

In the name of God most gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 90/federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 28.4.2021 headed by Judge Jasem Mohammad Abood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Talal Khudair Abbas Al-Zobaei, his attorney, Muhammad Akram Ali.

The Defendant: Speaker of Council of Representation/ being in his capacity his agent the legal advisor Haitham Majed Salem.

The Claim:

The plaintiff, through his attorney, claimed that the defendant had previously issued decision No. (727) of 19/8/2019 containing the lifting of his immunity, and since the aforementioned decision was in violation of the Constitution and represents a grave breach of the principles contained therein because it came as a result of the plaintiff filing the case No. (55/federal/2019) and that the subject matter is violations of the Constitution during the voting session to elect a Speaker of Council of Representation, and that the aim of the decision to lift the immunity is to pressure the plaintiff for the purpose of nullifying the aforementioned case filed with this court. And that the defendant/ being in his capacity

relied in his decision to lift his immunity on the provisions of Article (63/ Jim) of the Constitution of the Republic of Iraq of 2005 which states (A Council of Representatives member may not be arrested after the legislative term of the Council of Representatives, unless the member is accused of a felony and with the consent of the speaker of the Council of Representatives to lift his immunity or if he is caught in flagrante delicto in the commission of a felony) whereas, the aforementioned text of Article 63 of the Constitution was an exception to the original contained in Paragraph (beh) of the same Article, in which it was mentioned (A Council of Representatives member may not be arrested after the legislative term of the Council of Representatives, unless the member is accused of a felony and with the consent of the speaker of the Council of Representatives to lift his immunity or if he is caught in flagrante delicto in the commission of a felony). Therefore, to achieve justice and to proceed with case No. (55/federal/2019) away from the political pressures that the defendant/ being in his capacity uses against the plaintiff to nullify it, request to summon the defendant to plead and decide to cancel the immunity decision due to his violation of the law and issued a state order to stop the procedures to lift his immunity until this case is settled. According to the provisions of article (1/3rd) of the FSC's Bylaw No. (1) Of 2005, the case has been registered with this court No. (90/federal/2019) and the defendant/ being in his capacity is informed of its petition based on the provisions of Article (2/1st) of the above regulation, and his agents have responded by the regulation submitted to this court on 11/9/2019 that the plaintiff's claim is obligatory for the following reasons: 1- The plaintiff's claim that the decision to lift the immunity issued by the defendant/ being in his capacity came after he filed the case No. (55/federal/2019), which he appealed regarding the procedures that took place in the election of the defendant/ being in his capacity as Speaker of Council of Representation to pressure him to nullify the lawsuit because this claim is incorrect for the following reasons:

A- The aforementioned claim is not productive and has no legal value, and that the plaintiff's attorney did not evaluate the evidence and argument that this is true. B- The decision to lift immunity is not a special procedure until it is done by the defendant/ being in his capacity. Rather, it is an objective legal act governed by the Constitution and based on a request from the judiciary following the procedures followed by the courts. 2- The plaintiff's agent indicated that Article (63/Jim) of the Constitution on which the defendant/ being in his capacity relied to lift immunity, is an exception from the original and that the principle for this is Article (63/beh), which requires the approval of the majority of members of the Council of Representatives, As items (beh and Jim) of Article (63) of the Constitution are two texts of equivalent value, but rather differ in terms of the time of application, the work of the text (beh) takes place during the legislative term of the Council of Representatives, while item (Jim) is applied to a member of Council of Representatives outside the period of the legislative term. 3- The prosecutor is wanted by the judiciary based on the provisions of Article (308) of the Penal Code No. (111) of 1969, and that the maximum penalty legally prescribed for the perpetrators of the crimes described following the above article is imprisonment, and therefore it is classified as a felony also, the request to lift the immunity was referred to the defendant's department / being in his capacity outside the legislative term. Therefore, the attorney of the defendant/ being in his capacity requested, to reject the plaintiff's claim and to charge him the judicial fees and expenses. The FSC reviewed the attachments with the aforementioned list, which is the letter issued by the Presidency of Public Prosecution No. (25/immunity/2019) on 28/7/2019, this includes investigating by the Al-Karkh Investigation Court, which is specialized in integrity issues, regarding the complainant (Amjad Nazir), owner of Shurooq Al-Anwar General Trading Company, being blackmailed by the deputy (Talal Khudair Abbas Al-Zobaie). The aforementioned court decided to bring in the aforementioned representative following Article

(308) of the Penal Code, and after the aforementioned court completed its procedures, it requested to approach the Council of Representatives to consider lifting his immunity to refer him to the competent court based on the provisions of Article (63) of the Constitution of the Republic of Iraq. This court also viewed the court on a copy of the investigative papers on which the Office of Public Prosecution office mentioned above, which includes the testimony of the informant (Heibat Hamad Abbas), initial and judicial, the testimony of the complainant (Amjad Nazir Muhammad Qasim), initial and judicial, witness statements and the decisions of the investigating judge, including the decision made by a judge Al-Karkh Investigation Court, specialized in integrity cases, on 9/6/2019 including summoning the accused (Talal Khudhair Abbas Al-Zobaie) following the provisions of Article (308) of the Iraqi Penal Code, and because the accused is a member of the Council of Representatives for the current session, he decided to approach the Federal Al-Karkh Appeal Presidency to approach the relevant authorities to lift his immunity). On 8/26/2019, the FSC decided to reject the request to issue a custodian order, as this would give a sense of the opinion of the FSC in case No. (90/federal/2019), according to which the plaintiff requests the issuance of the custodian order to stop the procedures to lift his immunity, as this contradicts with the principle of not giving a prior opinion on the case before the pleading is conducted in it, in addition to the absence of a state of urgency in the request that was the basis for the issuance of the custodian order according to the provisions of Article (151) of the Civil Procedure Law No. (83) Of 1969 (amended). After completing all the procedures stipulated in Article (2/1st) of the FSC's Bylaw, a date was set for the pleading, and the two parties were notified of that according to what was stated in Article (2nd) of the above. On the day appointed for the pleading, the court was formed, and on behalf of the plaintiff, his attorney, Muhammad Akram Ali, attended under the power of attorney issued by the Notary Department in Al-Karkh, No (3335) on 6/13/2016,

collectively and individually with the lawyer Muhammad Ahmad, on behalf of the defendant/ being in his capacity, the legal advisor, Haitham Majed Salem, was present under the general power of attorney issued by the General Secretariat of the Council of Representatives / Legal Department in the No. (521) on 30/7/2019 and for the pleading immanence and public, the plaintiff's attorney repeated what was stated in the case's petition and requested a verdict, adding that the request to lift custody of his client and the decision issued regarding the lifting of immunity from him had been issued by the Presidency of the Iraqi Parliament outside the period of the legislative separation, agent of the defendant/ being in his capacity repeated what was mentioned in the list submitted by him, and after notifying the case petition and requesting the ruling to reject it, and the plaintiff charging the judicial fees and expenses, and after the attorneys of the two parties repeated their requests and statements, the end of pleading has been made clearly, the court issued its following decision in public.

The Decision:

After scrutiny and deliberation found that the plaintiff's attorney requested the ruling to cancel the decision to lift the immunity for violating the law and issue a custodian order to stop the procedures for lifting the immunity until this case is settled. Regarding the request for issuing the custodian order, this court decided on 8/26/2019 to reject the request, as the aforementioned request contradicts the principle of not giving a prior opinion on the case before the pleading procedures in it, in addition to the absence of a state of urgency in the request that established the basis for issuing the custodian order according to what decided by Article (151) of the Civil Procedure Law No. (83) Of 1969 (amended). Regarding the plaintiff's request, on which his case was based (the ruling to cancel the decision to lift his immunity for violating the law). The FSC placed the plaintiff's case, the regulations of the

litigating parties, and the documents presented in the case that are subject to scrutiny and deliberation, and it reached the following results:

First: The lifting of the immunity of Representative (Talal Khudair Abbas), according to which the decision issued by the Iraqi Council of Representatives/ Office of the President of the Council No. (727/mim.ra) on 19/8/2019 directed to the Higher Judicial Council / Presidency of the Public Prosecution, which includes (lifting the immunity of the aforementioned deputy due to the large number of complaints received on corruption charges directed against him during his tenure as head of the Integrity Committee previously, and based on the powers granted under Article (63/2nd/Jim), decided to lift his immunity). What was stated in the original case (the appeal against the decision issued by the Speaker of Parliament that includes lifting the immunity of the representative (the plaintiff in this case) falls within the jurisdiction of this court based on the provisions of Article (93/3rd) of the Constitution and Article (4/3rd) of the FSC's Law No. (30) Of 2005 (amended), which stipulated that (the FSC is concerned with the following Third: settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others) especially since the contested decision issued by the Speaker of the Council of Representatives was based on the provisions of Article (63/2nd/Jim of the Constitution) and therefore the appeal is within the jurisdiction of the court.

Second: By referring to the concept of parliamentary immunity, it was found that it is a kind of legal protection that the constitution assigns to the people's representatives from among the members of the Council of Representatives so that the representative can perform his work, and this immunity is of two types:

The first type: Substantive immunity, which means that a member of the Council of Representatives is not held criminally or civilly accountable for the opinions or facts he expresses during the exercise of his work in the Council of Representatives and includes speeches, sayings, opinions, and reports issued by a member of the Council of Representatives during the sessions of the Council or in one of its committees, as well as the discussions and deliberations that take place. In the sessions of the Council or the committees or during the discussion of draft laws by the Council of Representatives, as well as the oral and written questions those are directed in the case of questioning. This type of immunity is guaranteed by the constitutional legislator according to the text of Article (63/2nd/alif) of the Constitution, which stipulates that (a member of the Council of Representatives shall enjoy immunity for statements made while the Council is in session, and the member may not be prosecuted before the courts for such.

The second type: Procedural immunity, means (postponing the implementation of all or part of the judicial procedures in all or some of the crimes against a member of the Council of Representatives accused of committing a crime that is not covered by objective immunity during the legislative term or outside it, except after it is obtained now from the Council of Representatives or its president). This immunity is guaranteed by the constitutional legislator, but it differs from one country to another according to what is stipulated in the constitutions of each country. If we turn to Article (63/2nd/beh and Jim) of the Iraqi constitution, we find that it states that (B. A Council of Representatives member may not be placed under arrest during the legislative term of the Council of Representatives, unless the member is accused of a felony and the Council of Representatives members consent by an absolute majority to lift his immunity or if he is caught in flagrante delicto in the commission of a felony. C. A Council of Representatives member may not be arrested after the legislative term of the Council of

Representatives unless the member is accused of a felony and with the consent of the speaker of the Council of Representatives to lift his immunity or if he is caught *in flagrante delicto* the commission of a felony). For of the above, it is noticed that the constitutional legislator has placed a restriction on the judicial authority in taking criminal measures against a Member of Parliament in one case only, which is that the arrest warrant for a member of the Council of Representatives may not be executed unless he is accused of a felony crime. It is a crime punishable by law by death, life imprisonment, or imprisonment for more than five to fifteen years, according to the text of Article (23) of the Iraqi Penal Code No. (111) of 1969 (amended) and that immunity does not include a case of *flagrante delicto*. But if a member of the Council of Representatives is accused of a misdemeanor crime punishable by law by severe or simple imprisonment for more than three months to five years or a fine, or if he was accused of an infringing crime, which is punishable by law by simple imprisonment for a period of twenty-four hours to three months or a fine. It is possible to take penal measures against him without obtaining the permission of the Council of Representatives, as there is no immunity for a member of the Council of Representatives for it. That the constitutional legislator does not mention the two crimes of misdemeanors and offenses within the aforementioned text does not mean that a member of the Council of Representatives is not held accountable if he commits any of them, because this violates the principle of criminal equality, which is a manifestation of equality before the law, it is not permissible to place a member of the Council of Representatives above the law without the rest of the citizens whom he represents in that parliament, and that the principle of equality before the law is an explicit application of the rights and freedoms stipulated in Chapter Two of the Constitution under the title (Rights and Freedoms) as Article (14) of the Constitution, which was mentioned in the introduction to the articles of the aforementioned section, stipulates that (Iraqis are equal before the law without discrimination based on gender,

race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.) this represents the maintenance of everyone's right to a fair litigation, as Article (19/6th) of the Constitution stipulates that (Every person shall have the right to be treated with justice in judicial and administrative proceedings.) especially since parliamentary immunity against criminal responsibility is not considered a personal privilege or a right for a deputy, as it is decided in his interest. Therefore, the failure of the constitutional legislator to mention the two crimes of misdemeanor and infractions does not mean that what the representative commits is a permissible act, especially since some of them pose a threat to the lives, security, and safety of people, in addition to the fact that most of them are related to attacks on public and private funds. Therefore, as mentioned above, the FSC must revoke its previous decisions regarding obtaining the approval of the Council of Representatives absolutely for any crime against which any of the members of the Council of Representatives is accused, and that this be limited to one case only, which is (It is not permissible to implement the arrest warrant issued for a felony crime against which a member of the Council of Representatives is accused during or outside the legislative term, except after obtaining permission to do so from the Council of Representatives by an absolute majority during the period of the legislative term or from the President of the Council of Representatives if this is outside the period of the legislative term and except for legal measures are taken without the approval of the Council of Representatives or its president in the event that he is accused of committing a misdemeanor crime and offense that has nothing to do with currency inside the Council of Representatives or one of its committees and which are described with the substantive immunity referred to above) and considering that a new principle and a departure from the previous principle regarding custody of a member of Council of Representatives. As for the concept of the absolute majority to lift the immunity of a member of the Council of Representatives against whom

an arrest warrant was issued for an unseen felony crime, according to the provisions of Article (63/beh) of the Constitution, more than half of the total number of members of the Council of Representatives is intended, and this is considered a reversal of the previous court's decision No. (23/federal/2007) issued on 21/10/2007 regarding the interpretation of what is meant by an absolute majority, since the constitutional legislator intended by an absolute majority more than half of the total number of members of the Council of Representatives wherever the phrase (absolute majority) is mentioned, whether it is accompanied by a phrase with the phrase the number of its members or it is abstract as for what is meant by a simple majority, it means more than half of the actual number of the members of the Council of Representatives present after the quorum has been achieved for the sessions of the Council in the presence of the absolute majority of the number of its members and considering that a new principle and a departure from the previous principle related to interpreting the concept of the majority according to the details referred to above. Accordingly, upon the aforementioned, this court finds that the plaintiff's case must be rejected. Therefore, the FSC decided the ruling:

- 1- Rejected the claim of the plaintiff Talal Khudair Abbas Al-Zobaie.
- 2- The plaintiff, Talal Khudair Abbas Al-Zobaei, charged the fees, expenses, and attorneys' fees for the defendant's agent/ being in his capacity, the legal advisor, Haitham Majed Salem, and the amount of one hundred thousand dinars, distributed according to the law. Rule decisively obligating on all authorities, and it was issued by agreement based on the provisions of Articles (63/1st and 2nd/alif, beh, Jim) and (93/3rd) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4) and (5) of the FSC's Law No. (30) Of 2005 on 28/April/2021 coinciding with 16/Ramadan/1442.