



The Federal Supreme Court (F S C) has been convened on 11.7.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mikael Shamshon Qas George, Hussein Abbas Abu Altemmen and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiff: (1) alif.mim.sad.

(2) alif.qaf.ain.

Defendant: Fouaad Mohammed Maasoum/ the President of the Republic/ being in this capacity – his agent ghain.alif.jim/ the Head of legal experts in Republic of Presidency divan.

Claim

The plaintiffs claimed, that the President of the Republic had took the constitutional oath before the ICR according to the form listed in article (50) of the constitution, which is it (I swear by God Almighty to carry out my legal duties and responsibilities with devotion and integrity and preserve the independence and sovereignty of Iraq, and safeguard the interests of its people, and ensure the safety of its land, sky, water, wealth, and federal democratic system, and I shall endeavor to protect public and private liberties, the independence of the judiciary, and pledge to implement legislation faithfully and neutrally. God is my witness). And the President of the Republic, represent the second part of the executive authority, and he should protect the constitution and independence of Iraq and its sovereignty according to article (67) of the constitution which stipulates on (The President of the Republic is the Head of the State and a symbol of the unity of the country and represents the sovereignty of the country. He shall guarantee the commitment to the Constitution and the preservation of Iraq's

independence, sovereignty, unity, and the safety of its territories, in accordance with the provisions of the Constitution). Since the President of the Republic had violated its constitutional duties, especially in the subject of the referendum which will be held on 25/September/2017 because of his silence about the constitutional violation which he participating in its firming neither by his silence nor taking a tough attitude in this concern in addition to the chauvinist declarations from intimates that they are with independence of Kurdistan and the referendum which is basically against the unity of Iraq and destroying its independence. This act which made by Mr. Fouaad Maasoum regarded a violation to the constitution and perjury which he swear before the ICR, so, and in this case he lost an important condition of conditions to carry out this post. Accordingly, the two plaintiffs requested (to judge on Mr. Fouaad Maasoum and convicting him according to the constitution by violating it, and perjure the constitutional oath). The agent of the defendant (the President of the Republic/ being in this capacity) answered the petition of the case, that there is no truth for the claim of the two plaintiffs that his client (violated the constitution, and perjure it which he made before the ICR, when he was elected to his post, because of his quieted and he did not take a tough attitude against the referendum). Whereas his client did not save an effort in practicing his constitutional duties to maintain the unity of Iraq, its sovereignty and preserve the safety of its territories, and his client confirmed there is no replacement to continue dialogue, and restore confidence between brothers in the one nation, confirming the importance of understanding and dialogue as well as committing to the principles of the constitution and the unity of the nation, and the necessity to rely on dialogue and the means which ensures resolving thorny issues between the one nation's sons and taking advantage from proposals to resolve crisis which related to the sequences of the referendum in Kurdistan like the efforts which exerted by the united nations to help Iraq for establishing stability in the State, these efforts represented in the attitudes of his client which mentioned in the answering draft, which requires to reject the case objectively. The agent of the defendant requested to reject the case formally too, because reviewing it is out the FSC specialty and this matter depending on legislating a law regulates how to separate in charges directed to the President of the Republic, the Prime Minister and Ministers, as item

(6th) of article (93) of the constitution obliged. Whereas no law was legislated till now, therefore the FSC remains unspecialized to review this case. According to the aforementioned reasons, the agent of the defendant/ being in this capacity to reject the case objectively and formally. After answering and according to provisions of article (2/2nd) of the FSC bylaw No. (1) For 2005, the day 11.7.2017 was set as a date for pleading and on that day the court was convened, so, plaintiff (alif.kaf) attended as a plaintiff and a barrister according to the bar association identification card No. (43030) with power (jim) and the plaintiff (alif.sad) did not attend in spite of he was notified according to the law with the date of the pleading falling on today, so, the court decided to proceed in the case with his absence. The Head of legal experts in the Presidency of Republic divan (ghain.alif.jim) attended as an agent for the defendant the President of the Republic Fouaad Maasoum/ being in this capacity according to the power of attorney No. (2336) on 11.5.2017, and the public in presence pleading proceeded. The plaintiff repeated what listed in the petition of the case, and requested to judge according to it. The agent of the defendant answered he repeats what listed in the answering draft dated on 10.8.2017 and he added that the FSC previously decided in case No. (41/federal/2017 on 6.13.2017) to reject the case of the plaintiff (heh.mim) which is it in the same subject of this case, whereas this court is not specialized to review this case, so, I request to reject it for Non-competence and to burden the plaintiff the fees and expenses. The plaintiff commented that he has a draft recited it and the agent of the defendant commented that the name which mentioned by the plaintiff (shin) is not the consultant of the Republic President, and she has not any official title in the Presidency of the Republic. Both parties repeated their sayings. Whereas nothing left to be said, the end of the pleading ended and the decision recited publicly in the session.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiffs claims in the petition of the case, that the President of the Republic had took the constitutional oath Mr. fouaad maasoum before the ICR when he tenured the post with the form stipulated on in article (50) of the constitution which is it (I swear by God Almighty to carry out my legal duties and responsibilities with devotion and integrity and preserve the independence and sovereignty of Iraq, and safeguard the

interests of its people, and ensure the safety of its land, sky, water, wealth, and federal democratic system, and I shall endeavor to protect public and private liberties, the independence of the judiciary, and pledge to implement legislation faithfully and neutrally. God is my witness). The President of the Republic and according to provisions of article (67) of the constitution is the President of the state and the symbol of nation unity, represent the sovereignty of the state and guards to guarantee commitment to the constitution, as well as preserve independence of Iraq, its sovereignty, unity and safety of its territories according to the constitution. The President of the Republic quieted about the referendum which intended to be held on 9.25.2017 and did not take a tough attitude to stop it in addition to the chauvinist declarations comes from his intimates that they are supporting the independence of Kurdistan. Whereas the aforementioned referendum is basically against the unity of Iraq, its independence and sovereignty, therefore, the President of the Republic considered violator of the constitution because he perjured which he took according to article (50) of the constitution, which obliges him to maintain the unity of Iraq, as well as he did not restrict to the content of article (67) of the constitution which has the same aspect. Accordingly, the plaintiffs requested from the FSC to convict the President of the Republic according to article (61/6th/beh) of the constitution, because of his perjury and violating the constitution, to let the ICR relieving him from his post. The agent of the defendant defended that his client is committed to the provisions of the constitution and reviewing this case is not a specialty of the FSC because this matter is related to legislate a law regulates how to take decision in accusations which directed to the President of the Republic, the Prime Minister and Ministers, also item (6th) of article (93) of the constitution obliged, and this law is not legislated till now. Therefore, the FSC remains unspecialized to review the case, according to abovementioned reasons, the agent of the defendant requested to reject the case objectively and formally. The FSC finds that article (93/6th) of the constitution which texts ((Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law)) requires till specialty being to it to take decision in accusations directed to the President of the Republic in the matters mentioned in article (61/6th/beh) if the constitution that a law shall issues from the ICR regulates how to take

decision in accusations directed to the President of the Republic according to provisions of article (61/6th/beh) of the constitution abovementioned, as long as this law is not legislated till the date of initiating this case, so, reviewing it makes the specialty of the FSC suspended and disrupted till the aforementioned law is issued. Based on that, the court decided to reject the case for specialty and to burden the two plaintiffs the expenses and advocacy fees of the agent of the defendant/ being in this capacity amount of one thousand Iraqi dinars and the decision issued decisively according to provisions of article (94) of the constitution and article (5/2nd) of FSC law No. (30) For 2005 and unanimously on 11.7.2017.