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The Jurisdiction Of The Federal Supreme Court Of Iraq In Deciding On The Validity Of The Membership Of The Iraqi Parliament Council

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Abstract

After the end of the parliamentary elections for the Parliament elections, several problems arise that affect the legal status of the elected member, and the matter may reach the termination of the membership of one of the deputies and his exclusion, in addition to this exclusion may result in his replacement by another candidate from the same political entity or from the same electoral district or According to the votes obtained by each candidate, this occurs as a result of the violation of one or some of the conditions required by the constitution or laws related to the candidate for membership in the Parliament, but to ensure the validity and seriousness of the decision, not only on the member, but the effects of this extend to include the Parliament, because excluding The MP leads to a decrease in the number of parliamentary seats in the Council, as well as the lack of the number of constituency seats or political entity that has followed him this member.

La Jurisdicción De La Corte Suprema Federal De Iraq Para Decidir Sobre La Validez De La Membresía Del Consejo Del Parlamento Iraquí

Resumen

Después del final de las elecciones parlamentarias para las elecciones al Parlamento, surgen varios problemas que afectan el estado legal del miembro electo, y el asunto puede llegar a la terminación de la membresía de uno de los diputados y su exclusión, además de esta exclusión puede resultar en su reemplazo por otro candidato de la misma entidad política o del mismo distrito electoral o De acuerdo con los votos obtenidos por cada candidato, esto ocurre como resultado de la violación de una o algunas de las condiciones requeridas por la constitución o las leyes relacionadas para el candidato a la membresía en el Parlamento, pero para garantizar la validez y la seriedad de la decisión, no solo en el miembro, sino que los efectos de esto se extienden para incluir al Parlamento, porque excluir al MP lleva a una disminución en el número de parlamentarios escaños en el Consejo, así como la falta de la cantidad de escaños en la circunscripción o entidad política que le ha seguido a este miembro.

Introduction:

For the purpose of expressing the will of the voters in a true expression, it was necessary for the constitutions to specify a certain body that would decide on the validity of the membership of the members of the House of Representatives to avoid the aforementioned problems, but the constitutions did not move one direction in this regard, and there were several trends regarding the competent authority in that, and they are as follows: - The first: - That makes the matter within the competence of the House of Representatives itself: - This direction assigns this task to the House of Representatives and not others, especially the judiciary, for several considerations, including that this is an application of the principle of separation of powers, which is subordinated to the principle of the independence of the Parliament in managing its own affairs. And among them is the administration of the Council and the granting of its members guarantees against all, the most prominent of which is its competence to rule on the validity of the membership of its members, which may not be assigned to another authority in accordance with this chapter, which is one of its requirements

that every authority of the authorities undertake all matters related to its administrative and financial affairs . Likewise, the principle of immunity of parliamentary actions: That is, the validity of membership is one of the parliamentary actions that must enjoy the established immunity of those actions, the most prominent of which is their exit from the scope of judicial oversight .

The second: - This jurisdiction is vested in judicial bodies: - Contrary to the first trend, some constitutions assigned that task to judicial bodies and did not make it within the competence of the Parliament, for example, what was stipulated in Article (107) of the Egyptian Constitution of 2014 with the jurisdiction of the Court of Cassation to decide on a validity of membership Members of the House of Representatives , as well as the jurisdiction of the Supreme Court in that in Britain , due to several considerations, including that assigning that mission to the Parliament itself is not without political fluctuations, since these councils consist of a group of political parties, which may not have the element of impartiality Concerning the separation of the validity of the membership of a representative of one of For parties within the Council, which may politically harm that party. In addition to the members of the House of Representatives lacking the experience and powers necessary to adjudicate on this issue, unlike the judiciary, which has sufficient means to separate it on this and other issues.

The third: - making this jurisdiction common between the judiciary and the House of Representatives: - Unlike the first and second directions, there are some constitutions that have made the separation of membership validity for members of the House of Representatives a common task between the judiciary and the House of Representatives, and did not make it the competence of one without the other And among the countries that adopted this trend is Kuwait under Article (95) of its Constitution for the year 1962, which made this jurisdiction common between the National Assembly and the Constitutional Court . And for the considerations thereof, that this represents a middle direction between the previous two directions, so it makes the matter within the competence of the Parliament, but at the same time it works to involve a judicial authority with it in that.

Fourth: - making this matter the prerogative of a political party: - Some constitutions have made separating the validity of membership a prerogative of a political body independent of parliament and the judiciary, such as that of the French Constitution of 1958, which made this the prerogative of the Constitutional Council, knowing that the direction in France was to attribute this The competence of Parliament, since the French were

adherents to the principle of the sovereignty of the nation, but it became clear through previous experiences during the first three republics until the constitution of 1946, that Parliament was not neutral in deciding on the validity of membership, so this jurisdiction was assigned according to Article (59) of the 1958 constitution to a party Neutral, which is the Constitutional Council , as well as the ruling No, for the countries that have adopted the French system, including the constitutions of Morocco, Algeria and Mauritania .

As for the position of the Constitution of the Republic of Iraq for the year 2005 with regard to these directions: - It is noted that Article (52) of it stipulates that “First: The House of Representatives decides on the validity of the membership of its members, within thirty days from the date of registration of the objection, and by a majority of two-thirds of its members. Challenging the council’s decision before the Federal Supreme Court, within thirty days from the date of its issuance. In other words, this constitution has adopted the third trend that makes deciding the validity of membership of members of the House of Representatives within the jurisdiction of the House itself in partnership with a judicial body and not any judicial body, but the competent constitutional judiciary represented by the Federal Supreme Court, and the direction of the constitutional legislator in this was commendable, because This trend avoids the shortcomings of the first and second directions, and at the same time it combines the advantages that they were distinguished with. The attribution of the appeal against the decision of the House of Representatives to the Federal Supreme Court is of great importance, given the role of the court in supporting the stability of the Iraqi society and the formation of its constitutional institutions in line with the provisions of the constitution, and achieves the aspirations to protect the public rights and freedoms stipulated, as well as the authority of the court’s ruling in This field is binding on all authorities, including the legislature. In order to prevent the multiplicity of interpretations and decisions issued by the courts, if this jurisdiction was granted to other courts. First: The importance of research:

The importance of this research comes in the parliamentary systems that adopt the parliamentary system in general, and in the Iraqi constitutional system in particular in the Constitution of the Republic of Iraq for the year 2005, as this constitution briefly dealt with the provisions of the jurisdiction of the Federal Supreme Court to decide on the validity of membership of members of the House of Representatives, according to Article (52) of this constitution.

Second: The research goal:

This study aims to clarify the provisions related to the jurisdiction of the Federal Supreme Court to decide the validity of membership of members of the House of Representatives, in terms of determining the legal basis for the court's exercise of this jurisdiction, and what and the nature of the conditions required in appeals related to the validity of membership or not, as well as determining the judgments that can be issued by this court. In this regard, which concerns us primarily is the Iraqi constitutional system in the 2005 constitution, in terms of explaining the advantages it has regarding these provisions and similar defects, we try as much as possible to avoid them with the results we will reach, and what we propose in the conclusion of the research.

Third: The problematic of the research:

The topic of the research raises many problems, which we will try to explain with an opinion on appropriate solutions to them, by answering the following questions: What is the legal basis for the jurisdiction of the Supreme Federal Court to decide on the validity of membership of members of the House of Representatives, in light of the lack of stipulation in the current court law and the lack of Issuing its new law yet? And the adequacy of the formal and substantive requirements required to submit appeals to the court?

Fourth: Research Methodology:

The analytical method, based on the analysis of constitutional texts that dealt with the regulation of rulings related to the jurisdiction of the Supreme Federal Court to decide on the validity of membership of members of the House of Representatives in the Constitution of the Republic of Iraq for the year 2005, was adopted in this research, as well as the texts of laws that organized this topic, directly or indirectly, As well as the rulings issued by that court regarding the determination of the validity of membership.

Fifth: The research plan:

The topic of our research required that it be divided into three demands: the first deals with the legal basis for the jurisdiction of the Federal Supreme Court to decide on the validity of membership of members of the House of Representatives, and the second identifies in it the conditions required for the court to exercise its jurisdiction to decide on the validity of membership, and the third and last we discuss the rulings issued by the court regarding Appeals, as follows: -

The first requirement: The legal basis for the jurisdiction of the Federal Supreme Court to decide on the validity of the membership of the members

of Parliament.

The second requirement: The conditions required for the Federal Supreme Court to exercise its jurisdiction to decide on the validity of membership.

The third requirement: the rulings issued by the Federal Supreme Court regarding appeals.

The first requirement

The legal basis for the jurisdiction of the Federal Supreme Court to decide on the validity of membership of members of the House of Representatives

After the issuance of the Transitional Administration Law (Repealed) of 2004, Paragraph (a) of Article (44) of it stipulated that “a court in Iraq shall be established by law, called the Federal Supreme Court” . According to what was stated in this article, Decree No. (30) for the year 2005 regarding the formation of the Federal Supreme Court has been issued, and Article (4) of which specified the tasks assumed by the court . According to the aforementioned law, the internal system of court No. (1) for the year was issued. 2005 related to workflow procedures in court .

There was no mention in the aforementioned legislation of the jurisdiction of the Federal Supreme Court to decide on the validity of membership of members of the House of Representatives, but after the issuance of the Constitution of the Republic of Iraq for the year 2005 . Article (52) of it stipulates that it be granted this new jurisdiction, that “First: The House of Representatives decides on the validity of the membership of its members, within thirty days from the date of registration of the objection, and by a majority of two-thirds of its members. Second: It is permissible to appeal the decision of the Council before the Federal Supreme Court, within thirty Days of its release date. “

The law of the court continued to apply after the entry into force of this constitution in accordance with Article (130) of it, because the clause (second) of Article (93) obligated the formation of the court and determining the number of its members and the method of their choice, by a law enacted by a majority of two-thirds of the members of the House of Representatives, but this law has not been issued yet Despite the end of three legislative sessions of the Council.

From the foregoing it becomes clear that the constitution is the legal basis for the jurisdiction of the Federal Supreme Court to decide on the validity of membership of members of the House of Representatives, especially the text of Article (52 / second) of it, as this article expressly provides for this jurisdiction .

But the forms appear because the new court law did not require that its

legislation required Article (92 / second) of the constitution, as it differs in its composition and powers, from the formation and powers of the current court formed by order No. (30) for the year 2005 , and there is an opinion that it was better to The constitution provides for the jurisdiction of the court mentioned in its law above or any other law (prior to or after the enforcement of the constitution), to accommodate all powers that may be added to the jurisdiction of the court, especially since there are important matters of importance, which should be subject to the court, such as special constitutional texts Human rights and fundamental freedoms, or any constitutional issue m Vertex . Another opinion goes against the previous opinion that it was more appropriate for the legislator to amend Ordinance No. (30) for the year 2005 in a manner that explicitly indicates the authority of the court to decide on the validity of membership, even if it is competent to do so according to the higher text .

And my opinion holds that the 2005 constitution did not annul the court, and that the delay in issuing the law regulating its formation, as required by Article (92) of the constitution, does not undermine its legitimacy, and does not prevent the exercise of its powers laid down in the constitution , and this is what the court has established in its rulings that the exercise of its powers It is based on Article (4) of its Law No. (30) of 2005 and Article (93) of the Constitution of the Republic of Iraq for the year 2005, meaning that the constitution has added other powers to the court, including its ruling number (37 / Federal / 2010) on 04/14/2010 Regarding the legal basis on which she relied on the interpretation of the articles of the constitution, the court's law did not confer this jurisdiction on her, as she held that "... I found a The Federal Supreme Court formed by Law (30) for the year 2005 that the tasks stipulated in Article (93) of the Constitution are that which are concerned with their exercise, because the term (tasks) mentioned in Article (1) of its law came absolutely, and these tasks were not specified in what was mentioned in Article (4) of its law, and if the legislator wanted to restrict these tasks, he would have exercised its duties stipulated in this law. Accordingly, the jurisdiction of the Federal Supreme Court includes the exercise of the powers stipulated in its law or any other tasks that the laws stipulate in its jurisdiction, and in the forefront of these laws The Constitution of the Republic of Iraq, which is the supreme and supreme law ..., as long as Its law is effective under the provisions of Article (130) of the Constitution. And the failure to issue a new law for the court does not mean the lack of exercise of its functions stipulated by the law and the constitution, and this is what has been worked on in relation to the affairs

of the other country. According to the provisions of Articles (69), (74) and (82) of the Constitution, and other matters that require the constitution to issue new laws in it, the state institutions remain in place and exercise their functions stipulated in its laws and in the constitution or in the laws, Until its laws are repealed or amended according to the provisions of Article (130) of the Constitution, and This is to ensure the functioning of these institutions and the stability of state affairs and the interests of its people. As for saying otherwise, and the failure of the Federal Supreme Court formed according to Law No. (30) for the year 2005 to perform its duties stipulated in its law, in the constitution and in other laws, it means not ratifying the final results of the general elections for membership of the House of Representatives, the non-convening of the parliament and the failure to form a government, etc. From constitutional affairs, and this is not consistent with the spirit and goals of the constitution and the interest of the state. ” We have remarks on this ruling that are as follows: -

1- The court holds that the term (tasks) mentioned in Article (1) of its law came absolutely, and these tasks were not specified in what was mentioned in Article (4) of its law: - while the court neglected that those tasks were mentioned in a way that is not limited to an example Also, it had been previously determined in accordance with paragraph (b) of Article (44) of the State Administration for the Transitional (Canceled) Law of 2004, as the constitutional basis for the Court Law No. (30) for the year 2005.

2- That what the court went to is that the failure to issue a new law for the court does not mean that it does not exercise its functions stipulated in the constitution: - This statement is rejected by the court, as it contradicts what it has settled in many of the rulings issued by it regarding claims or interpretations regarding some articles Constitutions that indicated that they are regulated by law, meaning that the activation of these constitutional texts depends on the issuance of a law to that effect, for example, what relates to the accusative jurisdiction of the court to adjudicate the charges against the President of the Republic, the Prime Minister and ministers, as required by paragraph (VI) of Article (93) The Constitution promulgates a law to allow the court to practice The jurisdiction . Likewise, what was decided by the court regarding the Federation Council, as it went to the conclusion that the composition of the Council and the organization of its functions depend on a law issued according to Article (137) of the Constitution . Likewise, what is related to the law of relinquishing the acquired nationality, which is meant to express the high sovereign or security position in accordance with Article (18 / IV) of this Constitution . The same applies to

what is stipulated in Article (43 / First / B) of this constitution, that following any religion or sect is free in the management of endowments and their religious affairs and institutions, and this is regulated by law .

3- As for what the court went about regarding the work that has been worked on in relation to other state affairs regarding nomination and election for the position of President of the Republic, and the nomination of his salary and the salaries of the President and members of the Council of Ministers, despite the absence of laws regulating this, as stipulated in the provisions of Articles (69) and (74) and (82) of the constitution, and other matters for which the constitution requires the issuance of new laws in it: - These issues have never been issued laws that regulate them, unlike the court whose law was previously issued in accordance with the law of state administration for the transitional period, and its law must be issued The new due to its importance and the importance of the presence of the court, in a way that contributes to organizing its jurisdiction instead of Its current law, especially after the entry into force of the Constitution of the Republic of Iraq for the year 2005, as the latter included new powers that were not included in its current law , including its competence to decide on the validity of membership of members of Parliament. Accordingly, from our point of view, one of the following solutions must be adopted: -

The first: - It is a temporary option: -

It is taken in light of the political wrangling in the corridors of the House of Representatives, which led to delaying the law of the court law, despite the end of three legislative sessions for the council, according to which the court law No. (30) for the year 2005 is modified according to Article (130) of the constitution and in line with the principle of the supremacy of the constitution According to Article (13) of it as the supreme and supreme law in the state, by adding the text of a final paragraph to Article (4) of this law so that its text is “the powers mentioned in the constitution and the powers that the laws provide for the jurisdiction of the Federal Court to adjudicate.” With the necessity of amending the internal system of the court No. (1) for the year 2005 related to the workflow procedures in the court by adding a chapter related to the procedures related to requests to decide the validity of the membership of the members of the House of Representatives, including the formal and substantive requirements required in these requests, and the court’s procedures in this regard.

The second: - It is the best option: -

Which is represented by the expediting of the House of Representatives to legislate the new court law that required its legislation, Article (92 /

Second) of the Constitution, in order to be formed in its composition mentioned in this article, and to exercise its powers mentioned in Articles (52) and (93) of this Constitution, with the necessity The issuance of a new internal system for the court to replace the current internal system No. (1) for the year 2005 to regulate the procedures related to the workflow in the court, with the need to add the text of a final paragraph to Article (93) of the constitution, the text of which is “Ninth: The powers that the laws provide for the jurisdiction of the court Federalism by adjudication. “ The possibility of issuing laws in the future that regulate issues of a constitutional nature, which make the court an object of appeal, such as the law on declaring war and the state of emergency that necessitated its legislation, Article (61 / IX / C) of the Constitution and other articles, to accommodate the proposed text added to avoid challenging the unconstitutionality of those Laws in the future.

The second requirement

The conditions required for the Federal Supreme Court to exercise its jurisdiction in deciding on the validity of membership

For the Federal Supreme Court to exercise its jurisdiction to decide the validity of the membership of members of the House of Representatives, a set of conditions must be met, but these conditions are not precisely defined under a legal text, and this is due to the fact that the current court law and its bylaw do not originally include this jurisdiction on the one hand, and on the other hand Legislation of the new court law that required its legislation Article (92 / second) of the constitution, one of the two proposals that we referred to previously must be adopted, with the offer that these conditions contained in Article (52) of the constitution and other articles thereof, as well as conditions contained In some laws. They are divided into two types: the formal and objective conditions, which we will address as follows: -

First branch

Formal conditions

To submit applications to the Federal Supreme Court to decide the validity of the membership of the members of the House of Representatives, certain formal requirements must be met in those requests, which, in the absence of one of them, means that the court does not accept the request, and these conditions are as follows: -

First: It is obligatory to object to the decision issued by the House of Representatives: - In order to accept the appeal in the form of the Federal

Supreme Court, the deputy must first object to the decision of the House of Representatives before the House itself, and this is what is stipulated in paragraph (first) of Article (52) of the Constitution That “the House of Representatives decides on the validity of the membership of its members, within thirty days from the date of registration of the objection ...”. It must be submitted in a written, non-verbal manner, and this is confirmed by the Federal Supreme Court that “... the concerned parties have the right to object to the validity of the alternative deputy’s membership before the House of Representatives, with a written objection submitted to him ...” . However, the following notes are noted on this paragraph: -

1 - It did not specify the party to which the objection is submitted, and from our point of view, this objection must be presented to the Speaker of the House of Representatives, as he represents the parliament and speaks in his name, and works to implement the constitution, laws, and internal rules of it, as well as his role in opening and presiding over his sessions and presenting the matters that It requires conducting a vote on it and announcing its results on the one hand , and on the other hand, the appeal that will be submitted to the Federal Supreme Court will be the Speaker of the House of Representatives in addition to his position is the defendant in it, as we will see that in the provisions that we will mention in the folds of this research.

2- It did not specify a specific period during which the objector must object, but only specified a period of (30) days during which the House of Representatives must decide on this objection, and this prompted the Council to resort to the Federal Supreme Court to interpret paragraph (first) of Article (52) From the constitution and to the extent that the matter relates to the duration thereof, and is this period (from the date of membership confirmation or the existence of the reason for challenging or knowing about it or otherwise?), The court’s opinion of its ruling was numbered (7 / Federal / Information / 2015) on 2/2/2015 that “ ... the legislator, when he opened the door to object to the membership, did not specify a period to submit it, due to considerations he considered, as it may appear during the membership period one of the reasons that The validity of the membership of a representative, such as if it appears after a period that his academic certificate required for membership is forged, or that he was previously convicted, or other reasons that one of the membership conditions loses, even if he did not intend to achieve legitimacy in the membership of the House of Representatives, to set a period for submitting the objection as he did in the paragraph (First) of Article (52) of the Constitution, which obligated

it to decide upon the objection, and as he did in paragraph (second) of the same article, which obliged those who rejected his objection to appeal the decision of the response issued by the House of Representatives within thirty days from the date of its issuance ... ”). That is, the objection does not adhere to a certain period, but rather it can be challenged whenever new reasons arise.

Likewise, the appeal is not accepted if it was submitted directly to the court without objecting to it before the House of Representatives, and this is what the court went to by its judgment numbered (1 / Federal / 2011) on 27/1/2011 that “upon scrutiny and deliberation from the Federal Supreme Court, it was found that the plaintiff directly challenged In a decision of the House of Representatives dated 12/26/2010 about the validity of the membership of one of its members ..., and that Article (52 / First) of the Constitution of the Republic of Iraq for the year 2005 requires that the House of Representatives decide on the validity of the membership of its members, within thirty days from the date of registration of the objection , By a majority of two-thirds of its members, and since the plaintiff reviewed this court and filed his case directly without taking the legal method drawn in Article (52 / First) of the Constitution, as he did not object to the decision issued by the House of Representatives according to the aforementioned constitutional text, because the decision issued by the House of Representatives as a result of the objection is the one that is subject to appeal before this court in accordance with Article (52 / Second) of The constitution ... So for the above reasons, the plaintiff’s suit is obligatory to respond ... “.

Likewise, this appeal is not accepted if it was submitted directly to the court after objecting to it before the House of Representatives, but without waiting for a decision by the House in this regard. This is what the Supreme Federal Court went through with its judgments numbered (3 / federal / 2011) and (4 / federal / 2011) On 27/1/2011 that “... Since the plaintiff had objected to the decision of the House of Representatives according to his petition submitted to the Presidency of the House of Representatives on December 27, 2010, he did not wait for the decision of the House of Representatives to be issued on the outcome of his objection, because the decision issued by The House of Representatives as a result of the objection is the one who is subject to appeal before this court in accordance with Article (52 / Second) of the Constitution ... This court and filed his case before the decision of the Council to object to it, and contrary to the decree in Article (52 / First) of the Constitution, ... So for the above reasons, the

plaintiff's case is obligatory to respond ... ”.

But the question that arises in this regard is: What is the ruling if the objection is submitted and the council delays in deciding it? In this case, it is not permissible to leave the fate of the objector at the mercy of the council, because the delay in deciding his request harms the public interest, in terms of depriving the voters who elected this member of their true representation inside the council, which affects the representation of the will of the voters, and the continued payment of his salaries - especially In light of the absence of a legal text stipulating the suspension of his salaries during the period of objection and appeal - as well as damage to political parties and entities or governorates in terms of reducing the number of seats they obtained. On the other hand, this delay harms the interest of the objector himself from several sides, including delaying the submission of his appeal to the court or his response formally, as well as suspending his legal position in terms of depriving him of participation in the sessions of the council and voting on laws and decisions taken by the council - especially in light of The absence of a legal text stipulating the determination of the legal status of the objector to the validity of his membership and the extent of his enjoyment of the rights and duties of the membership during the period of objection and appeal - and for the purpose of avoiding the mentioned problems. From our point of view, the parliament must be limited to a specific period to decide a truth in the objection, and otherwise it will be considered a ruling, by amending the text of Article (52) of the constitution to be in the following way. “First: The House of Representatives decides on the validity of the membership of its members, within thirty days from the date the objection is registered. And by a majority of two-thirds of its members, otherwise the objection is returned by ruling, if that period expires without a decision on it. Second: It is permissible to appeal the council's decision before the Federal Supreme Court, within thirty days from the date of its issuance, or count it as a ruling.

Second: The decision of the House of Representatives to object to the decision must be issued by a majority of two-thirds of the members of the House: - To accept the appeal in a form before the Federal Supreme Court, a decision must be issued by the House of Representatives regarding the objection, within a maximum period of thirty days, according to the ruling of the Federal Supreme Court No. (7) / Federal / Information / 2015) on 2/2/2015, “... the period specified in Paragraph (First) of Article (52) of the Constitution results from the date the objection is registered with the

House of Representatives, and obliges it to decide on it, either by returning the objection and approval The validity of the membership of the member objecting to his membership, or by responding to the obligations of objection and issuing a decision yet Organic health ... “. Moreover, this decision must be passed by a two-thirds majority of the members of Parliament. Because the decision issued by the House of Representatives as a result of the objection is the one that can be challenged before this court in accordance with Article (52 / Second) of the Constitution, as indicated by the provisions of the aforementioned court.

This is what is stipulated in Paragraph (First) of Article (52) of the Constitution that “the House of Representatives decides on the validity of the membership of its members, within thirty days from the date of registration of the objection, and by a two-thirds majority of its members.” But this paragraph did not specify what is meant by a two-thirds majority? Is it a two-thirds majority of the number of members present, or a two-thirds majority of the total number of members of the House of Representatives? It is from our point of view a two-thirds majority of the total number of members of the House of Representatives after the quorum for the meeting stipulated in Article (59 / First) of the Constitution is achieved, and the evidence for this is as follows: -

1 - The concept that contradicts what was mentioned in the explanatory rulings issued by the Federal Supreme Court to interpret the expression “absolute majority” contained in Articles (61 / VIII) and (76 / IV) of the Constitution. The court held that “... in the event that confidence is withdrawn from one of the ministers, then Article (61 / VIII / A) only requests obtaining the (absolute majority), which is not (the absolute majority of its members) mentioned in Article (61 / VIII / B-3) When withdrawing confidence from the Prime Minister, because the text has mentioned it stripped from (the number of members), and it means the majority of the number present at the session after the quorum of the meeting stipulated in Article (59 / First) of the Constitution is achieved. Whereas, the majority is mentioned in paragraph (first) of Article (52) of the constitution “... and by a two-thirds majority of its members.” Therefore, a majority of two-thirds of the total number of members of the House of Representatives shall be made after the quorum is achieved.

2 - This is what the court affirmed by its ruling number (278 / Federal / 2006) on 6/12/2006 related to the interpretation of the two-thirds majority mentioned in Article (61 / IX / A) of the Constitution regarding the declaration of a state of emergency, that “... The majority of the two-thirds

majority meant in Clause (A) of Paragraph (IX) of Article (61) of the Constitution required when declaring a state of emergency, is the two-thirds majority of the members of Parliament present after the quorum of the meeting stipulated in Paragraph (First) of Article (59) Of the constitution, because if the legislator wanted a two-thirds majority for all members of the House of Representatives, it would be stipulated for that as stated in paragraph (first) of Article (70) and paragraph (second) of Article (92) of the constitution ... “.

3- This is what the court also confirmed by its ruling numbered (44 / federal / media / 2015) on 4/28/2015 related to the interpretation of Article (92 / second) of the constitution regarding voting on the new law of the court and the majority required to vote on it, which is a two-thirds majority Members of the House of Representatives, that “... the Federal Supreme Court finds that the legislation of the new law of the Federal Supreme Court requires approval by voting on the articles of the law by a two-thirds majority of the members of the House of Representatives, and requires approval of the law as a whole by a majority of two-thirds of the members of the House of Representatives ...”.

Otherwise, if the decision is not issued by a majority of two-thirds of the members of the House of Representatives, as if it was issued by the Speaker of the House only, then this decision is subject to veto by the Federal Supreme Court, for example, the decision of the Speaker of Parliament (11) for the year 2005 to cancel the membership of one of the deputies because he lost one of the conditions The membership taken in the session of Parliament numbered (41) on May 26, 2015, without presenting it to the parliament to obtain the approval of a majority of two-thirds of the members of the House, contrary to what is stipulated in paragraph (first) of Article (52) of the constitution, so the court decided to overturn this decision according to Judgment No. (62 / Federal / Media / 2015) on 6/7/2015 . Third: The appeal must be lodged with the Federal Supreme Court within (30) days from the date of the decision of the House of Representatives regarding the objection:

Another of the formal conditions for accepting the appeal before the Federal Supreme Court is that the appeal must be filed with the court within (30) days from the date of the decision of the House of Representatives regarding the objection, and this is what is stipulated in paragraph (second) of Article (52) of the Constitution that “may be challenged in The council’s decision before the Federal Supreme Court, within thirty days from the date of its issuance. This is what the court affirmed in one of its rulings

regarding the request of the House of Representatives regarding the mechanism of replacing vacant seats for members of the House of Representatives for the electoral cycle (2010-2014), as the court promised that “... challenging the validity of the membership of the House of Representatives, then deciding that The competence of the House of Representatives, where its ruling is taken within thirty days from the date of registration of the objection by a majority of two-thirds of its members in application of the provisions of Article (52 / First) of the Constitution, and that the second paragraph of this article permits those who are not convinced in the ruling taken by the House of Representatives to accept or reject the objection, To challenge the ruling of the Council before the Federal Supreme Court within thirty days from the date of repelling And he went ... “.

According to the ruling of the Federal Supreme Court No. (7 / Federal / Information / 2015) on 2/2/2015, “... this period is inevitable, due to its failure to observe it and exceeding it the fall of the right to appeal, in order to ensure the stability of the legal centers...”. If the appeal is filed outside this period, the court may decide on its own initiative to dismiss the appellant’s claim in form . The appeal shall be returned in the form also if a subsequent decision by the House of Representatives to cancel the contested decision before the Federal Supreme Court . Here we emphasize the necessity of our proposal to amend the text of paragraph (second) of Article (52) of the Constitution to avoid the problems that we have previously been exposed to in the following manner: “The Council’s decision may be appealed before the Federal Supreme Court, within thirty days from the date of its issuance, or counted as a ruling in judgment.” .

Fourth: The appeal must be submitted to the court on a case that meets the conditions and through a lawyer with absolute power: -

This is what is stipulated in Article (20) of the bylaws of the Federal Supreme Court No. (1) for the year 2005 that “Cases and requests are submitted to the Supreme Federal Court through a lawyer with absolute power and printed regulations, and it is not accepted by hand...”, so the court has no practice This jurisdiction is on its own without submitting a request to it, because it does not have the ability to address , because this mechanism is only in relation to disputes related to the constitutionality of legislation .

Despite what we mentioned, this condition relates to the jurisdiction of the court to monitor the constitutionality of legislation, but it is what is required by the seriousness and intuition of things and ease of proof, and from our point of view it is possible to refer to the provisions of Article (1) of the Civil Procedure Law No. (83) for the year 1969 amended , as

The reference law for all pleading laws and legal procedures . And what is required in Article (2) of him to submit a written request to accept the lawsuit. Hence, the application may not submit a decision on the validity of the membership orally .

Acceptance of the appeal before the Federal Supreme Court to challenge decisions issued by the House of Representatives, whether valid or not, is in the form of a lawsuit and meets the conditions mentioned in Articles (44, 45, 46 and 47) of this law .

It is also required that the appeal be submitted in the form of a lawsuit, and it must be submitted by a lawyer with absolute authority, otherwise the case will not be accepted as the objector submitted it otherwise, as if the objector submitted the appeal to the court personally, without submitting it from a lawyer with absolute authority, and this is confirmed by the Federal Court The supreme judgments are numbered (3 / federal / 2011) and (4 / federal / 2011) on 27/1/2011 that "... and that the appellant lodged his case contrary to what was decreed in Article (20) of the system, ... therefore For advanced reasons, the appellant's suit is obligatory to respond ... ".

The second branch

Objective conditions

In addition to the formal requirements required to submit requests to the Federal Supreme Court to determine the validity of the membership of the members of the House of Representatives, there must be in these requests some of the substantive conditions, which in the event that one of them is not available, also means the court rejecting these requests, and these conditions are as follows: -

First: That the appeal has one of the reasons specified in the constitution and law: - Acceptance of the appeal before the Federal Supreme Court must challenge the decisions issued by the House of Representatives, whether valid or not, if the appellant has one of the reasons mentioned, whether in the constitution or Relevant laws, as a result of the violation of one of the conditions set forth in the constitution or the law in any member of the House of Representatives, which leads to a challenge to the validity of his membership, and these conditions are as follows: -

1 - Conditions stipulated in the constitution: - As paragraph (second) of Article (49) of the Constitution of the Republic of Iraq for the year 2005 stipulated that the candidate for membership of the House of Represent-

atives must be a fully qualified Iraqi , then it is understood from this paragraph that A member of the House of Representatives is required to be an Iraqi, and the naturalized person has no right to nominate this position, and the reliable law in this regard is the Nationality Law No. (26) of 2006 . The justification of this condition is based on the necessity of not exercising political rights and freedoms except by citizens who owe loyalty to the state and prefer it to other countries and be more knowledgeable in its interest than others. As for foreigners, they do not share national solidarity with the people of the country in which they are sweet and do not appreciate its interest . It is also required in the candidate that he is not a dual national, that is, he does not hold any other nationality besides his Iraqi nationality, and if he holds another nationality, he should give it up when he takes this position, because of the importance and seriousness at the same time, because the exercise of the rights of the individual The political subject to the enjoyment of the nationality of the state who wants to exercise these rights in its region , and this is what is stipulated in paragraph (fourth) of Article (18) of the Constitution of the Republic of Iraq for the year 2005 that “it is permissible to have multiple citizenship for an Iraqi, and for whoever holds a high sovereign or security position, Abandoning any other acquired nationality, and this is regulated by law “, but it is not observed until now The issuance of the law mentioned in this article (the law to relinquish acquired citizenship) , which led to the work of many of the dual nationals for high-ranking sovereign and security positions , and that the expression of the high-level sovereign or security position stipulated in the aforementioned article - as the Supreme Federal Court went to - The scope for determining the political orientations in Iraq and those responsible for them determines these positions and the extent of their influence on the general policy of the state and organizes its implications according to that law . On our part, we call on the legislative authority to expedite the legislation of this law.

As for the fourth paragraph of Article (49) of the constitution, it stipulated that a representation of women should not be less than a quarter of the number of members of the House of Representatives. Whereas, paragraph (third) of it referred to the law regulating the conditions of the candidate and the voter and everything related to the election. The same applies to paragraph (Fifth) of it to a law dealing with cases of replacement of members of the House of Representatives upon resignation, dismissal or death. With Article (135 / III) of the constitution stipulated that the speaker and members of the House of Representatives must not be included in the

de-Baathification .

2- Conditions stipulated in the Elections Law: - According to Article (49 / Third) of the Constitution, the Iraqi Council of Representatives Elections Law No. (45) for the year 2013 was issued, and Article (8) of it stipulated the conditions required in the candidate for membership in the House of Representatives, and these The conditions are as follows: -

A- That he meets the conditions that must be met by the voter, and this condition is mentioned in Article (5) of this law, which is represented by (Iraqi nationality - fully qualified - registered in the voter register).

B- His age must not be less than (30) thirty years upon nomination.

C- It should not be covered by the Law of the Accountability and Justice Authority, or any law that replaces it .

D- Not to be convicted of a felony or misdemeanor involving moral turpitude, by virtue of a final sentence of imprisonment or imprisonment .

E- He must have a Bachelor's degree or equivalent .

F- He should not have been unlawfully enriched at the expense of the country or public money.

G- He should not be a member of the armed forces or the security services upon his nomination. Or from the heads of independent bodies upon his nomination, or from employees of the Independent High Electoral Commission, including a member of the Board of Commissioners and holders of high positions in it, with the exception of those who terminated his service there not earlier than (2) two years from the date of the nomination . Hence, it is not permissible for some of the occupants of the posts to nominate for membership in the House of Representatives, in more accurate terms it is permissible to retain the position without exercising its functions, in order for the member to vacate his parliamentary duties as a member of the House of Representatives .

3- Conditions stipulated in the law to replace members of the House of Representatives: - In accordance with paragraph (Fifth) of Article (49) of the Constitution, the Law to Replace Parliament No. (6) for the year 2006 amended by Law No. (49) for the year 2007 , which was stipulated Paragraph (first) of Article (1) of it regarding cases of termination of membership in the House of Representatives, and these cases are as follows: -

A- A member of the Council holds a position in the Presidency of the State, in the Council of Ministers, or any other official position .

B- Losing one of the membership conditions stipulated in the constitution and the election law.

C- The resignation of the member from the Council.

D- Death.

E- The issuance of a judicial ruling against him in a felony, in accordance with the provisions of the Constitution .

F- Injury with a terminal illness, disability, or disability that prevents him from performing his duties in the council, accompanied by a decision from a specialized medical committee, provided that his sick leave does not exceed (3) months during two consecutive legislative seasons, and if he exceeds this period, he is retired, and the council has the right In the appeal of the medical committee decisions.

G- Dismissing a member to bypass his absence without a legitimate excuse for more than a third of the council's sessions out of the total of one legislative term .

As for Article (2) of this law, cases of vacancies in one of the seats in the House of Representatives have been addressed for one of the reasons mentioned in Article (1), so it is replaced by a candidate from the same list in which the seat allocated to him is vacant in the House of Representatives according to the following arrangement: -

A- If the vacant seat is among the compensatory seats specified by the electoral law: he shall be compensated from the compensatory list of the political entity concerned, provided that the candidate is among those who have previously been approved by the Commission to nominate them to run in the elections regardless of the province.

B- If the vacant seat is within the governorate seats specified by the electoral law, he will be compensated from the block to which the replacement member belongs in the governorate list, and if the names of the candidates in a governorate are exhausted, then the relevant entity must provide the name of another candidate, provided that he is from among The entity nominated them on the electoral list in another governorate, and among those who have already been approved by the Commission: - An example of this is what the Supreme Federal Court went to by replacing the deputy who objected to her membership with the deputy who became Minister of Health, despite the fact that she was not a candidate for Maysan Governorate but for a governorate Dhi Qar, and that Approval of her candidacy led to a shortage of seats in Maysan Governorate, so the court decided to rule that the House of Representatives decision to validate the membership of this deputy was not correct, because it came contrary to paragraph (2) of Article (2) of the Law to replace Parliament No. (6) for the year 2006 as amended. .

A- If the vacant seat belongs to a woman: a woman is not required to be

replaced by it, unless this affects the minimum representation of women in the assembly : - This has been the Supreme Federal Court has rejected the appeals submitted to her unconstitutional (the third step) of the system Distribution of seats in Parliament No. (14) for the year 2014 issued by the Independent High Electoral Commission related to the account (quota for women), because it came in conformity with the provisions of Article (49 / Fourth) of the Constitution and Article (14) of the Iraqi Parliament Elections Law No. (45) For the year 2013 .

D - If the vacant seat belongs to a political entity consisting of one person: the seat is allocated to another candidate from another political entity who has obtained the minimum number of votes to be obtained on the seat.

But the question that arises in this field is what is the ruling if the objector and the deputy objecting to the validity of his membership belong to the same bloc and from the same governorate, but the difference between them is that one of them got more votes than the second? When referring to the aforementioned article, we find that it came free of treatment for the aforementioned case, but the Supreme Federal Court went to that the solution to this issue is by reference to the Iraqi Parliament Elections Law No. (45) for the year 2013 amending and specifically Article (13 / third) of it which states However, “the seats will be distributed within the list by re-arranging the sequence of candidates, based on the number of votes obtained by each of them, and the first winner will be the one who gets the highest number of votes, and so on for the rest of the candidates” .

Second: The appeal must be related to one of the cases in which the membership is valid and not its termination or an appeal from the electoral appeals: - Acceptance of the appeals from the Federal Supreme Court in the decisions issued by the House of Representatives must be restricted by the existence of one of the cases determining the validity of the membership mentioned in the paragraph (First) is one of the substantive conditions, and these appeals are not accepted if they are related to dropping membership in the Council or related to electoral appeals.

1- Dismissing the membership differs from the separation in the validity of the membership: - A - in terms of nature: - Because the abolishment of the membership means its removal after it has been proven, and it differs from its nullity, which states that the membership is not valid since its inception . Hence, it is a disciplinary punishment that undermines the authority of the member, because the representation of the people is based on trust and commitment in the duties imposed by the council’s internal regulations on the duties assigned to the members, so that if one of the members violates

these duties, the penalty imposed against him by the council itself was to drop his membership by the majority that he decided the Constitution(). Or that the constitution or related laws may stipulate certain conditions in the member, but these conditions are not required only at the beginning of the nomination, but rather their continued existence throughout the membership period . While deciding on the validity of membership is intended to meet the conditions set by the constitution or laws related to the candidate for membership in the House of Representatives, and these conditions must be met in the candidates from the day of the nomination (for example, that the deputy has not issued a court ruling that has become a crime against him), b - In terms of impact: - If these conditions are not met on this day, in this case the validity of the membership shall be separated by its nullity by a decision that applies retroactively, meaning that the decision issued for nullity is revealing to nullity and not its establishment, other than dropping the membership in which these terms are intended to be met on the day of the nomination. However, after obtaining the membership, there was a reason that led to its demise (for example: If the deputy has been issued after becoming a member of a court ruling, he has become a criminal offender . But the effect of dropping is limited to the future only, that is, the decision issued to cancel the membership applies from the date of its issuance and not retroactively , c - In terms of the competent authority: - The dropping of membership is within the jurisdiction of the House of Representatives and does not fall within the jurisdiction of the Federal Supreme Court , because It is concerned with the chapter on the validity of membership, and this is what the court affirmed by its ruling number (27 / Federal / Media / 2015) on 14/4/2015 .

2- Also, deciding on the validity of membership differs from electoral appeals: A- In terms of nature: - Because the latter is intended for everything related to the electoral process, starting with the establishment and organization of electoral districts, the polling process, and following up the organization of the register of political entities and lists of candidates, through counting and counting For the votes of the voters, and ending with the announcement of the final results of the elections and their approval by the competent judicial authorities , b- In terms of the competent authority: - The aforementioned matters fall outside the jurisdiction of the Federal Supreme Court and fall within the competence of the Independent High Electoral Commission , for example the request of the High Commission It will be transferred to the elections regarding the legal mechanism for determining the candidates to fill the compensatory seats for the 2010 Par-

liament elections, as the court prepared its ruling number (27 / Federal / 2010) on 3/29/2010 that “.... this request is at the core of the tasks of the Independent High Electoral Commission And its ruling in this regard is subject to appeal before the competent judicial body, so its request comes out of the jurisdiction of the Federal Supreme Court

So the court decided to reject the request from the lack of jurisdiction “. According to Article (4) of its Law No. (11) of 2007 Appeal against its decisions before the judicial body for elections formed in the Federal Court of Cassation , according to what is stipulated in Article (8) of this law , and the purpose of that is to distance the electoral process from the influence of any other legislative or executive authority, in furtherance of the principle of separation of powers The principle of the independence of the judiciary , while the role of the Federal Supreme Court in this area is limited only to the ratification of the final results of the general elections for membership of the House of Representatives, according to its jurisdiction contained in paragraph (VII) of Article (93) of the Constitution .

The third requirement

Judgments issued by the Federal Supreme Court regarding appeals

At the end of this topic discussion, the necessity of clarifying the rulings issued by the court regarding requests to decide the validity of the membership of the members of the House of Representatives remains, and it is represented by one of the following provisions: -

First: The ruling to dismiss the case from the jurisdiction: The court rules to dismiss the claim of the plaintiff from the jurisdiction, in the event that his case does not relate to the issue of deciding on the validity of membership, as in cases of electoral appeals that fall within the jurisdiction of the Independent High Electoral Commission in accordance with its applicable law, and will be Appeal its decisions in front of the judiciary of the elections formed in the Federal Court of Cassation . The same applies to dropping membership, which falls within the jurisdiction of the House of Representatives itself. As is the case in the rulings issued by the Federal Supreme Court, which we referred to when examining this within the objective conditions.

Second: Judgment for dismissing the plaintiff’s suit: - The court may rule to dismiss the plaintiff’s suit, in the event that a condition of the formal or substantive conditions is not met, as in the rulings issued by the Federal Supreme Court that we referred to when examining those conditions, and then one of these conditions It leads to dismissing the objector’s lawsuit, as if it was proven that he was unable to prove his affiliation with the same

bloc to which the member objecting to the validity of his membership belonged, so the court ruled ... that the provisions of paragraph (2) of Article (2) of the Law on Replacing Members are not available In the plaintiff's request for the vacant seat seat indicated on him ... the court decided to dismiss the case ... ". Likewise, if the plaintiff is not from a bloc or a conservative MP who objected to the validity of his membership, the court went on to say that "... when the contested MP and the disturbed deputy ... belong to the same bloc and governorate (Dhi Qar / State of Law Coalition / independent entity) , And that the plaintiff, even if he is from the same list ... except that his bloc and its governorate are different - he belongs to the Islamic Dawa Party and from the governorate of Baghdad - ... and so that his claim is lost for its legal basis, he decided to dismiss it .. ". Likewise, if a member who objected to the validity of his membership resigned during the hearing of the lawsuit, the court held that "... the member who objected to the validity of his membership resigned during the hearing of the case ... Then the objector to his membership is no longer a deputy in the House of Representatives, and the parliamentary seat is vacant from New after accepting his resignation, so that the lawsuit has been vacated and rendered irrelevant, the Supreme Federal Court decided to dismiss the claim of the claimant ... ".

Third: Ruling on the validity of the decision of the House of Representatives: - The court may rule on the validity of the decision issued by the House of Representatives as to whether or not a membership of one of its members is valid, according to its competence stipulated in paragraph (First) of Article (52) of the Constitution, in the event that what is stated is claimed The plaintiff, and that the council take a decision that is identical to what is stated in the constitution and the relevant laws, as if it were proven that the plaintiff belongs to a bloc other than the one to which the objected deputy belonged, as the court ruled that "... and that the resigned deputy is from the National Front for Dialogue Al-Watani, a candidate from Baghdad Governorate and from the list of (Arab Coalition), as well as the representative who objected to health His membership ... while the plaintiff is from the "Al Nushur Party" from the "Arab Coalition" list, therefore, the conditions prescribed for the vacant parliamentary seat works are not available in accordance with Article (2/2) of the law to replace members Not available in his claim, ... and the decision of the contested House of Representatives that it is not correct is consistent with the law and the constitution, and for this reason the Supreme Federal Court decided to ratify it ... ". Likewise, if the objector is from the same gover-

norate and mass of the objector as the objector, but his votes are less, for example, what the court went to by its ruling number (49 / Federal / Media / 2015) on 6/9/2015 "... that the objector and the deputy objecting to the validity of his membership belong to To the same bloc and from the Salah al-Din governorate, in addition to the fact that the objector obtained fewer votes than the votes obtained by the objected deputy, so the seat will be the share of the objected objector, that is, the House of Representatives decision to dismiss the objection of the objector was correct and in accordance with the provisions of the law ... " Or if the objector is from the same governorate but tried to change his mass, for example, what the court went to by its ruling number (20 / federal / media / 2016) on 10/10/2016 that "... when the objector was the objector and the procrastinated deputy ... And both of them are from the State of Law coalition - the entity of the Islamic Dawa Party -, and the plaintiff tried to change his affiliation to become - the entity of the Islamic Dawa Party - the organization of Iraq ..., so the contested House of Representatives decision to dismiss the plaintiff's objection .. It was true and based on the rule of paragraph (first) of Article (52) of the Constitution ... ".

Fourth: Ruling on the invalidity of the decision of the House of Representatives: - The court may rule that the decision issued by the House of Representatives is not valid or the membership of one of its members is correct, i.e. in the event of what is stated in the claimant's claim, and that the Council takes its decisions contrary to what is stated in the constitution and related laws, For example, if the defendant is from another bloc or governorate, as if it was proven that the plaintiff belongs to the same bloc to which the replaced deputy belonged, and that the defendant opposes the validity of his membership from another bloc, as the court ruled ... that the defendant replaced the deputy who became Deputy Prime Minister because he is from another bloc, while the plaintiff is from the same bloc as Deputy Most Del, so the court ruled that the House of Representatives validity of the contested decision ... ".

Or prove that the plaintiff belongs to another governorate, and that validating the validity of the deputy objecting to the validity of his membership will lead to a decrease in the number of seats allocated to that governorate, as the court ruled and that the third person ... is a candidate from the governorate of Baghdad and not Salah Religion, and as Salah al-Din Governorate has not exhausted the names of its candidates, ..., therefore, no candidate from another governorate will be granted, so the Supreme Federal Court finds that approval of the validity of Mr.'s membership ... by

the House of Representatives violates the provisions of the second (second)) From Article (Second) of Law No. (6) of 2006 amending, ..., and that the approval of his candidacy reduces the number of seats allocated to For a governorate whose seats have not been completed ... Therefore, the Federal Supreme Court decided to rule that the House of Representatives decision to endorse the third person's nomination was not correct ... for violating the law ... “. Likewise, the court went to the necessity that the members of the House of Representatives be replaced in accordance with the replacement law, and that the bloc to which the vacant seat belongs belongs has the right to nominate the replacement member, as it ruled that “... the House of Representatives went to an alliance of its nominee (the Accord Movement), which is the person Third ..., and who belongs to this movement ..., with the presence of the concerned bloc (Iraqi White) ..., and that the fact that the third person swore an oath and occupying the seat violated the provisions of paragraph (2) of Article (2) referred to above, it The ruling decided that the Iraqi parliament's decision to endorse the third person's nomination ... would be invalid ... cancel it and notify the parliament of an overture Block (Iraqi white) to see nomination in accordance with paragraph mentioned ... “.

Conclusions and proposals //

1- The constitutions did not take a single direction regarding the authority concerned with deciding the validity of the membership of the members of the House of Representatives, some of which make this matter within the competence of the Parliament itself, excluding others, due to several considerations among them, that it is an application of the principle of separation of powers, which derives from the principle of the independence of the Council Representatives to manage his own affairs, and the principle of immunity of parliamentary actions. Others make it the prerogative of the judiciary, since the attribution of that task to the parliament itself is not without political fluctuations, and the lack of an element of impartiality. In addition to the members of the House of Representatives lacking the experience and powers necessary to adjudicate on this issue, unlike the judiciary, which has sufficient means to separate it on this and other issues. Contrary to the two directions above, there are some constitutions that have made the separation in the validity of membership of members of Parliamentary councils a common mission between the judiciary and the House of Representatives, and did not make it within the competence of one without the other, due to considerations from them, that this represents a middle direction between the previous two directions and makes the mat-

ter within the jurisdiction of the Council Parliament, but at the same time working to involve a judicial authority with him in that. As for the last trend, this made the jurisdiction of a political body independent of parliament and the judiciary, such as the French Constitution of 1958, which made this the jurisdiction of the Constitutional Council.

2 - As for the position of the Constitution of the Republic of Iraq for the year 2005 from these directions: - It is noted from the extrapolation of Article (52) of it, that this constitution has adopted the direction that makes deciding the validity of the membership of the members of the Council within the jurisdiction of the Council itself in conjunction with a judicial authority and not any judicial authority. Rather, it is the Federal Supreme Court. And (from our point of view) the direction of the constitutional legislator in this was praiseworthy, because it avoids the defects that marred previous trends, and at the same time it combines the advantages that it has distinguished. Also, assigning the appeal to this court is of great importance, given its role in supporting the stability of the Iraqi society and forming its constitutional institutions in line with the provisions of the constitution, as well as the authority of the ruling issued in this field and binding on all authorities, including the legislative authority.

3- The Federal Supreme Court was formed according to Article (44) of the Transitional Administration Law (Repealed) and Decree No. (30) of 2005, but the aforementioned legislation did not mention any of the court's jurisdiction to decide on the validity of the membership of Parliament members, but after the issuance of The 2005 Constitution, Article (52) of it stipulated that it be granted this new jurisdiction, as the law of the court continued to apply after the entry into force of this constitution in accordance with Article (130) thereof, because the paragraph (second) of Article (93) mandated the formation of the court and determining the number of its members and the method of their selection, by a law enacted By a two-thirds majority of the members of the Council, but this law was not issued despite the end of three legislative sessions Council.

4- From the foregoing it becomes clear that the constitution is the legal basis for the court's jurisdiction to determine the validity of the membership of the members of Parliament. From (our point of view) we call for speeding up the legislation of the new court law, given its importance and the importance of the court's presence in a way that contributes to organizing its jurisdiction instead of its current law, especially after the entry into force of the 2005 constitution, since the latter included new powers that were not mentioned in its current law, including its jurisdiction to

decide on the validity of the membership of members Parliament . And must be adopted one of the solutions that we have mentioned in the folds of research. Which are represented in the following: -

The first: - It is a temporary option: - It is taken in light of the political tensions in the corridors of the House of Representatives that have led to delaying the law of the court's law, despite the end of three legislative sessions for the council, according to which the court's law number (30) for the year 2005 is modified, according to Article (130). Of the constitution and in a manner consistent with the principle of the supremacy of the constitution in accordance with Article (13) of it as the supreme and supreme law in the state, by adding the text of a last paragraph to Article (4) of this law so that its text is "the powers mentioned in the constitution and the powers that the laws provide for the jurisdiction of the Federal Court Separated by it. " With the necessity of amending the internal system of the court No. (1) for the year 2005 related to the workflow procedures in the court by adding a chapter related to the procedures related to requests to decide the validity of the membership of members of the House of Representatives, including the formal and substantive requirements required in these requests, and the court's procedures in this regard.

The second: - It is the best option: - which is represented by the speedy enactment by the House of Representatives of the new court law that required its legislation Article (92 / second) of the constitution, in order to be formed in the form set forth in this article, and to exercise its powers mentioned in Articles (52) and (93) From this constitution, with the necessity of issuing a new internal system for the court that replaces the current internal system to regulate procedures related to the functioning of the court, with the necessity of adding the text of a last paragraph to Article (93) of the constitution and its text is "ninth: The powers that the laws provide for The jurisdiction of the Federal Court to adjudicate. The possibility of issuing laws in the future that regulate issues of a constitutional nature, which make the court an object of appeal, such as the law on declaring war and the state of emergency that necessitated its legislation, Article (61 / IX / C) of the Constitution and other articles, to accommodate the proposed text added to avoid challenging the unconstitutionality of those Laws in the future.

5- To accept the appeal in a form before the Federal Supreme Court, the deputy must first object to the decision of the House of Representatives before the House itself, and this is what is stipulated in paragraph (First) of Article (52) of the Constitution, but the following notes are noted on this

paragraph: -

A- It did not specify the party to which the objection is submitted. (And from our point of view) this objection must be presented to the Speaker of the House of Representatives, as he represents the parliament and speaks in his name, and works to implement the constitution, laws and internal system, as well as his role in opening and presiding over his sessions and presenting the matters that require a vote on it and announcing its results on this side, On the other hand, the appeal that will be submitted to the court will be the president of the council is the defendant.

B- It also did not specify a specific period during which the objector must object, but only specified a period of (30) days during which the council must decide on this objection. Is this period (from the date of membership confirmation or the existence of the reason for appealing or knowing about it or otherwise?) The court's opinion numbered (7 / Federal / Information / 2015) on 2/2/2015 that "... the legislator when he opened the door to objection to membership did not specify a period for his presentation, due to considerations he considered, as it may appear during the membership period one of the reasons Which prejudices the validity of the membership of a representative, such as if it appears after a period that his educational certificate required for membership is forged, or that he was previously convicted, or other reasons that He lost one of the conditions of membership ... "That is, the objection is not limited to a certain period and that whatever reason appears to appeal the validity of the membership.

C- There are forms that present themselves in this regard, so what if the objection is submitted and the council delays in deciding it? In this case, it is not permissible to leave the fate of the objector at the mercy of the council, because this delay harms the public interest, by depriving the voters who elected this member of their true representation inside the council, and continuing to spend his salaries - especially in light of the absence of a legal text that stipulates the suspension of his salaries during the objection period The challenge - as well as harm to political parties or governorates in terms of reducing the number of seats won. In addition, it harms the interest of the objector himself to delay submitting his appeal to the court or formally rejecting it, and to suspend his legal status by depriving him from participating in the sessions of the council and voting on the laws and decisions taken by the council - especially in light of the absence of a legal text to determine the legal status of the objector to The validity of his membership and the extent of his enjoyment of the rights and duties of membership during the period of objection and appeal - and for the

purpose of avoiding this from (our view) the council must be restricted by a specific period to decide the truth in the objection and otherwise it is considered a ruling, by amending the text of Article (52) of the constitution to be as follows. First: The Council will decide Deputies in the validity of the membership of its members, within thirty days from the date of registration of the objection, and by a majority of two-thirds of its members, otherwise the objection will be returned by ruling, if that period expires without deciding it. Second: It is permissible to appeal the decision of the Council before the Federal Supreme Court, within thirty days from the date Its issuance, or several, is considered valid.

6- One of the substantive conditions for accepting appeals from the Federal Supreme Court in decisions issued by the House of Representatives is that they are restricted by the existence of one of the cases in which the membership is only valid. Accordingly (from our point of view) the court must not accept other appeals, that is, if they are related to cases Others, including dropping membership in the council or related to electoral appeals. And the lack of confusion between them because of the difference in each of them in several ways, and the inadmissibility of confusion between them: -

A- Dismissing the membership differs from the separation in the validity of the membership: - In terms of nature: - Dropping the membership means its removal after it has been proven, and it differs from its nullity, which states that the membership has not been validated from its inception, and therefore the penalty prescribed to it by the same council for dropping its membership By majority determined by the constitution. Or that the constitution or related laws may stipulate certain conditions in the member, but these conditions are not required only at the beginning of the nomination, but rather their continued existence throughout the membership period. While deciding on the validity of the membership means that the conditions specified by the constitution or the laws related to the candidate for membership in the House of Representatives are fulfilled, and these conditions must be met by the candidates from the day of the nomination. As for the impact: - If these conditions are not met on this day, in this case the membership validation is null and void by a decision that applies retroactively, meaning that the decision issued for nullity is revealing to nullity and has no origin, unlike dropping the membership whose effect of dropping is limited to the future only That is, the decision issued to cancel the membership is effective from the date of its issuance and not retroactively. And in terms of the competent authority: - The revocation of

membership is within the jurisdiction of the House of Representatives and does not fall within the jurisdiction of the Federal Supreme Court, because it is concerned with the validation of the membership.

B- The separation of membership validity also differs from electoral appeals: - in terms of nature: - because the latter is intended for everything related to the electoral process, starting with the establishment and organization of electoral districts, the voting process, and following up on the organization of the political entities register and lists of candidates, through counting and counting of votes The voters, and ending with the announcement of the final results of the elections and their approval by the competent judicial authorities. In terms of the competent authority: - These matters fall within the jurisdiction of the Independent High Electoral Commission, according to what is stipulated in Article 4 of its Law No. (11) for the year 2007. Appeal of its decisions will be made before the judicial body for elections formed in the Federal Court of Cassation, according to what it stipulated Article (8) of this law, while the role of the Federal Supreme Court in this field is limited only to certifying the final results of the general elections for membership of the House of Representatives, according to what is stipulated in Paragraph (VII) of Article (93) of the Constitution.

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