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The Federal Supreme Court (F S C) has been convened on 2.7.2017 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 Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiffs /1. (taa'.noon.al-m) 2. (faa'.raa'.noon) 3.(al-r.haa'.aleef)  
4.(kaa'.lam.lam) 5.(noon.jeem.haa') 6.(al-a.haa'.aeen) 7.(kaa'.meem.haa')  
8.(meem.kaa'.meem) 9.(aleef.meem.haa') 10.(meem.baa'.kaf)  
11.(faa'.kaa'.seen) 12.(noon.aleef.jeem) their agent the barrister  
(aleef.noon.haa').

Defendants /1. Director of Prime Minister's office /being in this capacity.

2. Minister of finance/ being in this capacity.

3. The General Director of General customs Commission/ being in this capacity.

### Claim

The agent of the plaintiffs claimed that the Prime Minister's office issued a letter No. (meem.raa'.waw/63/8259) dated on .6.27.2016, banning according to it, the importing and exporting process by companies, and directing to establish a partnership companies for customs clearance, based on that the general commission of customs has issued an announcement without a date or number, and it was generalized to all custom regions, determining the date 6.1.2016 to inhibit the clearance agents, whom not related to a company from working in the border regions and to the Directorates belongs to the general commission of customs, although they are licensed by the commission, while this matter had touched their benefits, also it was not

clear and violates some of constitutional articles, including, article (2<sup>nd</sup>/1<sup>st</sup>/b/c), which concern in impossibility of enacting a law contradicting with the democracy principles, and not contradicting with the rights and basic freedoms, as well as, it is violates articles (15 , 16 ,2) of the constitution. According to what aforementioned, the plaintiffs requested to reconsider the clause (2) of Prime Minister's Office letter, also obliging the third defendant, the General Manager of General customs Commission/ being in this capacity to not intervene to the clearance agents until a final decision issues in the case. After registering the case, according to the provisions of clause (3) of article (1) of the bylaw of the FSC , and completing the necessary procedures, the day 2.7.2017 was assigned as a date for the pleading, on that day the Court was formed, the agents of the plaintiffs attended, and the legal assistant consultant (haa'.al-s) as agent for the first defendant/ being in this capacity, considering that the power of attorney which granted to him by the Prime Minister extends to his office, and the Senior legal consultant (waw.kaa'.meem.al-s) attended as an agent of the second and the third defendants, the agent of the plaintiffs repeated the petition of the case and requested to judge according to it, and requested to call upon the Prime Minister as a third party in the case, regarding that the order that executed had been issued by him, the Court decided to reject the request of the agent of the plaintiffs to call upon the Prime Minister/ being in this capacity as a third party in the case, because it is not harmonize with its proceedings, the two agents of the defendants/ being in this capacity repeated their requests by rejecting the case, which they listed in their drafts and their sayings before the Court, the pleading was ended after completing its procedures, the Court issued its following decision:

### The decision

After scrutiny and deliberation by the FSC, the Court found that the Prime Minister's office issued a letter No. (meem.raa'.waw/63/8259) on 6.27.2016, according to it, the export and import process by the companies was banned, and it directed also to establish a partnership companies for custom clearance, and according to that letter, the General Manager of General customs Commission issued an announcement, determining in it to inhibit the custom clearance agents who are not related to a companies from working, and the plaintiffs in the case request to reconsider in the second clause of Prime Minister's office letter, and to oblige the third defendant the

General Manager of General customs commission to not intervene to them until a decision in the case issues. The FSC finds that the first defendant the manager of Prime Minister's office/ being in this capacity does not enjoying the Juristic personality, which qualifies him to litigate, which require to reject the case against him for adversarial, on the other side, the challenged letter because its unconstitutionality is an administrative decision, and the law determined the methods of how to challenge the administrative decisions before another party, not before the FSC, which also requires to reject the case for non-specialty, as for the second defendant, the Minister of finance/ being in this capacity, he does not related to the unconstitutional challenged letter, because he is an executive power only, which requires to reject the case against him for adversarial, eventually we have the third defendant the General Manager of General customs commission/ being in this capacity, which he has not the Juristic personality, which qualifies him to litigate, which requires to reject the case against him for non-specialty. According to what aforementioned, the Court decided to reject the plaintiffs case for non-specialty and for non-adversarial, and to burden the plaintiffs the expenses and the advocacy fees of the agents of the defendants an amount of one hundred thousand Iraqi dinar divided between them equally. The decision was made unanimously, according to the article (94) of the constitution, and made clear on 2.7.2017.