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The Federal Supreme Court (F.S.C.) convened on 7.12.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

The Lawyer Ahmed Fadel Ismail Al Mamouri.

**The defendant:**

1. The Speaker of the Council of Representatives / in addition to his position - his two agents are the legal advisor Haitham Majed Salem and human rights employee Saman Mohsen Ibrahim.
2. President of the Supreme Judicial Council / In addition to his post - his deputy, the legal employee, Labib Abbas Jaafar.

**The claim:**

The plaintiff claimed that it stated in the preamble to the permanent constitution (We, the people of Mesopotamia, ..., We, the people of Iraq, who have just risen...we resolve, with our men and women, our elders and our youth, to respect the rules of law and achieve justice and equality). It also included (enacting this permanent constitution from the system of values and ideals of heavenly messages and the latest developments in human science and

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civilization. The commitment to this constitution preserves for Iraq its free union of people, land, and sovereignty). And the permanent Iraqi constitution of 2005, in Article (5), stipulates (The law is sovereign. The people are the source of authority and legitimacy, which they shall exercise in a direct, general, secret ballot and through their constitutional institutions.). And in Article 6 of it, states: (Transfer of authority shall be made peacefully through democratic means as stipulated in this Constitution..) And since the appointment of positions in the administration of the three authorities comes through the practice of democracy as stated in Article (2/first/b) of it (No law may be enacted that contradicts the principles of democracy.) and democracy means the rule of the people and their approval and consent. The constitution, as a supreme document and a philosophy for managing the state and its federal institutions, should not be violated by any law. And Article (47) of it stipulates that (The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers), as the defendant practice the authority of managing the judicial bodies by issuing judicial circulation which does not meet the conditions of the binding instructions for courts and individuals, and it takes the status of (compulsory), and this jurisprudence is not related to the process of facilitating the implementation of the provisions of the law and it is outside the legislative controls before and after the issuance of the Supreme Judicial Council Law No. (45) of 2017, which is required

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by such instructions to facilitate the implementation of the law Or the management of judicial bodies, to be an argument against all people, including its issuance by a legislative authority or an executive authority after it is published in the Official Gazette to achieve knowledge of it. The process of subsidiary legislation, which gives the instructions their final formulation to facilitate the provisions of laws and facilitate their application, contained in the text of Article (9) of the Law of the Supreme Judicial Council, is contrary to the Constitution in Article (80/Third), and codifying the law (instructions) which are the powers of (the Council of The State) following Law No. (71) of 2017 in Articles (4 and 5) of it regarding his competence to legalize and express his opinion in the legal matters of the state and how to exercise this competence, even if the law states that the tasks of issuing instructions are entrusted to the President of the Supreme Judicial Council and refer to it until If the law of the Supreme Judicial Council permits otherwise because it is the only authority with jurisdiction to do so. Since the legislative drafting process is not owned by the Supreme Judicial Council, it does not have the mechanism and expertise required for issuing legislation with the rank of instructions, which it did not legislate, but rather introduced a system that violates the law called (uncles), which is personal diligence that violates the purpose of these instructions. As well as the violation of the President of the Federal Court of Cassation to the law of the Supreme Judicial Council / in addition to his position as (chairman) in Article (2 / first / 1), and he exercises its

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functions as a judicial supervisory body for the judgments and decisions issued by the courts with its functional and qualitative competence, as this dangerous role is exercised by the President of the Supreme Judicial Council, which is a flagrant violation of the Iraqi Constitution and does not represent a guarantee of the independence of the Iraqi judiciary in issuing rulings and decisions at the national level impartially and independently. It also practices these actions once through the President of the Supreme Judicial Council (as an administrative body) and once as the head of the Federal Court of Cassation (as a judicial body) and it practices A clear political role at the public level by receiving diplomatic missions or visiting foreign countries, which violates the principle of separation of powers and violates Article (98) of the Constitution, which prohibited a judge and member of the public prosecution to combine a judicial position with a legislative and executive position or work in any political activity. The Constitution and Law No. 45 of 2017, did not clarify the manner of assigning one of the most important positions in the judicial authority, the head of the Supreme Judicial Council, and it is one of the most important positions that must be subject to the intrusive legitimacy Tory and its management, and this position does not come by acclamation, previous pass or subsequent appointment, and when referring to the constitution, and what was stated in Article (61 / Fifth) - Approval of the appointment of each of (A) - the president and members of the Federal Court of Cassation, the Chief Public Prosecutor and the head of the Judicial

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Oversight Authority By an absolute majority based on a proposal from the Supreme Judicial Council), it was found that the possession of legal legitimacy passes through voting on the president and deputies of the Federal Court of Cassation exclusively so that they can exercise their judicial and oversight role - and since the composition of the Supreme Judicial Council so far is shrouded in ambiguity and no one knows how it was formed and what it is The mechanism followed by the Vice-President of the Federal Court of Cassation, the Chief Public Prosecutor, the Head of the Judicial Oversight Authority, the Heads of the Federal Courts of Appeal, and the Heads of Judicial Councils in the Region on how to reach the position of the Chief of the Court of Cassation, and a fortiori, to give legitimacy to the position of the President of the Supreme Judicial Council in a democratic way or a statement The mechanism of his legal election or appointment. Since the text of Article (Eleven) of the Law of the Supreme Judicial Council, it violated the Treaty Contracting Law No. (35) of 2015, Which provided for the mechanism of procedures and stages of issuing the treaty by the ministry or the party not affiliated with a ministry. Through these violations and legal and legislative violations that limit the role of the judiciary and its independent and impartial role to issue just decisions and judgments, and for the judiciary to remain an independent authority that has no authority over it other than the law under Article (91) exclusively. As for the interest, it is available under general constitutional principles when harm is provided, and the meaning of

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harm by law is the harm that affects a person as a result of prejudice to a legitimate interest or one of his rights. For all of the above, the plaintiff requested from the Federal Supreme Court to rule the unconstitutionality of Articles (2/First/1), (9) and (Eleven) of the Supreme Judicial Council Law No. (45) of 2017, and a request to appeal the status of the President of the Federal Court of Cassation (Chairman). The case was registered with this court in No. (133/ Federal/2021), and the legal fee was collected for it in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) From the same rules of procedure, so the attorney for the first defendant, the Speaker of the Council of Representatives, in addition to his position, answered the answer list dated 10/19/2021, which included the following:

1. The plaintiff did not indicate the current, direct and influential interest in his legal, financial or social position, and did not provide evidence that Realistic, direct, and independent damage to its elements that has been inflicted on him as a result of the contested legislation and it can be removed if a ruling is issued that the legislation required to be repealed is unconstitutional or that the text required to be repealed has been applied to it or is intended to be applied to it, based on the text of Article 6 / first, second, third, fourth and sixth of the Court's rules of procedure.

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2. The esteemed court had previously decided on the subject of the contested paragraphs (2/first/1) and (3/eleveth) according to its decisions numbered (22/federal/media/2017) and (136 and unified 137/federal/2017) and (34/Federal/2019) which has become an argument with its rulings, and the case becomes obligatory to respond and has no basis in the constitution and the law.

3. The allegation of violating Paragraph (eleven) of Article (3) of the Treaty Contracting Law No. (35) of 2015, the court does not have jurisdiction to consider it, because Article (90) of the constitution clarifies what is entrusted to its councils by judicial judges. The law in the case The Supreme Judicial Council concludes judicial agreements and there is no dispute in that.

4. Article (9), whose unconstitutionality is challenged, authorized the head of the Supreme Judicial Council to issue instructions to facilitate the implementation of its law, and there is no constitutional violation of this article. On the contrary, it is an alive and practical application of two chapters of the authorities.

5. The issue of receiving diplomatic missions, foreign and Arab ambassadors, visiting foreign countries, or signing agreements is at the heart of the work of the President of the Supreme Judicial Council, as he is the head of one of the federal authorities stipulated in Article 47 of the Constitution. For these reasons, the attorneys of the first defendant requested that the plaintiff's lawsuit be dismissed in form and substance because it was not based on a document from the constitution and the law, and charged him with all judicial fees,

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expenses, and attorney's fees. The second defendant's attorney, the head of the Supreme Judicial Council, in addition to his post, responded with a reply list that included the following:

1. Regarding the claim of unconstitutionality of Article (2/First/1) of the Law of the Supreme Judicial Council, which came without a basis from the constitution, and since what the plaintiff stated is a personal assessment It has no basis and does not constitute a constitutional violation, as it is known that the legislation of federal laws is within the competence of the Council of Representatives whenever the need arises and the interest is realized from the legislation and in accordance with the constitutional contexts, based on the provisions of Article (61 / first) of the Constitution of the Republic of Iraq for the year 2005. As for the appointment of a president and the members of the Federal Court of Cassation, the Chief Public Prosecutor, and the head of the Judicial Supervision Commission is also within the authority of the legislative authority represented by the Council of Representatives based on the provisions of Article (61/fifth) of the Constitution by an absolute majority based on a proposal from the Supreme Judicial Council. To what is stated in the Supreme Judicial Council Law No. (45) of 2017. If the Supreme Judicial Council undertakes to conclude judicial agreements and follow up their implementation in coordination with the Ministry of Justice in accordance with Article (3 / Eleven) - (subject of the appeal) - then it is a legislative option for the Council of Representatives based on the provisions of Article (61 / First) of

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the Constitution, as for violating paragraph (11) The subject of the appeal to the Treaty Contracting Law No. (35) of 2015, the decision of the Federal Supreme Court No. (43/Federal/2017) dated 20/6/2017 included a legal principle, which is that the conflict of the legal text with another legal text does not make it a constitutional violation, especially since the contested text is a later text and it is reliable and that the two texts are equally forceful and issued by Parliament according to its legislative powers.

3. Appealing the position of the President of the Federal Court of Cassation (chairman) in violation of Article (98/Second) of the Constitution, which prohibits the judge from engaging in any political activity, and because it contradicts the principle of judicial independence, it is a saying that is rejected because he exercises his duties as the head of the Supreme Judicial Council Chairman of the Council, which enjoys legal personality and financial and administrative independence based on the provisions of Article (1) of the Supreme Judicial Council Law No. (45) of 2017, not as the head of the Federal Court of Cassation, who does not enjoy legal personality and financial and administrative independence and exercises his judicial work in accordance with the provisions of Article (12) of Judicial Organization Law No. 160 of 1979, as amended, and therefore does not engage in political work, according to the plaintiff's claim. And based on what was stated in Article (91/First) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that (The Supreme Judicial Council exercises

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the following powers: First - administering judicial affairs and supervising the federal judiciary). Therefore, paragraph (first) of the aforementioned article requires the President of the Supreme Judicial Council to work on strengthening the relationship of the judicial authority with other authorities in the country in the field of combating corruption, terrorism, organized crime and speedy settlement of cases, and the judicial authority bodies in brotherly and friendly countries through meetings and constructive regional dialogues The Supreme Judicial Council has accomplished several tasks and taken very important steps through these dialogues in the field of strengthening and developing judicial and legal cooperation that concerns Iraq, and there are great positive results that have been achieved in the file of judicial and legal cooperation and the file of recovery and the exchange of experiences with countries In this field, it is worth noting that brotherly and friendly countries have a great desire to develop judicial relations with Iraq, and all these meetings and dialogues have no political nature, so the plaintiff had to be careful and use appropriate expressions before filing a lawsuit. 4. The plaintiff refers to the unconstitutionality of Article (9) of the Law of the Supreme Judicial Council, as it contradicts Article (91) and Article (80/Third) of the Constitution, and it is a personal opinion that has no basis, since, as mentioned earlier, the legal text contradicts a legal text Another does not make it a violation of the constitution, and that the court is not competent to consider the extent to which legal texts are compatible with each other, in addition to

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article (90) of the constitution stipulating (The Supreme Judicial Council manages the affairs of judicial bodies, and the law regulates the way it is formed, its functions, and the rules of workflow) and the reference came Here to the law through which the Council carries out its work, which is the Law of the Supreme Judicial Council No. (45) of 2017 and the instructions to facilitate its implementation No. (1) of 2018 published in the Iraqi Gazette No. (4524) on 12/24/2018 and in accordance with the principle of separation of powers in Exercising its competencies and tasks as approved by Article (47) of the Constitution, and since the lawsuit has lost its legal basis for the aforementioned reasons and since there must be an interest when filing the lawsuit, and the interest is the practical benefit that accrues to the plaintiff in the event of a ruling on his requests, and it is stipulated that this conciliator It is personal and direct, and not just a theory, and since it is not sufficient that the contested text contradicts the constitution itself, rather its application to the plaintiff must have violated one of the constitutional rights in the manner that caused him direct harm, and since the contested texts if they do not apply to the plaintiff or were not Addressed, or the rights claimed by him were not affected, the interest in the appeal did not materialize, and therefore the plaintiff's claim with this description would have violated the text of Article (6 / first, second, third, fourth, fifth, sixth) of the internal system of the Federal Supreme Court No. (1) For the year 2005, and it has been established without an interest (case and influence) in the financial, legal or social position of the plaintiff, and

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therefore the litigation is not directed in this case. Therefore, the second defendant's attorney requested a ruling to dismiss the plaintiff's suit for the reasons referred to above and to charge him the fees, expenses, and attorney's fees. After completing the required procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading and the parties were informed of it in accordance with the provisions of Article (2/Second) of the same bylaw above. On the appointed day, the court was formed, so the plaintiff attended particular, the lawyer Ahmed Fadel Ismail, who also attended on behalf of the first defendant addition to his post His attorney, the legal employee, Saman Mohsen Ibrahim, attended on behalf of the second defendant, in addition to his post, as his attorney, the legal employee, Labib Abbas Jaafar. His list dated 10/19/2021 and the second defendant's attorney responded, requesting that the case be dismissed on behalf of his client for the reasons mentioned in his answer list attached to the case file. To the provisions of Article (5) of the Constitution of the Republic of Iraq for the year 2005, considering that sovereignty is the law and that the people are the source of authority, and also to Article (27) of the Constitution, and there is no harm caused to him as a result of the application of the contested articles, and that he instituted this case to preserve the independence of the judiciary. and where is nothing left to be said, the Court decided the conclusion of the pleading, and a date was set as the date for the issuance of the decision, and with it, the court was formed and issued the following ruling.

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**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff requested to invite the two defendants in addition to their positions to plead and judge the unconstitutionality of Articles (2/first/1), (3/eleventh) and (9) of the Supreme Judicial Council Law No. 45 of 2017. for violating the provisions of Articles (61/Fourth), (80/Third), (91) and (98/Second) of the Constitution of the Republic of Iraq for the year 2005 and through what was stated in the plaintiff's lawsuit and his requests during the pleading and what was stated in the defenses of the two defendants in addition to their positions in accordance with what stated in the regulations submitted by their attorneys, the court reached the following conclusions:

1. The plaintiff's lawsuit focused on ruling the unconstitutionality of Article (2/First/1) of the Supreme Judicial Council Law No. 45 of 2017, which stipulated that (the Supreme Judicial Council consists of Who: The President of the Federal Court of Cassation - President) and Article (3/11) of the same law which stipulates (The Supreme Judicial Council undertakes the following tasks: - Concluding judicial agreements and following up their implementation in coordination with the Ministry of Justice) and Article (9) of the same law that stipulated (The President of the Supreme Judicial Council issues Directives to facilitate the

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implementation of the provisions of this law), for violating the provisions of Article (61/ Fourth) of the Constitution of the Republic of Iraq for the year 2005, which stipulates (The Council of Representatives is responsible for the following: regulating the process of ratification of international treaties and agreements, by a law enacted by a two-thirds majority of the members of the Council of Representatives) and Article ( 80/ Third) of the Constitution, which stipulates that (The Council of Ministers exercises the following powers: Issuing regulations, instructions, and decisions with the aim of implementing laws) and Article (91) of the same constitution, which stipulates that (The Supreme Judicial Council exercises the following powers: - First - administering judicial affairs and supervising the Federal Judiciary. Second - Nominating the president and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the head of the Judicial Oversight Commission and presenting them to the Council of Representatives for approval of their appointment. Third - Proposing a draft annual budget law for the federal judicial authority, and presenting it to the Council of Representatives for approval) and Article (98/Second) of the Constitution, which stipulates that (a judge and a member of the prosecution are prohibited from the following: - Belonging to any party or political organization or working in any political activity).

2. The Federal Supreme Court's internal system No. (1) of 2005 stipulates in Article (6) that the plaintiff in the case has a direct, immediate, and influential interest in his legal, financial or social

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position, and since the implementation of the condition takes precedence over his negligence, and then it must be adhered to On the condition of interest, as a condition for accepting the constitutional case, and the interest to prepare a basis for accepting the case is required that it be legal, personal, direct and existing, since the interest is the focus of the case, and no claim without interest and the interest must exist before the case is established. He has suffered as a result of the legislation required to be repealed, that the damage is direct and independent, that the damage is not future or unknown, that the plaintiff has not benefited from part of the text required to be repealed, and that the text required to be repealed has been applied to the plaintiff or is intended to be applied to him, and this court also finds that recourse to the constitutional judiciary, it should not be arbitrary for everyone who wanted it. Rather, the legal interest in the case should exist in the sense that the constitution guarantees its protection because the right protected by the constitutional case is a right guaranteed by the constitutional court. Constitution and approved by law, and in implementation of that, for the interest to be considered legal, there should be a violation of one of the constitutional rights. Therefore, it is not sufficient for the direct personal interest, which is a condition for accepting the constitutional case, for the contested legislative text to be contrary to the Constitution, but rather this provision must be applied to the plaintiff who has breached the law. One of the constitutional rights guaranteed by the constitution, and that the abstract theoretical interest is not

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sufficient and is not sufficient to accept the direct constitutional claim, as is the case for the interest that aims to establish an abstract constitutional ruling on a particular subject for academic purposes or in defense of ideal values to be established or a kind of expression of a personal point of view or to establish a specific concept in a specific issue that did not result in harm to the appellant, and the interest must be present and available at the time the lawsuit is instituted and until a judgment is issued in it. In view of the foregoing, and in the absence of the plaintiff's interest in filing this case, the court decided the following: -

First: the ruling dismissing the plaintiff's suit in form.

Second: To charge the plaintiff the fees, expenses, and attorney fees of the defendants' attorneys, in addition to their posts, an amount of one hundred thousand dinars, distributed according to the law. From the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and it was publicly understood on 2 Jumada al-Ula 1443 AH corresponding to 7/12/2021 AD.

**Signature of  
The president**

*Jasem Mohammad  
Abbood*

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