



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

The Plaintiff / the President of the Republic/ being in this capacity/ his agent the Head of Jurists Fathi Al-Jawari.

The Defendant / the Speaker of the ICR/ being in this capacity/ his agents the official jurists Salim Taha Yasseen and Haitham Majid Salim.

The Claim

The plaintiff claimed that the defendant, the Speaker of the ICR/ being in this capacity, had issued Law No. (26) of 2011 (Presidential Salaries and Appropriations Law), which was published in the Official Gazette on 24 October 2011 under the number (4214) and because the Constitution of the Republic of Iraq in 2005 adopted a federal parliamentary constitutional system based on the principle of separation of powers and decided to distribute the jurisdictions among them, ensuring respect for each authority of other authorities' powers, therefore, the legislation of the aforementioned law by the ICR, based on the conversion of the parliamentary proposal into a bill, ignoring the role of the executive authority in preparing the bills and submitting them to the ICR for legislation based on the provisions of item (1st) of article (60) and item (2nd) of article 80 of the Constitution, is a violation of the Constitution. The procedures shall be as following (the law proposal shall be presented to the executive authority to drafting it as a law bill after passing through a

chain of administrative and financial procedures. Later on, it shall be presented to the ICR to enact it). The FSC decided unconstitutionality of the cabinet salaries and appropriations decision number (27) for 2011 and annulling it, according to its decision number (48/federal/2012) issued on 25.2.2012 because it had been enacted without following the aforementioned contexts. Moreover, the Court took the same route in its two decisions number (43/federal/2010) and (44/federal/2010) by unconstitutionality of the law No. (18/2010) and the law No. (20/2010) because it had been enacted contrariwise the contexts which the constitution stipulated on. He requested to judge by unconstitutionality of the Republic of the Presidency salaries and appropriations law No. (26) For 2011, and to annul it in a way that achieve the correct implementation of the constitution, and the principle of separation between powers. On the scheduled day of argument, the agents of both parties attended, and the public in presence argument proceeded. The agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it, as well as the agents of the defendant repeated their previous sayings and what listed in their answering draft. They requested to judge by rejecting the case. Whereas nothing left to be said, the court had made the end of the argument and issued the next decision publicly.

The decision

During scrutiny and deliberation by the FSC found that the plaintiff initiated this case to challenge the unconstitutionality of the Presidential Salaries and Appropriations Law No. (26) for 2011 and the court found that this law was originally part of a unified bill in the name of (salaries and allowances of the President of the Republic, the Prime Minister, his deputies, ministers, under-secretaries, and who has their posts and who receives their salaries. As well as the consultants, private posts employees, directors general, whom in their post or receiving their salary and monthly bonuses for the ICR's Speaker, his two deputies and the members of the ICR). It was submitted to the ICR for its legislation and the ICR took a decision not to legislate this bill and went to pass a law for both the Presidency of the Republic, the ICR and the Council of Ministers and notifying the judicial authority to prepare a bill (the law on the salaries of the judiciary) and accordingly one of the committees in the ICR prepared a

proposal law - the subject of this case - which was enacted by the number (26) for 2011 and this project was not prepared by the executive authority as drawn by article (60/1st) of the Constitution, which stipulates (draft laws shall be presented by the President of the Republic and the Council of Ministers) and in view of the fact that there is a significant discrepancy with regard to the salaries of the Presidency of the Republic and that the defendant's agent defended the case that the law was presented to the Council of Ministers, the court has seen the case numbered (48/federal/2012) where the plaintiff's agent is based on initiating of this case and shows that the representative of the Council of Ministers when introduced as a third party in the aforementioned case has answered in his draft dated 8.1.2013, and in the paragraph (8th) of it (there isn't any constitutional or legal obstacle for collecting the salary of the Speaker of the ICR and his two deputies, and the allocations of the President of the Republic, salaries and allocations of the Prime Minister and the cabinet members, or whom in their posts in one law). This means that the Council of Ministers is still sticking to the unified bill that he sent to the ICR for its legislation, as it was clear from the above-mentioned evidence that the Court verified that the proposal prepared by the ICR for the aforementioned law had been approved by the Council of Ministers or not. The Court inquired the Council of Ministers, the general secretariat answered, whereas it sent the decision of the Cabinet No. (66) For 2013 which included (the Council of Ministers in its fifth ordinary session convened on 12.2.2013 and in the decision No. (66) For 2013 had decided to stick to the law bill which approved by the Cabinet's decision No. (58) For 2011 which is formally different of the laws approved by the ICR which determined the salaries and allowances of the three presidencies, as well as it is differed in number of its provisions in subjective texts which approved by the Cabinet in its law bill). All these facts had confirmed for the Court that the law No. (26) for 2011 had not been presented as a law bill by the Cabinet, moreover, the law proposal presented by the ICR and sent to the Cabinet had not been approved too, which prepared by a committee from the ICR according to the direction of the FSC which listed in its judgments issued by it in the cases (48/federal/2012) and (43/federal/2010) and (44/federal/2010) about the necessity of sending the law proposals presented by the ICR members, or from one of its specialized committees to the executive power (the President of the

Republic or the Prime Minister). Its source is the provisions listed in articles (60/1st) and (80/1st and 2nd) of the Constitution. Whereas the application of the provisions of these articles is not aimed at preventing the ICR from having its original right to legislate laws, because that is one of its terms of reference under article 61/1st of the Constitution, but in order to take (proposals of laws) its constitutional contexts in the field of legislation to be drafted in the form of (bills) in coordination with the executive power entrusted with article (80/1st) of the Constitution tasks (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 (proposals of laws) be sent to the executive power to study them and make them in the form of bills if they do not intersect with the constitutional provisions and laws and are consistent with the general policy of the state and with plans prepared in all fields, including political, social and financial, according to the specific contexts for preparing the draft laws and if the executive power is slow or abstains the preparation of a draft law that came in the form of a (proposed law) from the ICR without the executive power based on the constitution or the law and without a reason contrary to the general policy of the state, the ICR can use its powers stipulated in article (61/8th) of the Constitution, including the withdrawal of confidence from the Prime Minister and the consideration of the ministry resigns after conducting the necessary questioning in accordance with the Constitution and the Bylaw of the ICR. Thus, we are faced with the proper application of the principle of separation of powers stipulated in article 47 of the Constitution and the proper application of the principle of sharing tasks stipulated in articles (60/1st) and (80/1st and 2nd) of the Constitution and preventing the overlap of these functions between the authorities and in order to achieve the unity of the state's public policy. For all of the above, since the law (26) of 2011 (the law on salaries and allocations of the Presidency of the Republic) was initiated without following the advanced contexts referred to above, it was contrary to the Constitution. The Court decided to judge by unconstitutionality and annul it, and to burden the defendant/ being in this capacity the fees, expenses and advocacy fees to the agent of the palintiff, chief expert in the Office of the President of the Republic Fathi Al-Jawari, amount of 10,000 dinars. The decision has been issued unanimously and decisively according to the provisions of article (5/2nd) of the FSC's law

No. (30) For 2005 and article (94) of the Constitution. The decision has been made clear on 12.3.2013.