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Federal Supreme Court
Ref. 79/ federal / ٢٠١٣



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 23.10.2013 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, and it issued the following decision:

The Plaintiff:

The attorney Razaq Hammd Al-Awadi _ Baghdad – Al-Harthiya - House 16/1 .

The Defendants:

The I.C.R. Speaker /being in this post _ his agents the legal officials (Sen. Ta'. Ya'.) and (Ha'. Mem. Sen.).

The Claim:

The plaintiff claimed before the F. S. C. in the lawsuit No. 79/Federal/2013 that in the Article (63 / First) of the Constitution (A law shall regulate the rights and privileges of the speaker of

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the Council of Representatives, his two deputies, and the members of the Council of Representatives) .

And since the constitutional text was made clear and does not accept interpretation for that, all the salaries and pension rights of the Speaker of Parliament, his two deputies, and the members of the Council that they receive are illegal and unconstitutional based on the above text.

The Unified Retirement Law No. (27) for the year 2006 in Article (1 / Fifth) thereof stipulated for the retirement entitlement the following: The request for retirement requires (25) years or more retirement service and his age is not less than fifty years and that he be an employee according to the Civil Service Law No. (24) for the year 1961 and that the position is included in the permanent staffing of the employee and contributions are paid for his salaries.

And where the granting of privileges and pension rights came under Article (3) of Law No. (50) of 2007.

Therefore, the ruling requested the unconstitutionality of Article (3) of the aforementioned law due to the defect of the deviation of the legislative authority from using its powers, which makes the legal issue a constitutional issue and the abolition of all procedures that grant members retirement rights contrary to the provisions of the constitution.

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And the defendant was notified of the lawsuit petition as mentioned above. Representatives and members are stipulated in Parliament Law No. 50 of 2007 and the law has chosen that the Speaker of Parliament, his two deputies, and members are equal to the Prime Minister and his two deputies, and this is a matter that the plaintiff did not explain why it was unconstitutional and that the plaintiff's citation of the Unified Pension Law No. (27) for the year 2006 / amended is originally a citation refuted as it relates to the rights of the employee.

Article (1 / First / D) of the Unified Retirement Law defines an employee as (every person entrusted with a job that includes the civil or military staff and security forces ...) and this includes the public sector employee and this definition does not apply to the head of The House of Representatives and its deputies and the members of the Council. Also, the plaintiff did not clarify what is meant by the sentence (deviation of the legislative authority from using its powers), so his lawsuit is without details and no specific contents of the deviation so that it can be discussed and responded to, and the text of Article 63 / First of the Constitution has given the absolute right to Parliament to determine The rights of the speaker, his two deputies, and members shall be in a law without limiting these rights to a limit or restricting them to a restriction, and the Council chose to enact the House of

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Representatives Law No. (50) of 2007, in which Article (3) of which stated these rights as required by the constitution.

And that the plaintiff's reference in the lawsuit petition that the alleged deviation makes the legal issue a constitutional issue, and this is an unproductive term as well as being of unknown intent, and then he refers to the abolition of the procedures for granting members retirement rights in contravention of the provisions of the constitution.

And the attorney of the defendant argued that this claim of violating the constitution is poor in evidence and proof, so the claim is without content, so he requested a dismissal of the lawsuit with the plaintiff bearing all its expenses.

The court called the two parties and the pleading took place in the presence of the two parties.

The plaintiff repeated what was stated in the lawsuit petition and requested the verdict according to it, with the defendant being charged with the expenses and attorney fees, and the defendant attorney's also repeated what was mentioned in the response list submitted to the Federal Supreme Court on 9/2/2013 and requested a dismissal of the lawsuit.

The plaintiff submitted an explanatory list of the lawsuit petition dated 10/31/2013 stating that Article (3) of Law No. (50) of 2007 violates the constitution because the law when enacted was not



enacted according to the constitutional contexts stipulated in Article (60) of the constitution because the law was Originally proposed and that the proposals of laws were submitted by ten members of the Council of Representatives or one of its specialized committees in accordance with Article (60 / second) of the Constitution, and that the violation of the legislation to the content of the Constitution is the issuance of the legislation subject to the legal incident in violation of the substantive provisions referred to by Article (63) Of the constitution, which is the deviation in the use of the legislative authority of its powers, and in light of this, Parliament may not issue legislation affecting any of the principles, provisions, or pillars included in the constitution, including, for example, the rights and freedoms mentioned in Article (14_46) of the Constitution.

Therefore, any matter that is decided in contravention to the constitution is considered null and void by virtue of the constitutional texts and overrides it which is a transgression of the social contract that organizes life and responsibilities between the rulers and between the people. The lawsuit and he answered the court's inquiries from him, as he explained that the law was enacted contrary to the provisions of Article 60 / First of the Constitution because it was a proposed law and it was sent to the President of the Republic or the Council of Ministers and

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the request for judgment in accordance with the lawsuit's petition for the reasons it presented and for the explanations contained in the regulations The introduction dated 9/30/2013 and 10/21/2013 and the plaintiff repeated his statements and requests and requested the judgment accordingly, the attorneys of the (defendant) also repeated their previous statements and requests and requested the ruling to return the case with the plaintiff being charged with the case's fees and attorney fees, and since the court has completed its investigations in the case and Whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff filed this case before the Federal Supreme Court contesting the unconstitutionality of Article (3) of the Parliament Law No. (50) of 2007 regarding the retirement salaries of the Speaker of the House of Representatives and his two deputies, and he also requested the abolition of all procedures that grant members of Parliament retirement rights.

Whereas, Article (4) of the aforementioned law stipulated that members of the House of Representatives be granted retirement rights, so the plaintiff's request contained Article (4) of the law

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above as well, and upon referring to Article 63 / First of the Constitution, it was found that it stipulated (A law shall regulate the rights and privileges of the speaker of the Council of Representatives, his two deputies, and the members of the Council of Representatives). And it became evident to the court, upon reviewing Article (3) of Law No. (50) of 2007 (Parliament Law), we find that it stipulated (The Speaker of Parliament and his deputies shall enjoy all the rights and privileges that the Prime Minister and his two deputies enjoy in all material and intangible fields, and they are dealt with in a protocol on this basis), and Article (4) of the law above states that (a member of the House of Representatives enjoys all the rights and privileges that the Minister enjoys in all material and moral areas, and they are dealt with protocol on this basis).

And the court found out from the defenses of a representative (the defendant) in their answer list dated (9/5/2013) submitted to this court in the case numbered (86/Federal/2013) stating that the original law subject to appeal is a proposed law and not a bill and that the Council Representatives legislated a number (50) for the year 2007 and it has not been prepared as a project by the executive authority as prescribed by Article (60/First) of the constitution which states (Draft laws shall be presented by the President of the Republic and the Council of Ministers) and that

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this proposal has not been sent to the executive authority by the House of Representatives according to the direction of The Federal Supreme Court contained its rulings in many cases, including (Case 43/Federal/2010 on 7/12/2010, and 64/Federal/2013 on 8/26/2013) that law proposals submitted by members of Parliament or from one of its specialized committees to the executive authority.

And that the source of this approach is the provisions contained in Article (60 / First) and (80 / First and Second) of the Constitution in order for law proposals to take their constitutional contexts by being formulated in the form of draft laws in accordance with the powers of the executive authority entrusted with Article (80 / First) of the Constitution The 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) and that the implementation of these tasks must send the proposals of laws to the executive authority to study and make them 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 political and social fields and that according to the specific contexts for preparing draft laws.

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Whereas, the House of Representatives Law No. (50) of 2007 was an idea that the House of Representatives adopted in the form of a proposed law and was enacted without following the advanced constitutional contexts, and that a period passed for the legislation of the law without objection to it by the executive authority and its allocation of the financial resources necessary to cover salaries The allocations determined without objection to it by the government, as it was doing so in implementation of the law and it is obliged to implement the laws in force, and it is not able to refrain from implementing the laws in force, and if a period of time has passed since the enactment of a law, this does not preclude the challenge of its unconstitutionality as this challenge is not subject to the term of or a statute of limitations for that and for the reasons presented, the plaintiff's claim is supported by the constitution, and Articles (3) and (4) of the House of Representatives Law No. (50) are in contravention of the constitution as far as the matter is related to the pensions of the Speaker of Parliament, his two deputies, and members of Parliament, so the Federal Supreme Court decided that Articles (3 and 4) of Law No. (50) of 2007 are unconstitutional regarding the provisions in them related to the pensions of the Speaker of Parliament, his two deputies, and members of the House of Representatives, for their violation of Article (60 / First) of The

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constitution, and this is what the plaintiff restricted his claim to, excluding other rights and privileges with charging the defendant/being in this post all the case's expenses with the advocacy fees. The decision has been issued decisively according to article (5/second) of the federal Supreme Court law No. (30) For year 2005 and Article (94) of the constitution and by agreement and made clear on 23/10/2013.