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The Federal Supreme Court (F.S.C.) has been convened on 5.5.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

**The Plaintiff:**

Darry Jaber Farhod.

**The defendant:**

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

**The claim:**

The plaintiff claimed that the Fifth Amendment Law no.(17) for 2013 of the State Council Law no.(65) for 1979 published in the official gazette issuance no. 4283 on 29.7.2013 violates the provision of the constitution and the principle of power separation. The law under challenge in article (1) clause (3<sup>rd</sup>) violated clearly article (98/1<sup>st</sup>) of the constitution because it considered the President of the State

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Council, his deputies, and consultants as judges when practicing the duties of the administrative judicial. Clauses (dal, heh) of article (2) considered the Administrative Judicial Court and the Supreme Administrative Court as part of the State council' components which violates the principle of power separation. The Law changed the title of General Discipline Board to the Employees Judicial Courts, also granted the Supreme Administrative Court jurisdictions of Cassation Court and the expanded body in it. Article (4) of it stated the jurisdiction of the State Council to the functions of the administrative judicial, the law authorizes forming other courts for administrative judicial and the employees judicial in the governorates centers by announcement issued by the Minister of Justice which consider violation to the constitutional principles, interfering with the jurisdictions of the judicial authority, and breach to the principle of power separation. He requested to rule that the Fifth Amendment Law of the State Council Law to be unconstitutional. The defendant- in addition to his post was informed with the case petition, he responded with the answering draft dated on 12.11.2013 stating that the plaintiff has no interest in challenging the law, also the plaintiff is general prosecutor who initiated his lawsuit in his personal capacity while article (20) of the F.S.C. bylaw required that the

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lawsuit must be filed by attorney with absolute authority, the plaintiff listed his requests to some of the law articles claiming that its violated the constitution while he requested to rule that the law is unconstitutional in total, he faulted the law for making the president of the state council, his deputies and the assistant consultants as judges, that doesn't violates the constitution because it came throw a law. The defendant ' agent added that Iraq work by the double judicial system, granting the supreme court of administrative the jurisdictions of cassation court and the expanded body in it came as implementation for the law provision, he requested to dismiss the lawsuit. The president of the State Council submitted a request dated on 13.11.2013 to be introduced as third party in the lawsuit beside the defendant, he didn't pay the legal fee of this request, the court decided to consider it on the argument day, it appointed 5.5.2014 for the argument, the call upon the parties, the plaintiff submitted request to the court dated on 3.4.2014 to revoke the case petition for the formal defect in it, the defendant' agents responded with the draft dated on 15.4.2014 requesting to dismiss the lawsuit because it wasn't filed by attorney, the defendant' agents attended, the plaintiff or who represent him didn't attended. whereas nothing left to be seed, the argument is closed, the decision issued publicly.

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**The decision:**

During scrutiny and deliberation by the F.S.C., it found that this lawsuit was filed by the plaintiff (Darry Jaber Farhod) in his personal capacity even if he mentioned his post title as (Judge /general prosecutor) in the general prosecutor presidency, filing this lawsuit by the plaintiff in the mentioned capacity violates the provisions of articles (20) of the F.S.C. bylaw no.(1) of 2005 which stated that (the lawsuits and requests must be submitted to the Federal Supreme Court through an attorney with absolute authority ...), it was supposed to submit the case petition by an attorney with absolute authority, it doesn't become authentic if the plaintiff assigned an attorney after he filed and submitted the lawsuit to the court and paid its fees. accordingly the court decided to dismiss the lawsuit formally for the mentioned reason, and to burden the plaintiff the expenses and advocacy fees for the defendant's agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously on 5.5.2014.

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