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The Federal Supreme Court (F S C) has been convened on 9/1/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Representative Raid Hamdan Al-Maliki, member of the parliamentary legal committee/ his agent, the barrister Raad Abdul Jabbar Ruhaima.

The Defendant: Speaker of the ICR/ being in this capacity – his agent the Director-General of the legal department Sabah Jumaa Al-Bawi.

The Claim

The plaintiff, through his agent, claimed that the Speaker of the Council of Representatives, being in this capacity, took a decision and action on 10/9/2023 to withdraw the proposal of the First Amendment Law to the Anti-Prostitution Law No. (8) of 1988 from the Parliamentary Legal Committee, and this procedure caused the suspension of the legislation of this proposal in violation of the provisions of the Constitution, and the provisions of the Bylaw of the Council of Representatives No. (1) of 2022 regarding the proposals of laws, as he (i.e. the plaintiff) submitted on 1/7/2023 a proposal to amend the aforementioned law drafted in the form of legal articles with the reasons for it in order to Filling the gap in the criminalization and promotion of homosexuality and the criminalization of transsexuality based on one's desires, in order

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to preserve human morality and the values and identity of Iraqi society; and because there are current and future risks as a result of calls for deviation that invade the world and are widely promoted by countries and organizations under titles such as (homosexuality, gender or gender), and the proposal was accompanied by the support and signature of (85 members) members of the Council of Representatives and submitted to the Speaker of the Council of Representatives, who referred it to the Legal Committee - by virtue of its margin on letter No. (224) on 1/7/2023 - which is competent, based on the provisions of the rules of procedure, to express an opinion on the proposals of laws and in its capacity as the committee concerned with the work of legislating laws of a penal nature, which stated its opinion and confirmed by letter No. (777) on 20/7/2023 that the proposal meets the formality specified in accordance with the provisions of Article (60/2nd) of the Constitution, and Article (121) of the Rules of Procedure of the Council of Representatives and does not conflict with the provisions of the Constitution and there is no objection to proceeding with the procedures for its legislation, under the margin of the Speaker of the Council, the proposal was referred to the parliamentary constituency, where it is supposed to be included on the agenda, but its approval was not obtained despite the approval of his first and second deputies to include it, as the agenda is prepared by consensus, which prompted the plaintiff to collect signatures to request the addition of a paragraph on the agenda of the Council based on the provisions of Article (37) of the Rules of Procedure of the Council of Representatives and submitted a request signed by (57 deputies) during the (tenth) session of the second legislative term of the second legislative year On 15/8/2023, which was held under the chairmanship of the First Deputy Speaker of the Council of Representatives and presented the request to the Council, and the

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approval was obtained to include the first reading of the aforementioned amendment law proposal, so it was read by the Legal Committee, which was in the process of completing the procedures for its legislation and submitting it to the second reading, and the members of the Council of Representatives began to send their comments on the proposal. However, the decision of the Speaker of the Council prevented this and the withdrawal of the proposal from the Legal Committee, as the Constitution stipulates in Article (60) thereof ((First: Draft laws submitted by the President of the Republic and the Council of Ministers, Second: Proposals for laws submitted by ten members of the Council of Representatives, or one of its competent committees)), and the rules of procedure of the Council of Representatives clarified the mechanism for submitting proposals under Articles (121) - Ten members of the Council have the right to propose draft laws to the Speaker of the Council of Representatives drafted in articles containing the reasons (122) - The Chairman of the Council may inform the party submitting the proposal in writing of its violation of constitutional or legal principles, after submitting it to the competent committees, or that it does not meet the required form, or that there are provisions contained in its articles in the laws in force, and that it is requested to correct or withdraw it, if the party submitting the proposal insists on its opinion, it must submit a written memorandum to the Speaker of the Council of its point of view, in light of what was done within a week of notifying it, and the President shall present the matter to his deputies, and inform the party submitting the proposal again in writing of what was decided in this regard, and if the party submitting the proposal insists on its point of view, the President shall submit the matter one week after notifying the matter to the Council of Representatives to take what he deems appropriate) and (123. The Speaker of the Council of Representatives

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shall refer the proposals in the draft laws to the Legal Committee. To study them and prepare a report thereon to the Council that includes an opinion on the permissibility of considering or rejecting the proposal or postpone it, and the chairman may propose to the Council the rejection of the proposal for reasons related to the subject in general, and if approved by the Council, it shall be referred to the competent committee) and (124- If a bill related to other bills referred to one of the committees is submitted, the Speaker of the Council refers it to this committee directly, this is unless the committee has begun to study the articles of the draft or proposal) and (125 - The procedures for discussing draft laws stipulated in this system shall apply to proposals related to draft laws, taking into account what is contained in a special text) and (126 - The sponsors of the proposals of laws may withdraw them by a written request submitted to the Speaker of the Council at any time before the start of discussion on the articles in the Council, and the withdrawal of the proposal shall result in considering it as if it were not unless one of the members requests to continue. In the consideration of the proposal by a written request submitted to the Speaker of the Council (and (127) - Proposals of laws rejected by the Council or withdrawn by their sponsors may not be resubmitted in the same session, and the Chairman of the Council presents the above recommendation to the Council with its data at the first meeting, and then referred to the competent committee and the Chairman may refer it to the competent committees directly and inform the Council of this at the first meeting thereafter), as for the constitutional violation contained in the decision or action taken by the Speaker of the Council of Representatives in his capacity as head of one of the federal authorities, it is represented in the following reasons: 1- The Speaker of the Council of Representatives prevailed in his own opinion objecting to the

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legislation of the law and rejecting its subject, and the reasons and arguments relied upon by the Speaker of the Council in refusing to legislate a law criminalizing homosexuality are not acceptable. Especially if accompanied by submission to private international wills or interventions exercised by international missions, on the other hand, there is no international opinion or unified position towards supporting homosexuality in its various forms, but there is a division and a different opinion even within countries that support homosexuality or so-called homosexuality, such as the United States, Britain, Germany and others, and on the third hand, the legislative authority is bound by the provisions of the constitution, which affirmed the Islamic identity of the majority of the people and confirmed the preservation of the family entity and values and considered Islam as the main source of legislation, and on the fourth hand, talking about the rejection of traditions, customs or religion for behaviors Perverted is not a source in itself to criminalize or prevent them, there remains a legislative vacuum that requires the existence of legal texts developed by the legislative authority to criminalize homosexuality because the constitutional principle stipulates that there is no crime or punishment except by a provision. 2- The Speaker of the Council of Representatives' chairmanship of the Council is an administrative and organizational presidency as it is a public facility, and in this capacity he and his deputies can only organize the work of the Council in accordance with the powers vested in him under the Council of Representatives Law and its formations No. (13) of 2018 and the rules of procedure, and he does not have the authority or legislative will for legislative work (proposals and draft laws) except in terms of being considered a vote like other members of the Council has the right to vote or not, and therefore the predominance of his opinion and position towards a proposed law or draft law negatively or

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positively and his use of his administrative powers for this purpose is a deviation in the use of power, but he must follow the procedures stipulated in Article (122) of the Rules of Procedure In the event that he deems that the proposal violates constitutional or legal principles, he can inform the party - the author of the proposal - in writing after submitting it to the committees competent, in the event that the party - the sponsor of the proposal - continues to adhere to its legislation, the Speaker of the Council must submit the matter to the Council of Representatives to take what he deems appropriate, which confirms that the Speaker of the Council does not have the sole authority to block the legislation of law proposals submitted in accordance with Article (60/2nd) of the Constitution, but rather the authority of the Council of Representatives with its total members. 3- In confirmation of the submitted proposal, the signatures of more than (100) deputies were collected and attached to a letter, and the Speaker of the Council was approached with the number (G/258) on 14/9/2023, and the request was made to return the proposed law to the Legal Committee to complete its report, including the editorial observations of the deputies and submit it for second reading, but the refusal to return the law continued, forcing him to hand over the book and the signatures of the deputies to the president's office, and the total number of signatures collected starting to submit the proposal (85 signatures), and then to include it in the tenth session of the Council (57) the signature and vote of the Council by majority on its inclusion for the first reading, then the signatures of (101 deputies) to demand the completion of its legislation, and it is clear that the will of the members of the Council of Representatives with the legislation of the proposed law, therefore, the plaintiff asked this court to rule on the validity and unconstitutionality of the action taken by the Speaker of the Council of Representatives in his capacity as a representative of a federal authority

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to withdraw the proposal to amend the Anti-Prostitution Law, which was first read in the Council of Representatives, and to cancel this measure because it violates the provisions of Article (60/2nd) of the Constitution, and the provisions of the Rules of Procedure of the Council of Representatives No. (1) of 2022, the defendant shall be charged with fees, expenses and attorney's fees. After registering the case with this court No. (254/Federal/2023), collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with the provisions of Article (21/1st and 2nd) of the Bylaw of the Federal Supreme Court No. (1) of 2022, his agent replied with the answering draft dated 2/11/2023, summary: The court does not have jurisdiction to hear the case, as the plaintiff did not provide evidence that his client (the defendant) violated a definitive constitutional text, and that withdrawing the proposal is one of the internal regulatory peremptory procedures in the Council of Representatives, in particular, the court had previously ruled in its decision (51/federal/2009) that the determination of the Speaker of the Council of Representatives priorities in the use of parliamentary oversight means is one of the organizational matters of the Council and the court has no authority to intervene in these matters, and his client based his decision to withdraw the proposed law on Article (122) of the rules of procedure of the Council, where the Iraqi Penal Code No. (111) of 1969 amended many provisions related to the criminalization of sodomy under Articles (393 and 394), as well as the Anti-Prostitution Law No. (8) of 1988 Many of the provisions addressed by the proposed law, including the crime of brokering, which can include the crime of exchanging wives, which negates the need to enact many of the provisions included in the proposal - subject to withdrawal - which stipulates many provisions that require the executive authorities to take measures and measures that would lead to an increase

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in the financial burdens on the state treasury, including what is mentioned in Article (2) of the proposed law to prevent prostitution, brokering and homosexuality and prohibit its promotion by any means, as well as the prevention of biological sex change And the articles of the proposed law imposing the penalty of detention and imprisonment, Whereas Article (131) of the Rules of Procedure of the Council of Representatives No. (1) of 2022 stipulates (the Finance Committee must take the opinion of the Council of Ministers on every proposal for an amendment proposed by the Committee in the appropriations included in the draft budget, and the committee must include in its report the government's opinion in this regard, and this provision applies to every proposal for an amendment submitted by any of the committees of the Council or one of the members if it entails financial burdens), so his client (the defendant/ being in this capacity) corrected this defect and decided to withdraw the proposal before proceeding with its legislation without fulfilling the formality stipulated in the rules of procedure, especially since the court had previously issued many decisions through which it ruled the unconstitutionality of legal texts legislated by the Council of Representatives; because it arranged financial burdens on the state treasury and was legislated without taking the opinion of the Council of Ministers, including court decisions No. (90 and its unified / federal / 2015), (72 / federal / 2017) and (140 and unified 141 / federal / 2018) and (156 / federal / 2018) and (42 / federal / 2020) and (35 / federal / 2021) to name a few, but not limited to, and since the court's decisions are final and binding on all authorities, so it was necessary to withdraw the proposed law until the government's opinion regarding its legislation was solicited, therefore, the defendant's agent requested the dismissal of the plaintiff's lawsuit and he shall burden the expenses. After completing the procedures required by the court's internal

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regulations, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof, in which the court was formed and checked the plaintiff's requests, his grounds and the defenses of the defendant's agent, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff (Raed Hamdan Al-Maliki / Member of the Council of Representatives) and this lawsuit was filed against the defendant (Speaker of the Council of Representatives / being in this capacity), claiming that he had taken a decision on 10/9/2023 to withdraw the proposal of the First Amendment Law to the Anti-Prostitution Law No. (8) of 1988 from the Parliamentary Legal Committee, which caused the suspension of its legislation, and the subject of the lawsuit is that the plaintiff, in his capacity as a member of the Council of Representatives, had submitted a proposal to amend the Anti-Prostitution Law No. (8) of 1988 with the support of (85 deputies), and the proposal was referred to the Legal Committee - under the margin of the Speaker of the Council On letter No. (224) on 1/7/2023 - which indicated its opinion that the proposal meets the formality specified in accordance with the provisions of Article (60/2nd) of the Constitution and Article (121) of the Rules of Procedure of the Council of Representatives, and according to the margin of the Speaker of the Council, the proposal was referred to the parliamentary department for inclusion on the agenda of the Council, Despite the approval of the two Vice-Presidents, the Speaker of the Council did not agree to include it in the agenda of any session, so (57) deputies submitted a request during

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the tenth session of the second legislative term on 15/8/2023, which was held under the chairmanship of the First Deputy of the Speaker of the Council of Representatives to include the proposed law on the agenda, and the approval to include it and read it obtained a first reading from the Legal Committee, after which that committee completed its procedures and submitted it for second reading, so the Speaker of the Council of Representatives decided to withdraw the proposal from the Legal Committee by a unilateral decision, and since this is contrary to the provisions of the Constitution, the law and the internal rules of the Council of Representatives, the plaintiff requested to invite the defendant being in this capacity to plead and rule on the validity and unconstitutionality of the procedure taken to withdraw a proposal to amend the aforementioned law and charging fees, expenses and advocacy fees, the defendant replied, being in this capacity under his agent's draft dated 2/11/2023, requesting the dismissal of the plaintiff's lawsuit because its subject matter is outside the jurisdiction of the Federal Supreme Court, and that his client has based the withdrawal of the proposal to amend the aforementioned law on the provisions of Article (122) of the Rules of Procedure of the Council of Representatives, and the proposed law burdens the government, which requires taking its opinion before enacting it, and the Federal Supreme Court finds the following: First: The plaintiff's lawsuit is formally admissible, as it falls within the jurisdiction of this court based on the provisions of item (third) of Article (93) of the Constitution of the Republic of Iraq for the year 2005, and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, because the plaintiff requested a ruling on the invalidity of the procedure issued by the Speaker of the Council of Representatives in addition to his job, and the interest is achieved in the case based on the

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provisions of Article (20) of the Law. The plaintiff has a positive, direct and influential interest in his legal status because he is the author of the proposal to amend the law, and the procedure contested in its invalidity has already been applied to him, and both the plaintiff and the defendant, in addition to his position, are legal opponents whose approval entails a judgment in the event of an acknowledgment issued by them. Second: Objectively, the Constitution of the Republic of Iraq, as well as the law of the Council of Representatives, and its internal regulations, did not grant any of them the Speaker of the Council of Representatives competencies other than those granted to the Council, except for some administrative matters, whereas it granted ten members of the Council the proposal of draft laws to the Speaker of the Council of Representatives, drafted in articles containing the reasons for them in accordance with Article (121) of the Bylaw, and Article (127) thereof stated that proposals of laws rejected by the Council or withdrawn by their sponsor may not be resubmitted in the same session, and that the concept of this text is clear that the authority or competence to reject proposals for laws belongs to the Council of Representatives and not to The President of the Council, and the withdrawal of the proposal is due to the applicant only, and not to the President of the Council or his presidency, as for the argument of the defendant's agent/ being in this capacity that the amendment proposal - the subject of the lawsuit - imposes financial burdens on the government that must take its opinion on it, the court has found that the provisions contained in the amendment proposal do not bear any financial burdens on the government, In addition, the Court found that these texts deserved to be within the Iraqi legislative system because it included deterrent sanctions to address new and alien cases on Iraqi society, to say the least they are not commensurate with its religious, moral and social reality,

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and have a serious negative impact on the general population because they are phenomena rejected by the consensus of the wise and the owners of the monotheistic religions, which are cases of homosexuality, represented by same-sex relations, wife exchange and effeminate, and the promotion of these acts and participation in their dissemination among society is no less dangerous than committing them, and this is considered (the proposed law) as a felony offense, in addition to increasing the penalties for prostitution and brokering crimes. As for the argument of the defendant's agent/ being in this capacity that his client's decision to withdraw the proposal was based on the provisions of Article (122) of the Rules of Procedure of the Council of Representatives, it is a counterproductive statement, as the said text did not authorize the Speaker to withdraw the proposal, rather, it stipulates that (the Chairman of the Council may inform the party submitting the proposal in writing of its violation of constitutional or legal principles after presenting it to the competent committees, or that it does not meet the required form, or the existence of the provisions contained in its articles in the laws in force, and to ask it to correct or withdraw it, and if that party submitting the proposal insists on its opinion, it must submit a written memorandum to the President of the Council with its point of view in light of what happened within a week of being notified by the President shall submit the draft to his deputies and inform the party submitting the proposal in writing of the decision in this regard, and if the party submitting the proposal insists again on its point of view, the President shall submit the matter one week after notification of the matter to the Council of Representatives to take what he deems appropriate), whereas, the Court found that the Chairman of the Council did not follow the procedures provided for in the said Article, he had issued a unilateral decision to withdraw the proposed law after completing the formalities

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for its enactment through the availability of the required number constitutionally and legally to submit it and refer it to the competent committee, and then approve its inclusion in the agenda and its first reading, and since this procedure constitutes a violation of the principles of the Constitution and the law and a confiscation of the opinion of the Council and a clear deviation in the use of power, so the plaintiff's claim deserves to be responded.

For all of the above, the Federal Supreme Court decided as follows:

First: Ruling on the invalidity of the action taken by the Speaker of the Council of Representatives being in this capacity on 10/9/2023, which includes the withdrawal of the proposal of the First Amendment Law to the Anti-Prostitution Law No. (8) of 1988.

Second: The defendant charged the Speaker of the Council of Representatives, being in this capacity, the fees, expenses and advocacy fees of the plaintiff's agent, Lawyer Raad Abdul-Jabbar Rahima, an amount of one hundred thousand dinars.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and Articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 26/Jamada Al-Akhira/1445 Hijri coinciding 9/January/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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