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The Federal Supreme Court (F.S.C.) has been convened on 12.3.2013 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:**

Sheikh Dr. Khaled Aba Dhar Al-Attayah, head of the parliamentary bloc State of Law - his agent the attorney Yaseen Kadhem Alsaady.

**The defendant:**

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

**The claim:**

The agent of the plaintiff claimed that the I.C.R. on 23.1.2013 voted on law proposal that specify the mandate of the I.C.R. president, president of the republic, and the prime minister that was enacted in the mentioned session, as this law violated the constitutional provisions formally and

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Athraa



objectively therefore he challenged it for being unconstitutional for the following reasons:

**First: Formally :** the Constitution stated in article (60/1<sup>st</sup>) that ((bill laws shall be presented by the President of the Republic and the Council of Ministers))and stated in (2<sup>nd</sup>) that ((proposed laws shall be presented by ten members of the Council of Representatives or by one of its specialized committees)), from extrapolating the constitutional texts it states the principle of separation of powers in article (47), the submission of laws bill are designated for the executive authority, they must be submitted by competent authorities in the executive authority in relation to financial, political, international and social obligations, the one who fulfills these obligations is the executive authority according to the constitution stipulated in the article (80) and not the legislative authority. the Constitution of Iraq stated in article (60) of it two paths to submit the law bills, these paths are exclusively of the executive authority the President of the Republic and the Prime Minister, if it were represented by other that represents constitutional violation to the text of article (60/1<sup>st</sup>) of the Constitution, paragraph (2<sup>nd</sup>) of article (60) of the

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Athraa



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Constitution authorizes the I.C.R. to submit laws proposals throw ten members of the I.C.R., or throw one of its competent committee. The proposed law doesn't means the law bill, because the proposal is an idea, the idea is not bill, the proposal shall take it path throw one of the paths mentioned above... etc.

**Second: objectively :**

**First:** what stated in provisions of article (3/1<sup>st</sup>, 2<sup>nd</sup>) of the law voted by the I.C.R. contradicts the constitutional provisions specially the provision of article (76) which stats that (the President of the Republic shall charge the nominee of the largest Council of Representatives bloc with the formation of the Council of Ministers.) this text is about absolute right granted by the Constitution for the nominee of the largest bloc in the Council of Representatives to form the government when assigned by the President of the Republic, as it fixed in the legal jurisprudence that the absolute shall be implement absolute unless a provision was stipulated to restrict it, if the constitutional legislator meant other than that, he would have stated that the nominee chosen by the President of the Republic didn't occupy the position for two cycle or more, therefore, restricting this absolute

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Athraa



constitutional right by law enacted by the I.C.R. is violation for the aforementioned provision, and exceeding the general constitutional principles that consider the rights stipulated in it sanctity therefore restricting it by a legal text is clear violation to these principle.

**second:** article (72) of the Constitution stated clearly that the term in office of the President of the Republic is limited four years, it is permissible to re-elect him for second mandate according to ((the President of the Republic's term in office shall be limited to four years. He may be re-elected for a second time only)), the term in office of the President of the Republic is limited to two terms, the same person is not allowed to occupy the post for more than two terms, it is clear definite provision. The Constitution in articles (76, 77, 78, 79) about the term of office of the Prime Minister it stated in absolute and wasn't restricted unlike what it stated in article (72/1<sup>st</sup>) regard the President of the Republic...etc.

**Third:** article (77/1<sup>st</sup>) of the Constitution stated that ((the conditions for assuming the post of the Prime Minister shall be the same as those for the President of the Republic, provided that he has a college degree or

Athraa



its equivalent and is over thirty-five years of age.)), so the restriction of the term of office is not related to the mentioned condition.

**Fourth:** article (20) of the Constitution stated (Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office)).

The Constitution stipulated the parliamentary system, which stipulated the previous provisions. Therefore, defining the prime minister's term of office in the parliamentary system is a departure that is not included in the constitutional principles, and the issue of organizing the work of the three authorities is a constitutional issue for the seriousness of the issues that it defines and on this basis the text of the constitution and in detail On organizing the work of the executive, legislative and judicial authority, and on this basis came detailed provisions related to organizing the work of the three authorities in the state, which is the subject of determining the mandate of whoever is in charge of it is a very serious issue, and for this reason the constitution does not explicitly stipulate that the mandate of the prime minister shall be defined in two or more terms. for the reasons mentioned the plaintiff agent ask the F.S.C. to rule that the law of limiting the three presidencies of

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Athraa



the state is unconstitutional for violating the constitutional principles, and to burden the defendant in addition to his post the fees. On the argument day the agents of both parties attended and started in presence public session. The defendant agent repeated the answering draft submitted to the court on 23.2.2013 requesting to dismiss the lawsuit ad to burden the plaintiff the expenses, as the required condition in the plaintiff to initiate a lawsuit are not available, and as the proposed law is under legislation and isn't approved yet, he requested to dismiss the lawsuit because he required formality in article (93/3<sup>rd</sup>) of the Constitution isn't available in laws subject of challenge for unconstitutionality, the court reviewed the drafts of the case and parties statements, whereas nothing left to be said, the argument is closed, the decision issued publicly.

### **The decision:**

During scrutiny and deliberation by the F.S.C., it found that the plaintiff agent challenge the constitutionality of the law of limiting the three presidency of the state for violating the constitutional principles that he mentioned in the case petition, the court found that the challenged law wasn't published in the official gazette until the date of filing the lawsuit on 10.2.2013 therefore it wasn't in force and under

Athraa

Republic of Iraq  
Federal Supreme Court  
Ref. 5 / federal /media/ 2013



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implementation on the filing date, as the F.S.C. is competent to monitor the constitutionality of laws and regulations in force and not those are not in force under article (93/1<sup>st</sup>) of the constitution of 2005 which obligate to dismiss the lawsuit from this aspect. Therefore the F.S.C. decided to dismiss the lawsuit from this aspect, and to burden the plaintiff the expenses and advocacy fees for the plaintiffs' agents amount of (ten thousand) IQ.D. This decision has been issued in presence, unanimously and public on 12.3.2013.

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Athraa