



The Federal Supreme Court (F S C) has been convened on 2.26.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Akram Taha Mohammed, Jaafar Nasir Hussein, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (mim.mim.jim.teh) – his General agent the Barrister (the.kaf.zin).

The Defendant: the Speaker of the ICR/ being in this capacity- his agents Director of the legal department (sin.ta.yeh) and the legal consultant assistant (heh.mi.sin).

The Claim

The agent of the plaintiff claimed before the FSC in the case No. (69/Federal/2017) that the defendant/ being in this capacity decided in the session held on (5.25.2017) numbered (37) to cancel his client's membership the Representative (mim.mim.jim.teh) because he exceeded the legal limit of absences without justification for more than tertian of total number of sessions for legislative term. In this case he will be considered removed, whereas the decision violates the provisions of the Constitution and the law. Therefore, his client challenges aforementioned decision within the legal duration, and for the following reasons: first: the decision of the ICR included a violation to provisions of article (1/1st/7) of ICR members replacement law No. (6) for 2006 which amended by the law No. (49) for 2007. This article stipulated on (to remove the

member when his/her absences exceeded the allowable limit without a justification for more than tertian the Council's sessions form the total legislative term). He added that what listed in the decision of the Council about the removal and in its bylaw (which stipulated on, when the Representative's absences exceeds tertian sessions of the ICR without a justification of total sessions for the legislative year). While the ICR has an annual convening session with two legislative terms, and according to ICR's members replacement law No. (6) for 2006 (amended). The duration of absence without a justification counted for more than tertian the Council's session of total legislative term. Therefore, counting this percentage of total legislative year (which includes two legislative terms) makes the challenged decision and the ICR's bylaw in this concern folds a true violation for ICR members replacement law No. (6) for 2006 (amended). This law represent a legal base derived from the Constitution, because it was issued according to provisions of the Constitutional base which listed by article (49) of the Republic of Iraq Constitution for 2005. This matter was clarified as a rationale of issuing aforementioned law, and this matter is impermissible violation to the legislative rules which derived from the Constitution under the protection of a Constitutional state because the bylaw of the legislative foundation (Parliament) whereas it regulates a Constitutional foundation with a special significance in the political system, and this may produce a big political effects. Therefore, this system's decisions can't be regulatory and conventional, but it has a constitutional nature. This matter will makes the ICR bylaw subject to a constitutional overseeing to not let it be an entrance to violates the provisions of the constitution, or to exceeds the legislative texts interpretation in a good manner, as well as not to make the ICR's bylaw as a reason to expand the legal competences to stop the ICR at the limits granted to it by the Constitution. The bylaw is in a level becomes after the Constitution and the law, so, the member has the right to object for the provisions of the Constitution and the law if this bylaw included a violation to the relevant constitutional bases and the legislative rules, especially that the new jurisprudence goes to subject the bylaw of the legislative power to be oversight by the Supreme constitutional Courts by challenging a constitutional issue

stipulated in the bylaw of the ICR if it was reviewed before it. In this case, the ICR will review an issue related to constitutionality of a text includes its competence, and the constitutional Court will review it and take a decision about it. From this point, subjecting the bylaw's rules to the constitutional overseeing to guaranteeing its issuing within the constitutional legitimacy is an obligatory matter, especially your honorable Court is the only sponsor to protect the legislative and constitutional bases which had issued according to these constitutional bases. Accordingly, all what abovementioned makes the ICR's decision by removal, as well as what listed in its bylaw represents a true violation to the provisions of the Constitution and the ICR members replacement law No. (6) for 2006 (amended) which had been issued according to a constitutional base. Second: his client notified the Speaker of the ICR by a written letter the force majeure which happened with him, and it was out of his will. This reason led him not to attend the Council's sessions in this concern, and the Speaker of the Council approved it and this procedure was confirmed by its written approval on the letter which directed to him from the culture and media committee in the ICR issued by No. (493) lam.theh.qaf and dated on (11.1.2016). The approval of the ICR's Speaker on abovementioned letter included relieving of his client from attending till its problem solved, therefore getting this approval will make unexcused absence not exist. This matter makes the removal decision folds a true violation for the ICR bylaw in what related to absence subject after his client notified the Speaker of the ICR with a written letter, and he got the written approval from the Speaker of the ICR. This matter makes the decision challengeable by your honorable Court. Third: the ICR and before issuing the challenged removal decision should investigate the reality of force majeure which his client exposed to which was confirmed for him with knowledge of all the ICR embers, because there were many cases initiated before the Iraqi Judiciary about his son kidnapping. As well as there was a case initiated before Dubai emirate about this accident which he exposed to, and this accident caused arresting him. These force majeure were not expected, also it wasn't avoidable with any other mean. As long as the origin in estimating such force majeure is within the core of your honorable court

estimating competence, because it is specialized in interpreting the law texts and researching about how the accepted excuse is exist in these realistic permanent facts which responsibility of absence is not corresponding with, if we assumed there is an absence already. His client was exempted from attending with the written approval of the ICR's Speaker. Fourth: the decision lead to waste the voters votes whom elected his client, whereas he gained (62514) votes which recorded him the highest number all over Iraq. This means his client has a huge popular representation to let him be a sound and Representative under the parliament's dome, and this matter corresponds with the constitutional principle which says ((the members are representing all the Iraqi people)) article (49/1st) of the Constitution. Contrariwise, it will be regarded a violation of the Constitution which is higher and premier law of the state, and according to the decision of the ICR which cancelled the membership of his client it will be wasting of the voters' votes which he represent, and this decision is unjust and violates the Constitution and the law. Fifth: as your honorable Court notices that the defendant (Presidency committee did not directs a written note to his client to call upon him to commit attending the sessions). This what article (18/2nd) indicated to, therefore, this matter regards violation to the ICR's bylaw which considered in a legal level comes after the Constitution and the law. Accordingly, the agent of the plaintiff requested from the FSC to judge by annulling the decision of the defendant in the session numbered (37) convened on (5.25.2017) and restoring his client to the membership of the ICR, and to burden the defendant/ being in this capacity all the expenses and advocacy fees. The agent of the defendant answered the petition of the case according to his answering draft dated on (7.17.2017) and he requested to reject the case and to burden the plaintiff all the expenses and advocacy fees for the following reasons: 1. The agent of the plaintiff indicates in clause (1st) of his draft that the ICR had cancelled the membership of his client in spite of his absences were not reached the quorum which is it the absence more that tertian of the Council's sessions in one legislative term. We make clear to the honorable Court that the plaintiff's absences had reached half of the first legislative term from (7.15.2014) to (11.30.2014) whereas his absences reached

(17) absence of (34) sessions were convened in that legislative term, and he attached a table indicates to these absences, its dates and times while he was absented. 2. The agent of the plaintiff indicates in clause (1st & 2nd) of his draft that his client had informed the Speaker of the ICR with a written letter about his force majeure which inhibits him from attending the Council's sessions. We clarify that aforementioned absences in clause (1) occurred in the year 2014, and there was not any connection with the circumstance that the plaintiff pointing to. The agent of the plaintiff indicates in clause (3rd) of his draft that the ICR has to detect his client's situation before removing him. So we answer this point that the ICR had communicate with the ministry of foreign affairs about the Representative (mim.ta) and the last letter received from the ministry that he tried to escape illegally from United Arab Emirates while he was sponsored. This matter led to annul his sponsorship and to arrest him again. 4. The agent of the plaintiff indicates in clause (4th) of his draft that removing aforementioned Representative had wasted the votes of his voters, so we answer that the ICR member representation of (one hundred thousand Iraqis) not only (62514) Iraqis is a legal system ruled by a specific bases should be implemented according to the circumstances which pass on the representation, including necessity of removing the Representative which wastes its representation with his much absences during one legislative term. It is worth to mention that the replacement Representative will also represent one hundred thousand Iraqis according to the Constitution, and this will cancel the subject of voters' votes wasting. The Court called upon the both parties to the pleading session, and on the set day the agent of the plaintiff attended according to the power of attorney which attached to the file of the case. As well as, the agent of the Defendant/ being in this capacity attended according to their private official power of attorney which attached to the file of the case, and the public in presence of both parties pleading proceeded. The agent of the plaintiff repeated what listed in the case's draft and he requested to judge according to it, with burdening the Defendant the expenses and advocacy fees. The agents of the Defendant repeated what listed in the answering draft which presented to the Court as an answer on the petition of the case, and

they requested to judge by rejecting the case with burdening the plaintiff all expenses and advocacy fees. The agent of the plaintiff recited the decision of the ICR (challenge subject), and the agent of the Defendant answered that absence duration which his client cancelled the plaintiff's membership was from (7.15.2014) to (11.30.2014) with (34) sessions. The agents of the Defendant presented a draft dated on 9.10.2017 as an answer of the Court's enquiry that absence duration of the plaintiff which the ICR issued its decision by cancelling his membership in the ICR which reached half of the first legislative term sessions for the period from (7.15.2017 to 11.30.2015) according to attached table. As well as a warning was sent to the plaintiff numbered (540) on (8.16.2015) to not absenting the Council's sessions which attached in his illustrating draft, and the Council's decision issued by cancelling the plaintiff's membership according to provisions of article (1/1st/7) of ICR members replacement law No. (6) for 2006 which amended by the law No. (49) for 2007, and the provisions of article (18/2nd) of the ICR bylaw. The Court reviewed the letter delivered to it by the General secretariat of the ICR/ legal department/ Ref. (1/13/9753) on 9.17.2017 according to an enquiry of the Court. Whereas this letter included that there is no letter confirms participation of the plaintiff in the Popular Mass in the duration from (7.15.2014 to 11.30.2014), and the plaintiff enjoyed regular paid leave for the days (8,9,22.9.2014) except absence days, and this letter was attached to the file of the case. Also the Court reviewed the decisions and recommendations of the Council during the session numbered (37) on (5.25.2017) second clause of it which included what following (the Presidency of the Council decided to cancel the membership of Mr. (mim.mim.ta) because he exceeded the legal limit of absences without a justification for more than tertian number of the ICR total legislative year sessions. He is regarded relieved by the law according to article (1/1st/7) of the law No. (49) for 2007 law of ICR members replacement No. (6) for 2006 (amended), as well as it reviewed the parliamentary order No. (92 on 7.6.2017) which judged by cancelling the plaintiff's membership from the ICR for abovementioned reasons. The Court also reviewed the warning sent to the plaintiff by the general secretariat of the ICR/ legal department/ Ref. (540) on (8.16.2015)

which called the plaintiff to not absents the ICR's sessions more than determined period, or the required procedure will be taken against him according to the law and the ICR bylaw. The Court also reviewed the letter which it received from the ministry of foreign affairs/ deputy's office/ Ref. (mim/12/23/267) on (1.23.2018) which included that the general consulate of Republic of Iraq in Dubai informed it according to its confidential letter No. (1) on (1.15.2018) that the plaintiff was suited in AL-Sharjah Court with detention for two years and deportation outside the state, and he was sentenced by Dubai Court (one year detention) with deportation outside the state, and there are cases not resolved yet. After reviewing, it were attached to the file of the case. Whereas the subject of reason behind the plaintiff's absence from attending the Council's sessions for the events he exposed to outside Iraq, so it is not the subject of the case, and the Court is restricted by the petition of the case according to article (45) of procedure law. The Court decided to left this matter to the ICR whereas it is specialized in verifying it. The agents of both parties repeated his sayings and previous requests and requested to judge according to it. Whereas nothing left to be said, the end of the pleading made clear and the decision made clear publicly.

The decision:

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiff requests in the petition of his case from the FSC to judge by annulling the ICR decision which token in the session No. (37) convened on (5.25.2017) which judged by cancelling his client's membership from the ICR pretending that this decision violates the constitution and the law. The Court found after scrutinize the case that the ICR took its abovementioned decision after it found that absences of the plaintiff had exceeded half the sessions of the first legislative term, whereas his absences reached (17) absence of (34) sessions were convened in that term from (7.15.2014) to (11.30.2014). The plaintiff was notified by the letter No. (1/9/shin3/540) on (8.16.2015) which called him not to absent in the future from attending the ICR sessions, unlikely the legal procedures will be token against him. Then, the ICR decided according to the parliamentary order No. (1/9/92) on (7.6.2017) to

remove the Representative (mim.mim.jim) because he exceeded the legal limit of absences according to article (1st/1/7) of the law No. (49) for 2007 the law of first amendment of ICR members replacement No. (6) for 2006. The FSC finds that article (1st/1/7) of aforementioned law stipulated on (the membership of the ICR shall be ended for one of the following reasons: removing the member when his/ her absences exceeds without justification for more than tertian of the Council's sessions of the total one legislative term sessions), and article (18/2nd) of the ICR bylaw had set the mechanism of how to execute item (7) of clause (1st) of first article of law No. (49) for 2007 where it stipulated on (the presidency in case of absence repetition without a justification for five times sequence or ten times inconsequent within the annual cycle may direct a written warning to the absent member and called him to commit to attend. In case he did not conforms with the presidency, the subject shall be reviewed on the Council by relying on a request from the committee). Firstly, the FSC finds that its competence is trying the litigation reviewed before it according to what stipulated on in article (93/3rd) of Republic of Iraq constitution for 2005 which includes (Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority..Etc) as long as challenged decision is issued by one the federal authorities which stipulated on in article (47) for the constitution. The FSC also finds that ICR attitude was not right in taking challenged decision because the plaintiff's absences for the period (7.15.2014 to 11.30.2014) for his attendance to the ICR sessions has already sent to him as a warning Ref. (540) on (8.16.2015) calling him to commit attending the Council's sessions, and in case his absences exceeded more that tertian of the Council's sessions in the legislative term a legal procedure will be token against him. The Council and according to its parliamentary order No. (1/9/92) on (7.6.2017) decided to remove the plaintiff from the ICR membership contrariwise to what stipulated on in article (1st/1/7) of the law No. (49) for 2007, and contrariwise to what determined in article (18/2nd) of the ICR bylaw, whereas the warning must be directed after absence occurring by the Representative member for the Council's sessions of determined limit in the law and bylaw,

and in case he refrained that, the legal procedure shall be taken against the Representative, while the Council directed the warning to the plaintiff on (8.16.2015) Ref. (540) for his absences from (7.15.2014) to (11.30.2014). Then, the Council removed him without reviewing the subject on the ICR contrariwise the aforementioned legal texts. Therefore, the decision of the ICR violated the law No. (49) for 2007 – which regarded a federal law, and the FSC relied on it in confirming its competence of trying the litigation raised from its implementing – and contrariwise of article (18/2nd) of the ICR bylaw and contrariwise the constitution. Its violation considered a constitutional violation requires to object it according to article (93/3rd) of the constitution indication to article (47) of it. Therefore, the FSC decided to judge by annulling the decision issued from the ICR in the session No. (37) convened on (5.25.2017) which decided to cancel the membership of the Representative (mim.mim.jim.teh) in the ICR according to parliamentary order No. (1/9/92) on (7.6.2017) with burdening the defendant/ being in this capacity the case's expenses and advocacy fees for the agent of the plaintiff the barrister (ta.kaf.zin) amount of one hundred thousand Iraqi dinars. Beside that the Court is restricted trying the case according to its petition according to article (45) of civil procedure law No. (83) for 1969. Therefore, the Court did not investigate the other bone of contention during the sessions by the defendant/ being in this capacity because trying it is out of the FSC competence which stipulated on in article (93) of the constitution and article (4) of the FSC's law No. (30) for 2005. Its matter must be left for the ICR which considered the competent body to trying it. The decision issued in presence, decisively and unanimously according to provisions of article (94) of Republic of Iraq constitution and made clear on 2.26.2018.