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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:**

(sad. Jim.beh.) president of the human right committee/  
NGO - his agent the attorney (yeh.sin.).

**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. Speaker, President of the republic, and the Prime Minister which was enacted in the mentioned session, as this law violated the constitutional provisions formally and objectively therefore he challenged it for being unconstitutional for the following reasons:

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1- Paragraph (2<sup>nd</sup>) of article (60) of the Constitution authorized the Council of Representatives to present proposed laws by ten members of it or by one of its specialized committees, 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 for preparing the law bill according to what stated in laws and valid regulations if that was approved with the policy of the executive power stipulated by the I.C.R. the law bill was proposed by group of the I.C.R. members to the presidency committee, it wasn't law bill presented by the executive power, and its violates the constitutional text, that text stated an absolute rights and didn't specify it with any limits, the absolute shall be implemented as that unless a limiting text is mentioned, as there are two issues: First: the right to vote and elect as the Constitution guaranteed this right for all citizens for both genders equally and it is an absolute right must be respected according to the free will of the elector when he chooses someone to represent him in the supreme leadership of the country, when the votes of the electorate go to a person and he gets a supermajority that represents him, enabling him to form the largest parliamentary bloc in forming the government, then not allowing him to exercise this right is a constraint to the public will that voted for him as it chose his representative in Therefore, the restriction

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here contradicts the aforementioned constitutional text and contradicts it in form and spirit.

As for second issue which is the right to nominate, because the public will when a person is given votes by a great majority, believing that this vote for him will enable him to nominate for the presidency of the Council of Ministers, given that the right to nominate here came absolutely and no restriction has been received, so the legislation of a law that prevents him from nominating for the position of prime minister is an explicit restriction of the public will In choosing who will represent it under the leadership of the state, how is that correct?

The constitution gives rise to these rights and we come with laws that restrict them. Certainly, this is a violation of the democratic principles that the Iraqi constitution stipulated in Article (20) of it, article (1/1<sup>st</sup>) of the law consider violating to the constitutional provision stipulated in article (72/a) that (the President of the Republic's term in office shall end with the end of the term of the Council of Representatives), in time that the text of the mentioned article of the law indicated the end of the term of the President of the Republic by the end of the electoral cycle of the I.C.R., when the constitution is clear in this regard specially the expressions that the Constitution mentioned, it's not allowed to use or states different expressions from what stated in the Constitution even if it leads to the same meaning and this is an fixed principle in the constitutional jurisprudence,

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the specification mentioned in article (1/2<sup>nd</sup>) of the law in regard of the president of the republic is violation to the constitutional rules and the legislative content drawn by the Constitution in this regard. What was listed in the law of limiting the position of the I.C.R. speaker in article (2/2<sup>nd</sup>) consider clear violation to article (55) of the Constitution which states that (the Council of Representatives shall elect in its first session its speaker, then his first deputy and second deputy, by an absolute majority of the total number of the Council members by direct secret ballot), as this text stipulated two absolute rights, first is for who is running for the presidency of the Council, second is the will of the absolute majority of the total number of the Council members, as issuing a law that limit the presidency of the speaker to the Council consider as restriction on the absolute right that was granted by the Constitution for those who are nominated for the presidency of the Council of Representatives and is considered a restriction on the will of the absolute majority of the members of the Council of Representatives to choose who will lead them, especially since the presidency of the Council is one of the important issues in the parliamentary system in which the government emerges from the Council of Representatives and that what is mentioned in the article of the law in it is contradictory It is clear to the provisions of the constitution. What is meant by the end of the prime minister's term at the end

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of the election cycle of the Council of Representatives in which the Prime Minister granted confidence in it, and according to the text, although the constitution has stated in detail that each election cycle forms the government according to the principles stipulated by the Council of Representatives at the end the fourth year according to article (56) of the Constitution, for the mentioned reasons listed in the case petition the agent of the plaintiff requested the F.S.C. to rule the unconstitutionality of the law of limiting the three presidency in the State for violating the constitutional principles listed in the case petition and to burden the plaintiff the expenses of the lawsuit and the advocacy fees. On the scheduled date of argument the agent of the plaintiff and the defendant agent attended, and started in presence public session, the plaintiff agent repeated the case petition and requested to rule under it and to burden the defendant all expenses, the defendant agent repeated his arguments in the answering draft submitted to the court dated on 23.2.2013 requesting to dismiss the lawsuit and to burden the plaintiff the expenses. 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

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the constitutional principles that he mentioned in the case petition, the court found that the challenged law for being unconstitutional wasn't published in the official gazette until the date of filing the lawsuit on 10.2.2013 therefore it wasn't in force or under implementation, as the F.S.C. is competent to monitor the constitutionality of laws and regulations that are in force and not those are out of 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 defendant' agents amount of (ten thousand) IQ.D. This decision has been issued in presence, unanimously and public according to the provisions of article (93/1<sup>st</sup> and article 94) of the constitution on 12.3.2013.

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