

Republic of Iraq
Federal Supreme Court
Ref. 255 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 11.12.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Galeb Amer Shneen, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abed Alrahman Sulaiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff: Salam Hadi Kazem Abboud Al-Shammari/ Resigned member of the Council of Representatives for the fifth electoral term - His representative is Lawyer Shawkat, Sami Fadel.

The defendant: The Speaker of the Iraqi Council of Representatives/ in addition to his post – his representatives the legal consultant Haithem Majed Salim and the legal official Saman Muhsen Ebrahim.

The claim:

The plaintiff claimed, through his representative, that he submitted his resignation (for national reasons) from the membership of the Iraqi Council of Representatives for the fifth parliamentary session to the Speaker of the Council of Representatives on 6/12/2022. Without presenting the resignation to the Council of

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Representatives following constitutional and legal principles, the plaintiff took the initiative to challenge the aforementioned parliamentary order before this court, for violating the provisions of Article (59/Second) of the Constitution, which confirmed that the decisions of the Council of Representatives are taken by simple majority, and for violating the provisions of Articles (9, 34, and 35) of the internal system of the Council of Representatives, which clarified the tasks of the speaker and his two deputies, and did not include accepting the resignation of members of the Council of Representatives, and that Article (1/Third) of the Law of Replacing Members of the Council of Representatives No. (6) for the year 2006 requires accepting the resignation of the Council of Representatives by an absolute majority, as The Council of Representatives Law and its formations No. (13) for the year 2018 did not include the authority of the Speaker of the Council to accept the resignation, and this matter has created a legislative vacuum in which he can only be treated through the general rules that stipulate that the body that elected the person assigned to public service is the one who has the right to accept his resignation, and since the representative was

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directly elected by the people following what was stipulated in Article (49 / First) of the Constitution, the resignation must be presented to the members of the Council to accept it after achieving the quorum following Article (59/Second) of the Constitution. In the opinion of the constitutional and legal jurisprudence in Iraq, two legal texts conflict with the competence of the Council of Representatives:

The first: Article (1) of the Law of Replacing Members of the Council of Representatives, Paragraph (3) of which states that membership ends with the acceptance of resignation or dismissal from the Council of Representatives,

second: Article (12/Second) of the Council of Representatives Law and its formations No. (13) for the year 2018, which indicated that the prosecution ends (with resignation.) and remained silent, and since the principle is that if two legal texts regulate the same issue, they must be implemented together, unless this is not possible, in which case the later is considered null to the previous one, And since their implementation is possible because both of them stipulated the resignation, and one of them specified the procedures for accepting

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the resignation without the other, which means that the resignation does not end membership except by accepting the resignation from the Council of Representatives, and therefore accepting the resignation by a unilateral decision of the Speaker of the Council of Representatives was marred by the defect of violating the law because membership in the Council of Representatives It does not expire unless it is accepted by the Council of Representatives itself, and this is what has been practiced in previous sessions. In addition, the issuance of the decision by a non-competent authority renders it null and void of its legal value and implications. The defendant rejected the plaintiff's request to withdraw the resignation without justification other than his reliance on Article (12) of the Council of Representatives law and its formations, which does not include accepting the resignation of a member of the Council of Representatives among its paragraphs, justifying the rejection decision by (The resignation is an option for the deputy according to the Council's law and is accepted immediately if it is deposited in Council, and there is no legal basis for the content of the request, and the aggrieved party can resort to the Federal Supreme Court). And

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his refusal to do so is a violation of Article (46) of the Constitution, which prohibits the restriction of any rights and freedoms except by law, and since the alternative candidate for him is (Milad Shahid Kazem), she did not take the constitutional oath until the filing of this lawsuit, so the plaintiff requested this court, based on the provisions of Article (93/Third) of the Constitution, the ruling on the unconstitutionality of Parliamentary Order No. (105) and its invalidation and the invalidation of all its effects while retaining all the rights and privileges of membership to which he is entitled during the period of his stay outside the parliament and charging the defendant with fees, expenses, and attorney's fees. The case was registered with this court under the number (255 / Federal / 2022), and the legal fee was collected according to Article (21 / First) of the Internal Regulations of the Federal Supreme Court No. (1) for the year 2022, and the defendant is notified of its petition and documents following item (Second) of the article The same, his representative replied with the answering list dated 11/29/2022, summarizing that the Council of Representatives law did not require any formality regarding the approval of the resignation by any party, including the

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Council of Representatives, and that the mere submission of the resignation entails the termination of the mandate of the member of the Council, just as the approval of the Speaker of the Council The deputies requested the resignation request to promote the resignation, arranging the legal effects thereof, financial, administrative and parliamentary procedures, and announcing the vacancy of the parliamentary seat in preparation for its filling by the substitute following the law. Article (12/Second) of the Council of Representatives Law and its formations has abrogated the provision contained in Article (1/ b) of the Law on Replacement of Members, as evidenced by the text of Article (73/Second) of the Council of Representatives Law and its formations, which stipulates (no text that conflicts with this law shall work to the extent that they contradict it), and that what his representative wrote is clear in b The absence of a legal basis for withdrawing the request for resignation after arranging its legal, administrative and financial effects, bearing in mind that claiming the dues of the resigning representative despite the termination of his membership has no basis because the prosecution is not a spoil but rather a public service provided by the

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representative as long as he is a member of the Council of Representatives, and if his membership ends with it All the dues and privileges associated with it, so he asked to dismiss the lawsuit and charge the plaintiff with the judicial expenses. After completing the procedures required by the internal system of the court, a date for the pleading was set in accordance with Article (21/Third) thereof, and the two parties were notified of it. On the appointed day, the court was formed, the plaintiff's attorney and the defendant's attorney attended and the public pleading proceeded. The plaintiff's representative repeated what was stated in the lawsuit's petition and asked According to the ruling, the defendant's attorney responded and requested the dismissal of the case for the reasons contained in the affidavit attached to the case papers, and each party's attorney repeated his previous statements and requests, and as there was nothing left to say, the court decided the conclusion of the pleading and issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the plaintiff, Salam Hadi Kazem Abboud Al-

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Shammari, was a member of the Iraqi Council of Representatives / in the fifth (current) electoral cycle. A request to invite the defendant, the Speaker of the Council of Representatives, in addition to his job, to plead before this court and to rule on the unconstitutionality of Parliamentary Order No. (105) issued on 6/16/2022 to terminate his membership in the Council of Representatives, nullify all the consequences of him, and preserve for him all the rights and privileges of membership that He is entitled to it for the period of his stay outside the council. The court finds that the plaintiff's suit is admissible in terms of the litigation, because the plaintiff and the defendant, in addition to his job, are two legal litigants who meet the conditions of the litigation, and have the legal capacity to litigate. Amended Civil No. (83) of 1969 and the provisions of Article (20) of the Federal Supreme Court Bylaw No. (1) of 2022, and when examining and deliberating the requests of the plaintiff who requested the ruling on the unconstitutionality of the parliamentary order, the court finds that the exercise of its role in constitutional oversight takes place based on the provisions of Article (93 / First) of the Constitution of the Republic of Iraq for the year 2005 and Article

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(4 / First) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021, which stipulated in one form that (the Federal Supreme Court is competent in the following First: Monitoring the constitutionality of laws and regulations in force) The internal system of the Federal Supreme Court No. (1) of 2022 stipulated Organizing the procedures for challenging the constitutionality of laws and regulations in Article (19) of it, which states: “Any of the three federal authorities, ministries, independent bodies, the prime minister’s office of the region, entities not associated with a ministry, and governors may request the court to decide on the constitutionality of a legal text or system, provided that the request is sent to the court by letter. Signed by the head of the concerned authority, the competent minister, the head of the independent commission, the prime minister of the region, the head of an entity not affiliated with a ministry, or the governor, provided that the contested text relates to the tasks of those authorities and raised a dispute in application). The jurisdiction of this court extends to the laws and regulations in force only, and does not extend to the instructions, decisions, or procedures issued by the

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executive or legislative authorities, nor to the rulings and decisions issued by the judicial authority, and since the appeal submitted by the plaintiff focused on the unconstitutionality of the representative order issued by the president The Council of Representatives is in addition to its function according to what was stated in the petition, and since the texts that allow appealing the unconstitutionality of the aforementioned laws and regulations in force do not expand to include those unconstitutional orders and do not include what is stated in Clause (Third) of Article (93) of the Constitution, which requires the dismissal of the case, and for all of the above, The Federal Supreme Court dismissed the lawsuit of the plaintiff, Salam Hadi Kazem Abboud Al-Shammari, and charged him with the fees, expenses, and attorney's fees for the defendant's attorney, the Speaker of the Council of Representatives, in addition to his duties, the legal advisor Haitham Majed Salem and the human rights employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars, to be distributed among them according to the law. And the decision was issued by an agreement binding on all authorities based on the provisions of Articles (93 and 94) of the

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Constitution of the Republic of Iraq for the year 2005 and Article (4) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and understood publicly in 6/ Jumada I / 1444 AH corresponding to 11/12/2022 AD.

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