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The Federal Supreme Court (F S C) has been convened on 12.20.2016 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:

Plaintiff / (qaf . dal. aleef) / his agent the barrister (aleef. kaf .meem).

Defendants / 1. The speaker of the ICR / being in this capacity/ his agents the legal officials (seen. taa'. yaa') and (haa'. meem. seen).

2. The prime minister / being in this capacity/ his agent the legal consultant (haa'. aleef .meem).

### Claim

The plaintiff claimed by his agent that the (F S C) made a decision on case No. (55/federal/2016) on 8.23.2016 by rejecting it , there was some reasons require not to reject it and re-opening the pledge and one of these reasons that the F S C finished the case before completing all the needed procedures , as the agent of the plaintiff didn't answer the drafts presented by the two defendants . Also the agent of the plaintiff adding that the decision on the case by rejecting came after his assigning by the second appeal commission in Babylon Federal Court and the F S C listed in its decision dated on 8.23.2016 that he was attendant and he repeated his requests while he apologized from attending because of his preoccupation in another appeal case, once again the agent of the plaintiff returns and repeat his previous defends in the decided on case which is it his request to implement the provisions of the constitution of 2005 as it is the higher law and obligatory all over Iraq , with voidance of every text violate its provisions according to

the article No. (13) of it , and the text of article (740) civil code which appealed against its unconstitutionality rest on the constitution of (1925) , whereas the texts of the constitution abovementioned never corresponding with the valid constitution which is, the constitution of 2005. He sees that the legislative option is obliging to the provisions of the constitution , whereas the court had completed its procedures in the case , and after registering it, a date for the pleading were determined , and the two parties attended , the agent of the plaintiff repeated his sayings and request. The agents for the two defendants repeated their requests by rejecting the case the reasons they enlisted. As the Court completed its investigations the pleading were ended, the decision issued publicly.

### The decision

The Court found , that the agent of the plaintiff challenges issued by this court in case No. (55/federal/2016) on 8.26.2016 , under the pretence that he was preoccupied in another job at the appeal Court , and the Court in its challenged decision , the court considered him attendant in spite of his absence , and the F S C finds that it has issued its challenged decision against after it has rejected to postpone it , for that reason the court viewed the case while he was absent , and one of the courts' competences is to take such procedure in accordance to article (11) of bylaw No. (1) for the year 2005 even in case of absence of the two parties in spite of notifying them, and the mentioning of the two parties being attendant during the pledge listed by default in the case , and the court viewed the case objectively because it found that the article (740) of the civil law had included a regulatory matters , the purpose of which is to achieve balance between the two parties of the contract , especially that the text of the abovementioned article gives the power to one party of the contract to end it in 30 years , in case that the contract signed in a duration more than that, and the philosophy of the text comes accordingly with the jurisprudence rule (the decisions never change in days) , add to that it is a legislative option , and there is no contradiction with any constitutional text , and any judgment issues by the F S C is decisive and obligatory for all powers , according to the text of article (94) of the constitution and unchallengeable by anyway , even if one of its expressions listed by default and ineffective in the judgment , and that never makes it a reason for challenging , and according to what has been aforementioned. The case of the plaintiff becomes out of

its legal and constitutional support , which requires to reject it , therefore the F S C decided to reject the case and to burden the plaintiff all the expenses and advocacy fees for the defendants' agents a sum of (100.000) one hundred Iraqi dinar divided between them equally, and the decision issued decisively and publicly on 12.20.2016 according to article (94) of the constitution.