



The Federal Supreme Court (F.S.C.) has been convened on 6.5.2013 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

**The Plaintiff:**

Minister of Higher Education and Scientific Research/ in addition to his post - his agents dr.(alif.sin.shin.) director of legal and administrative office in the ministry, (ain.ta.ha.) assistant general director, (qaf. Ain.ain.) department manager in the mentioned office.

**The defendant:**

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the senior legal advisor in the I.C.R. (heh. mim. sin.) and (Sin. ta. yeh.) manager in the legal office in the I.C.R..

**The claim:**

The agents of the plaintiff claimed that the defendant in addition to his post issued the Second Amendment Law to the Academic Service Law no. (93) for 2012 in a way that violates

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the constitution, therefore they are challenging it for being unconstitutional for violating the formality and the mechanism stated in the constitution on enacting the laws for the following reasons:

1. The defendant violated the decision of the F.S.C. as it stated constitutional principle in the decision no.(43/federal/2010) on 12.7.2010 and (44/federal/2010) on 12.7.2010.
2. The Iraqi constitutional has stated parliamentary constitutional regulation based on the principle of distributing the powers and each constitutional institution respects the powers of other institutions, the constitution specified exclusively the authorities of the I.C.R. in article (61) of it, in the field of legislations, the constitution assigned the mentioned Council the authority to enact federal laws according to the law drafts presented by the Council of Ministers under article (80) of the constitution, this authority is exclusive to the executive power, as the constitution authorizes the president of the republic and the prime minister to present law drafts according to article (60/1<sup>st</sup>) of it.

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3. The constitution differ between the law draft and the law proposal, as it authorizes the President of the Republic and the Council of Ministers to present law drafts to the Council of Representatives according to what we mentioned above, the law proposal authorizes ten (10) of the Council members or one of it competent committees the power to represent it under article (60/2<sup>nd</sup>) of the constitution. the law draft is different than the law proposal, the law proposal must be presented to the body that have the power the enact it in the law draft (the Council of Ministers) after going throw the administrative and legislative procedures in the ministries and institution of the governorate before being discussed by the council of ministers and proposing on the I.C.R. to enact it.
  4. We point out the importance of the principle of power separation approved by the constitution in article (47), whereas the I.C.R. violated this principle and exceeded the competences of the government that are stated in the constitution, which are its competent to present the law drafts under article (60/1<sup>st</sup>) of the constitution, and its competent to plan and implement the general policy of the state and the general plans stipulated in

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article (80/1<sup>st</sup>) of the constitution, the I.C.R. has done more than violating the constitutional provisions of laws enacting mechanism but also violates its bylaw that obligates the financial committee to take the opinion of the executive authority in each amendment suggested by the committee in the credits arises from implementing the law, the committee report must include the opinion of (the competent executive body) in this regard with its reasons, this provision to be implemented on any proposal of amendment presented by any committee of the I.C.R. commissions or one of its members if it cause financial implications as stated in article (130) of the bylaw of the I.C.R..

5. The F.S.C. decision no.(43/federal/2010) stated that (the executive authority are concerned with submitting the laws drafts, they must be submitted by competent bodies of the executive authority because it is in relation to financial, political, international and social obligations, and that who fulfills these obligations is the executive authority according to what the constitution has stated in article (80) and not the legislation authority, the Iraqi constitution in article (60) of it stated two sources from which the law



drafts are presented and they are exclusively of the executive authority the President of the Republic and the Council of the Ministers, and if it was presented by other body that represent constitutional violation to the provision of article (60/1<sup>st</sup>) of the constitution.), that didn't occur in the second amendment law for the law of Academic Service no.(93) for 2012 because it is a proposal presented by the parliamentary committee of higher education in the I.C.R., the Council voted on it without referring it to the competent executive authority to enact it as a draft, and without the knowledge of the competent executive authority (the Ministry of Higher Education and Scientific Research), it also included additional financial burden on the executive authority which confuses the ministry plans and strategies.

6. The I.C.R. after reading the proposal of second amendment law for the law of Academic Service no.(23) for 2008, the ministry of the state of the Council affairs addressed copy of it to the general secretariat of the Council of Ministers/ the legal office by the letter no.(4/qaf/6858) on 14.8.2012, where the legal office in the general secretariat of the Council

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referred the subject the Finance Ministry in the letter no.(qaf/2/2/100) on 28.8.2012 to state the opinion, it responded with official letter issued from the National Pension Commission no.(2325) on 14.10.2012 to reject with reservations on the law proposal, in addition to the reservations of the general secretariat of the Council of Ministers on the law according to its letter no.(qaf/5/2/100/34160) on 30.10.2012, but the I.C.R. didn't wait the response of the Finance Ministry, and didn't present the subject on the Ministry of Higher Education and Scientific Research in first place, accordingly it included amount of defects and mistakes. Enacting the mentioned amendment law leads to increasing the expenditure within the operating budget of the Ministry in unplanned form which leads to increase paying the retirees pension in way that leads to encouraging the professors to refer to retired without remaining in the service, and distributing the powers between the presidents of the universities without interfering of the ministry which leads to case of confusion and disorder in distributing the human resources and preventing appointing new professors, and remaining the same old scientific ranks

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without giving the young energies an opportunity or for the return of scientific competencies from abroad, and breaching the principle of the existence of stable transactions resulting from legislative stability and other reasons that they mentioned, they requested the F.S.C. to rule to repeal the law no. (93) of 2012 (the Second Amendment law for the law of Academic Service no.(23) for 2008 ) for violating the constitutional and parliamentary bylaw' provisions.

After completing the required procedures according to paragraph (2<sup>nd</sup>) of article (2) of the F.S.C. bylaw no.(1) for 2005, a date for the argument has been set the agents of the plaintiff and defendant has attended, and started in presence public argument, the plaintiff' agents repeated the case petition and requested to rule according to it, and presented explanatory draft for the case petition, the defendant agent requested to dismiss the lawsuit for the reasons listed in the answering draft submitted to the court dated on 27.1.2013 including that Iraq does not follow judicial precedents and that the Iraqi judiciary considers each case separately and takes into account the evolution of the situation and the stability of transactions, the Constitution authorizes the Council of Representatives the right to submit proposals for laws and grant the Council of

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Ministers and the President of the Republic the right to present laws drafts in article (60) of the Constitution, but the constitution did not go down to the level of defining each of them, nor how to formulate and detail it, the constitution stipulates general principles and leaves their elaboration to other forms of legislation, the opinion of sending law proposals to the government to formulate them has no basis in the constitution, but rather contradicts the principles of the representative system and destroys the principle of separation of powers upon which the plaintiff's agents relied on the case, and that it confiscates the parliament's role in formulating law proposals. the National Pension Authority endorsed some observations on the amendment proposal related to the formulative and subjective notes and did not reject the proposal, the General Secretariat of the Council of Ministers letter does not refer to a observations on the content of the proposed law, but rather referred to an allegation that it was not presented to the relevant authorities since the issue was presented before the Council of Ministers they submitted a letter issued by the Higher Education and Scientific Research Committee in the Council of Representatives no.(1211) on 4.12.2012 confirming the Ministry's knowledge of it, the reasons mentioned in the case petition doesn't represent

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constitutional reasons to dismiss the lawsuit, he mentioned number of letters to prove presenting the proposal on the competent bodies including the General Secretariat of the Council of Ministers, then he submitted answering draft dated on 8.4.2013 to the explanatory draft of the plaintiff' agent dated on 17.2.2013 and 31.3.2013, according to the court' question directed to the plaintiff agent in the session dated on 12.3.2013 that stated (is the proposal actually has been sent to the bodies referred to in the answering draft dated on 27.3.2013, which are the General Secretariat of the Council of Ministers, the Ministry of Higher Education and Scientific Research, the Ministry of Finance and the Pension Authority, and the answers received from those authorities if they were sent to.), the plaintiff' agent answered the question by the draft dated on 15.4.2013 clearing that the Council of Representatives ratified the amendment law without waiting for receiving the proposals from the related executives bodies especially the Ministry of Higher Education and Scientific Research as it wasn't invited for that, in answering for the question he stated that the general secretariat reserved on the proposal and challenged the constitutionality of the amendment law in its letters (qaf/2/2/100/34160) on 30.10.2012 and (qaf/2/2/100/37607) on 20.12.2012 attached

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to the draft, by reviewing the letters it shows that the General Secretariat of the Council of Ministers/ the legal office/ by the letter no. (qaf/2/2/100/34160) on 30.10.2012 requested the Office of the Minister of State for Parliamentary Affairs to convey her vision to the Council of Representatives regarding the proposed law for amending the university service law, which includes:

1. the first amendment to the service law did not take into account the draft law on Academic service that was approved by the Council of Ministers according to its decision no.(341) of 2009, and this led to the issuance of the law without regard for what is produced It has unsatisfactory effects on educational institutions and teaching staff, and this is what prompted the Council of Representatives to approve another draft within a very short period, it did not request the government's opinion of this proposal or a request for coordination with it on this proposal, and this calls on us to record our reservations about it, it was supposed to in first place to clarify the opinions of the relevant authorities, especially since the proposal includes financial commitments.
2. The council of Representatives did not abide by the decisions of the F.S.C. no.(43/44) for 2011, which

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specified the mechanism of legislation through the government channel, so the ministry will appeal its unconstitutionality when it is published in the official gazette). As for the second letter no.(qaf/2/2/100 /37607) on 20.12.2012 it is addressed to the Ministry of Higher Education and Scientific Research in which the General Secretariat of the Council of Ministers asked the ministry to challenge the law for its unconstitutionality As soon as it was published in the official gazette and the defendant's attorneys stated their statements regarding the aforementioned in their editorial draft submitted to the court on 8.4.2013. the court heard the statements of the agents. whereas nothing left to be seed, the argument is closed, the decision issued publicly.

### **The decision:**

During scrutiny and deliberation by the F.S.C., it found that the Minister of Higher Education and Scientific Research/ in addition to his post filed this lawsuit to challenge the constitutionality of second amendment law to the law of Academic service no.(93) for 2012 for violating the formality and mechanism of legislation stipulated in the Constitution, the court found that this law originally is proposal presented by the parliamentary committee to the I.C.R. to be enacted,

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the Council voted on it without referring it to the competent executive authority to formulate it as law draft, it was legislated by the no.(93) of 2012 and it wasn't prepared as draft by the executive authority as stipulated in article (60/1<sup>st</sup>) of the Constitution which stated that (draft laws shall be presented by the President of the Republic and the Council of Ministers) as the law (the amendment) in the above form added additional financial burdens on the shoulders of the competent executive authority and confused the ministry's plans and strategy and causes inflate the pension so that it threatened the migration of scientific competencies towards retirement. For other reasons listed in the case petition, the Minister of Higher Education and Scientific Research challenged the mentioned law. The defendant agent claimed that the law was presented before the Council of Ministers and the competent bodies, the agent of the plaintiff responded with the draft dated on 15.4.2013 stating that the Council of Representatives has enacted and approved the law proactively before addressing the government, the I.C.R. didn't have time to know the government proposals and didn't ask to coordinate with it, the general secretariat of the Council of Ministers has already reserved the law and challenged it for unconstitutionality according to the letters (qaf/2/2/100/

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34160) on 30.10.2012 and (qaf/2/2/100/37607) on 20.12.2012. the court reviewed the first one that is directed to the Office of the Minister of State for Parliamentary Affairs which included that the general secretariat of the Council of Ministers is about the second amendment of the Academic service law, requested to transfer it to the I.C.R. clearing that (the first amendment to the University Service Law did not take into account the draft university service law approved by the Council of Ministers according to its decision (341) for 2009, and this led to the issuance of the law without taking into account the unsatisfactory effects that may result on educational institutions and teaching staff, and this is what prompted the Council of Representatives to approve another draft within For a very short period of time, he did not ask for the government's opinion on this proposal or a request for coordination with it, and this invites us to record our reservations about it, it was supposed to in first place to clarify the opinions of the relevant authorities, especially since the proposal includes financial commitments, the I.C.R. did not abide by the decisions of the F.S.C. no.(43/44) for 2010, which specified the mechanism of legislation through the government channel, so the ministry will appeal its unconstitutionality when it is published in the official gazette),

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this means that the Council of Ministers did not express its approval on the proposal, but rather requested to challenge of the unconstitutionality of the aforementioned amendment to the law subject of the lawsuit, also the Ministry of Finance did not announce its approval of the proposed law, which is part of the Council of Ministers. The court finds from the investigations and reviewing the regulations exchanged between the two parties and from the official letters exchanged on the subject that the second amendment to the University Service Law (93) of 2012 was not presented as a draft law by the Council of Ministers, nor was the proposal of the law prepared by the Council of Representatives and sent to the Council of Ministers, prepared by one of the committees of the Council. According to the direction of the court mentioned in the rulings issued in the lawsuits (43/federal/2010) and (44/federal/2010), it is necessary to send (draft laws) submitted by members of Parliament or from one of its specialized committees to the executive authority (the President of the Republic or the Council of Ministers) to issue the provisions contained in the two articles (60/1<sup>st</sup>) and (80/1<sup>st</sup>, 2<sup>nd</sup>) of the Constitution, as the implementation of the provisions of these two articles is not aimed at preventing the parliament from its inherent right to legislate laws because

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that is one of its competencies stipulated in the article (61/1<sup>st</sup>) of the constitution, but for (law proposals) to take its constitutional contexts in the field of legislation, by formulating in the form of (draft laws) in coordination with the executive authority that article (80/1<sup>st</sup>) of the constitution entrusts with tasks of (to plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a Ministry), the implementation of these tasks requires that (the proposals of laws must be sent to the executive authority to study it and make it in the form of draft laws if they do not intersect with the constitutional provisions and laws, and are consistent with the general policy of the state and with the plans prepared in all areas, including the political, social and financial fields and This is according to the specific contexts for preparing draft laws, and if the executive authority abstained or abstained from preparing a bill that came in the form of a (proposed law) from the Council of Representatives without the executive authority relying on a substantiation from the constitution or the law and without a reason contrary to the general policy of the state, the Council of Representatives can use its powers stipulated in article (61/8<sup>th</sup>) of the Constitution, including the withdrawal of confidence from the Prime Minister and

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considering the Ministry resigned after conducting the required questioning according to the constitution and the bylaw of the Council of Representatives, considering that the Council of Ministers has violated the provisions of the Constitution, and thus we are in front of the proper implementation of the principle of separation of powers stipulated in Article (47) of the Constitution and the proper implementation of the principle of sharing the tasks stipulated in articles (60/1<sup>st</sup>) and (80/1<sup>st</sup>, 2<sup>nd</sup>) of the Constitution, and to prevent overlapping tasks between the authorities and to achieve the unity of the state's general policy. for all of the above, and since the second amendment to the University Service Law (93) of 2012 was enacted without following the foregoing contexts referred to above, it came in contravention of the Constitution, the Court decided to rule that it is unconstitutional and to repeal it, and to burden the defendant in addition to his post the expenses and advocacy fees for the plaintiffs' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously on 6.5.2013.

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