9) a vote on the code of parliamentary conduct which, according to the Committee's recommendations, was considered as part of the Council's bylaw. On 2/3/2016, at its ordinary session No. (13), the House of Representatives issued a decision amending the above-mentioned code, according to the former decision was considered under which the code is part of the Council's rules of procedure, the Council's

decision was issued on the basis of the provisions of article (148) of the bylaw of the Iraqi Parliament, which states that (Amendments to these rules may be made on the proposal of the Presidency or fifty members of the Council and with the approval of a majority of the members) The proposal was submitted by the Presidency of the Council. The paragraph (1/5th/heh) of the above-mentioned decision stated the penalty for withdraw membership from the deputy when a serious violation of the parliamentary code of conduct was established. In this regard, we would like to indicate the following: 1- The legislator restricted the reasons for the draw membership under article (1/1st) of the First Amendment Act of the Law on replacement of members of the House of Representatives No. (49) of 2007 with seven images as restrictedly. There was no withdrawal of membership when the serious violation of the code of parliamentary conduct was established, this decision was violation to the text of the article mention before and since the decision became part of the bylaw of the House of Representatives, it cannot be considered an implicit amendment of the law, because the law is of the highest rank of the bylaw and may not be issued in violation of the applicable law valid. 2- Because seriously penalty which entails termination of membership in the House of Representatives, In our view, when the legislature mentioned of the bylaw on the disciplinary measures that the Presidency can exercise against deputies, the legislature did not mentioned the penalty for termination of membership and the provisions of the bylaw relating to absence, the presidency was given the authority to give written warning under the provision of article (18/2nd) and authority deduction of a cash amount under the provisions of article (18/3rd) but when the legislator wanted to mentioned the subject of ending membership cause of absence. Because of the seriously penalty the legislator has dealt with this order by legal text which is the provision of article (1/1st/7) of the First Amendment Act of the Law on replacement of members of the House of Representatives No. (49) of 2007. Therefore, the penalty for withdrawing membership in the bylaw is violate to the will of the legislator and the philosophy of legislation. The duty here is to amend the

First Amendment Act to replace members of the House of Representatives No. (49) of 2007 by adding this new status of termination of membership to him rather than amending the bylaw of the House of Representatives, because it was violate to the legal text which mentioned the image of termination of membership on the one hand and because it would be contrary to the will of the legislator and the philosophy of legislation that determined the status whereby the membership withdraws exclusively under the provisions of the law and did not leave it to the bylaw. 3- Although the decision of the House of Representatives to withdraw the membership according to the new text ((the text of paragraph (1/5th/heh) from code of parliamentary conduct)) has taken into account the Constitutional text, which defined the majority of the two-thirds decision on the validity of the membership, according to the provisions of article (52/1st) of the Iraqi Constitution. However, the new text omitted the right of the deputy to object to this decision, violation to the provisions of article (52/2nd) of the Constitution, which gave the right of the deputy to turning to the Federal Court to challenge the decision of the House of Representatives on the validity of its membership within 30 days from the date of the decision. 4- The nature of the bylaw as a competent to organize the conduct of sessions in Council differs in nature from that of the code of parliamentary conduct, and voting as part of the bylaw must be considered because the two documents differ in their nature and purpose which are performing, I enclose a photocopy of the minutes of the session, which votes on the decision to consider this code as part of the bylaw, which includes the objections of the members and their preferences to this decision, and to all the above, they request the plaintiffs' agents of the FSC to annulled paragraph (1/5th/heh) of the code of parliamentary conduct to a vote of the House of Representatives for unconstitutionality and violation of the provisions of the Constitution and the law. After registering the case with this Court in accordance with paragraph ((3rd), article (1), of the bylaw of the FSC No. (1) of 2005) and completing the procedures required therein in accordance with paragraph (2nd) , article (2), of the mentioned system .

A date has been set for the argument and the plaintiff was represented by his attorneys (jim. ha. dad.) and (alif. sad. ha.), under their power of attorney agency in the case file. The defendants were represented by the two legal officers (sin. ta. yeh.) and (heh. mim. sin.) under the power of attorney to the case file, argument commenced immanence and public. The agents of the plaintiff reiterated the application of the petition and called for the verdict, with the defendant holding all the expenses of the lawsuit and the lawyer's fees, adding that the challenged paragraph is unconstitutional of the code of parliamentary conduct (1/5th/heh) violates article (52/1st) of the Constitution. The defendant's agents reiterated what was stated in the answering draft submitted to the Court on 23/3/2016 and requested the reject the case, with the plaintiff charging the charges and the attorney's fees, and where there was no remaining to be said, 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's agent challenge in front of the FSC of unconstitutional the paragraph (1/5th/heh) of code of parliamentary conduct that issued by House of Representatives in ordinary session No (13) on 2/3/2016 state that (Withdrawal of membership in the conviction of a gross violation of the code of parliamentary conduct or the requirements of representative or parliamentary duty) under the pretext of violate the article (52/1st) of the Constitution of Republic of Iraq for the year 2005, the plaintiff request from the court judgment to annulled it. The FSC found from the scrutiny of the case that the House of Representatives when issued its decision above-mentioned added paragraph (1/5th/heh) challenged its unconstitutionality by the plaintiff to the code of parliamentary conduct for the House of Representatives where considered a part of bylaw of the House of Representatives, in authorizing the withdrawal membership of the deputy, the Council had required the approval of two thirds of the

members of the House of Representatives and the guidance of the competent committee and had added that decision to the bylaw of the Council and considered it part of it. Where the article (51) of Constitution has been authorized the House of Representatives to issue the bylaw to the Council for to regulate the functioning of the Council and issuing the objected (against) text was based on this authorization in addition to the decision of withdrawal membership of the deputy subject to challenge in front of the FSC according to the article (52/2nd) of the Constitution, the challenge decision is unconstitutional in accordance with the provisions of the Constitution and is not violation with its provisions, so that the plaintiff's claim is lost to its constitutional authorization, which must be rejected. Therefore, the FSC decided to reject the case, with the plaintiff charging all its expenses and attorneys' fees to the two agents of the defendant/ being in this capacity the jurists (sin. ta. yeh.) and (heh. mim. sin.) amount of (one thousand dinars) shall be distributed equally the decision was issued immanence with unanimously decisively and its made clear publicly on 9/8/2016.