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The Federal Supreme Court (F S C) has been convened on 11.20.2017 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 Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

First – Claim:

Presented to the FSC and registered in its records and legal fees of it were paid four cases as following and according to the date of its presentation:

1. Case No. (89/federal/2017) initiated on 9.10.2017 by the general secretary of AL-Wafa'a Iraqi party by his agent the barrister Mr. Ahmed Falih Atiyah against the defendants the President of Kurdistan territory and governor of Kirkuk/ being in this capacity.
2. Case No. (91/federal/2017) initiated on 9.12.2017 by the two representatives Hasan Turan and Arshad Rashad by their agent the barrister Mr. Mohammed Majeed AL-Saaidi and Mr. Bariq Ahmed AL-Mosawi against the defendants the President of Kurdistan territory, Kirkuk governorate council's head and the governor of Kirkuk/ being in this capacity.
3. Case No. (92/federal/2017) initiated on 9.12.2017 by the representatives Misters Mohammed Saadoun AL-Sayhood, Abd AL-Salam Muhsin AL-Maliki and Ammar Khadhim AL-Shubli by their agent the barrister (PhD. Abbas AL-Shammari) against

the defendant the President of Kurdistan territory/ being in this capacity.

4. Case No. (93/federal/2017) initiated on 9.13.2017 by the representative PhD. Hanan Saeed AL-Fatlawi by her agent the barrister PhD. Abbas AL-Shammari against the defendant the President of Kurdistan territory/ being in this capacity.

The plaintiffs had agreed unanimously in the aforementioned cases on the request to judge the unconstitutionality of the referendum processed on 9.25.2017 in Kurdistan territory and in the other regions which included by this referendum. And to burden the defendant the expenses of the cases.

### Second – Notifications

The FSC had notified the defendants/ being in this capacity in two stages according to what its bylaw stipulates on No. (1) for 2005:

#### First stage:

Notifying them with the petition of the case or its documents to let them review it, and present their defends and substantiations and send it the court within the legal duration which stipulated on in the aforementioned bylaw.

#### Second stage:

After the end of the legal duration on exchanging the defends, the date of the pleading was set in the aforementioned cases which is it 11.20.2017, and the two defendants were notified, governor of Kirkuk and the President of Kirkuk governorate council/ being in this capacity of this date according to the law.

As for the defendant the President of Kurdistan territory/ being in this capacity he was notified by the Prime Minister of the territory via his office because he took its place in exercising the executive authorities which was concern the President of the territory, including takes the territorial order No. (106) on 6.9.2017 of carrying out the referendum (challenge subject).

### Third- unifying the cases:

The FSC studied in a consultation session the four cases aforementioned, and it found its subject is one which is it challenging unconstitutionality of the referendum processed on 9.25.2017 in

Kurdistan territory and the other regions which included, and what based on that referendum, and to briefing the procedures – without wasting the core of the claim (subject of the aforementioned cases)- and achieving the principle of equality between the plaintiffs in reviewing their case with a unified procedures applying to provisions of article (14) of the constitution, and for the legal permission which stipulated on in article (75) of civil procedure law, the court decided to review the aforementioned cases unified and issuing one judgment in it according to the provisions of constitution and law.

#### Pleading stage:

In the set date of the pleading, the agents of the plaintiffs in the four cases attended, and no one of the defendants attended spite of notification according to the law, the pleading proceeded in their absence. The agents of the plaintiffs repeated what listed in their case and requested to judge according to it. Whereas the case completed the reasons of judgment in it, the court made the end of pleading clear and recited the judgment publicly in the session.

#### Fifth -the decision:

After scrutiny and deliberation by the FSC, and after studying the dossiers of the aforementioned cases in (1-4) of (1<sup>st</sup>) of this judgment, the court found that the defendant the President of Kurdistan territory when he carried out the Presidency of the territory had issued being in this capacity the territorial order No. (106) on 6.9.2017 which he announced in media the Head of Kurdistan territory Presidency divan and confirmed by the defendants the Head of Kirkuk governorate council and the governor of Kirkuk/ being in this capacity, and the territorial order had included aforementioned to process the referendum on 9.25.2017 in Kurdistan territory and the other regions outside the territory which included by the referendum. The referendum was by asking who included with one question what texts ((do u agree on independence of Kurdistan territory and the Kurdisatni regions outside the administration of the territory and establish an independent state)). The FSC also finds and with target which endeavors to and the purpose of it is the independence of Kurdistan and the included regions outside the territory of Iraq and establish an independent state out of the federal

system of the Republic of Iraq, which article (116) of the constitution stipulated on which consist of the capital, territories, Non-central governorates and local administrations. The territorial order abovementioned and processing of the referendum is conflicts and violates the provisions of article (1) of the constitution which stipulates on ((the Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq)) and this article which leded the constitution after its preamble, the FSC had interpret it in the decision issued from it on 6.11.2017 in reference (122/federal/2017) which extracted from it that the constitution of the Republic of Iraq for 2005 does not allows the separation of any component of its federal system components listed in article (116) of the constitution, which article (109) of it obliged the three federal powers stipulated on in article (47) of the constitution, as arranged listed in this article, legislative, executive and judicial power by maintain the unity of Iraq, its safety, independence, sovereignty and its democratic federal regime. Based on that, the referendum occurred on 9.25.2017 in Kurdistan territory and the regions outside it, and according to the target which carried on to achieve it is the independence of Kurdistan territory and the other regions outside it which included with this referendum, has no substantiation in the constitution and violates its provisions. Accordingly and relying on provisions of clause (3<sup>rd</sup>) of article (93) of the constitution, the court decided the unconstitutionality of the referendum occurred on 9.25.2017 in Kurdistan territory and the other regions which included with it, and cancel all traces and results based on it and to burden the defendants/ being in this capacity the expenses and advocacy fees for the agents of the plaintiffs in the four cases aforementioned amount of one hundred thousand Iraqi dinars for each case. The decision issued decisively, obligatory for all powers 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, the decision made clear on 11.20.2017.