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The Federal Supreme Court (F S C) has been convened on 11.27.2017 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 AL-temman who authorized in the name of the people to judge and they made the following decision:

Plaintiffs: 1. (sin.shin.ain) } their agent the barrister (mim.mim.ra).  
2. (sin.yeh.mim) }

Defendant: Speaker of the ICR/ being in this capacity/ his agents the two legal officials as a director (sin.ta.yeh) and legal assistant consultant (heh. mim.mim).

### Claim

The agent of the plaintiffs (sin.shin.ain) & (sin.yeh.mim) claimed that in 2005 the referendum of the Iraqi people on the Republic of Iraq constitution took place, and the aforementioned constitution gained its complete formality in organizing the relationship between the authorities and the people as an obligatory contract, whereas it is stipulated in article (48) of it ((the federal legislative power shall consist of the Council of Representatives and the Federation Council)). Which means that the legislative power today is constitutionally uncompleted, because there is a part of the text abovementioned missing, which is the Federation Council, and it was not formed since (2005), more than a twelve years for voting on constitution whereas article (65) of the constitution stipulated on ((a legislative council shall be established named the “Federation Council,” to include representatives from the

regions and the governorates that are not organized in a region. A law, enacted by a two-thirds majority of the members of the Council of Representatives, shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all that is connected with it)). Whereas the ICR had exercised its tasks for its third term and it is about the fourth term and did not fulfilling its contract according to the constitution to complete constructing the legislative establishment according to what determined by the constitution, which may negatively effect on the administration of the ruling in the federal sate and its decentralized federal system. This matter created a legislative gap and the agents if the plaintiffs requested to call upon the defendant/ being in this capacity and obliging him to implement the text of articles (48 & 65) of the Republic of Iraq constitution. The defendant were notified with the case, and his agents answered on it in their draft dated on (11.14.2017) that the agent requesting to oblige their client to implement the provisions of articles (48 & 65) of the constitution without noticing that the constitution had charted (mechanism of enacting laws) according to provisions of article (60) of it, clarifying that the law bills presented President of the Republic and the cabinet, and the law bills presented by ten of ICR members. Therefore, this case is out of the FSC specialties stipulated on in article (93) of the constitution which requires rejecting it for the abovementioned reasons. After registering this case in FSC according to clause (3<sup>rd</sup>) of article (1) of its bylaw No. (1) For 2005 and completing the required procedures in clause (3<sup>rd</sup>) of article (2) of the aforementioned bylaw. The day 11.27.2017 appointed as a date to review the case, and on that day the court was convened, so, the barrister (ha.jim) attended the agent of the plaintiff (sin.shin.ain) and the plaintiff (sin.yeh.mim) did not attend spite of notifying his client according to the law and waiting him till (10:45) in the morning. The agents of the ICR Speaker/ being in this capacity attended, the public in presence pleading proceeded. The agent of the first plaintiff repeated what listed what listed in the petition of the case and added that he restrict his case to obliging the defendant the ICR Speaker to implement articles (48 & 65) of the constitution which related in establishing the Federation Council law in the current term, the agents of the defendant answered that they repeat what listed in their answering draft dated (11.14.2017) and requesting to reject the

case for Non-specialty, whereas the FSC does not have the power to oblige the defendant to enact the law, and worthy to mention that the Presidency of the Republic had prepared the law bill of the Federation Council on (9.14.2014) and was read a second reading in the ICR in session No. (15) convened on (8.19.2017) and it is ready for voting. The agent of the first plaintiff were assigned to prove the specialty of the FSC to oblige the ICR to issued a specific legislation, he answered he has no information in this concern. Both parties repeated his previous sayings, whereas nothing left to be said, the end of the pleading made clear and the decision issued publicly.

### The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiffs challenged the defendant because he did not enacting ((Federation Council law)) violating by that provisions of articles (48 & 65) of the constitution, and they requested from him/ being in this capacity to be obliged to implement provisions of aforementioned articles, and the agents of the defendant (Speaker of the ICR) being in this capacity answered that taking a decision in this case is out of the FSC specialties stipulated on in article (93) of the constitution, and requested to reject the case for Non-specialty. The FSC finds that the request of the plaintiffs to oblige the ICR Speaker/ being in this capacity to implement provisions of articles (48 & 65) of the constitution to enact (Federation Council law)) has no support in the constitution of what related to the specialties of the FSC which determined in article (93) of the constitution because this matter is related to a regulatory issues concerns the Speaker of the ICR/ being in this capacity because of contradicting of the request with provisions of article (47) of the constitution which concerns separation of powers in what related to its specialties and tasks. Based on that, the FSC decided to reject the case for Non-specialty, and to burden the plaintiffs the advocacy fees for the agents of the defendant/ being in this capacity amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision issued decisively and unanimously, according to provisions of article (94) of the constitution and article (5/2<sup>nd</sup>) of the FSC law No. (30) For 2005, and made clear on 11.14.2017.