

(Translated from Arabic)

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 100/federal/media/2018



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 5.12.2018 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 who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs : 1- the Representative (Ra.Ta.Mim.)
2- the Representative (Beh. Ain. Waw) } their agent
the attorney
(Alif. Mim.
Ain)

The Defendant: Head of the Parliament / being in this capacity- his agents the legal officials the director (Sin. Ta. Yeh.) and the assistant legal advisor (Heh. Mim. Sin.).

The Claim:

The agent of the Plaintiffs claims before the F.S.C. that the House of Representatives in his exceptional session dated 6/6/2018 has voted on the third amendment to the modified parliament elections code

No(45) for 2013, and the code included group of constitution violations, and where it is not permissible to legislate a code that violate the provisions of the constitution, and any text contrary to its provisions is considered void, therefore he challenged the aforementioned code for the following reasons:

1. the House of Representatives didn't complete the formal procedure that established by the constitution in code legislation, whereas the submission of the code to the House of Representatives was in the form of a proposal and not as draft submitted by one of the components of the executive authority, and that code places financial burdens on the government, so it was necessary for the parliament to obtain prior approval from the government, which the parliament did not do, that act consider as clear violation to previous decisions issued by your esteemed court on this matter, the most important one is decision No(3) for 2013.
2. the House of Representatives didn't adhere to your esteemed court decision No(55) for 2010, when he resorted to reading the code proposal, first and second read in two open sessions, where the presence of representatives attendance did not exceed (30) thirty representatives. And there is no constitutional basis for an exceptional open session, also the topic of Wednesday session was set to discuss the circumstances of the election process, and the agenda of the exceptional session did not include the legislation of the code that amendment the election code, therefore, the maintenance of the open session does not legalize or allow to change the agenda of the session, according to that the two sessions of the first and second readings are considered null and void, therefore the House of Representatives is not permissible to vote on the code proposal in the exceptional session that held on (6/6/2018) because of the nullity of the two sessions in which the first and second reading occur .

3. The content of article (1) from the code amendment consider as clear violation to previous decisions issued by your esteemed court, whereas the obligating of the High Independent Commission to conduct the counting and sorting process through a result speeding up system, was done according to law, and the manual re-counting and sorting will cost the government financial burdens, in addition to that the parliament mandate don't apply on the amending of the election code paragraphs, if it was allowed the parties with parliamentary majority would amend the election code, in order to close the way against the winning parties, and the constitutional basis for that is the principle of the sovereignty of the people, and breach of his will, as he is the source of authority.
4. Article (3) from the code violate the provision of article (20) of constitution which stipulated that (Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office.) therefore the cancellation of the results of the outside voting, and conditional voting in the internally displaced person camps, and the population movement of some governorates, or private voting in the Kurdistan region, consider deprivation the Iraqi citizens from the right of political participation, that embodies in the voting proses, also the identification of certain categories or some governorates in specific consider clear distinction against this categories which consider constitutional violation to the provisions of article (14) of constitution which stipulated that (the Iraqis are equal before the law without discrimination), and that the party that have the authority to cancel the election's results is the judiciary commission that was formed according to the independent high electoral commission code, and not the parliament, so the parliament's repeal of the voting results for these groups violated the principle of

powers separation, as well as when he took the place of the judiciary authority in the cancellation of these results.

5. Article (4) from the code violate the provisions of article (98) of constitution flagrantly, where it stipulate that (the combining of a judicial position with legislative and executive positions and any other employment is prohibited.) and this article is absolute in its content and purpose, so it is prohibited for the judge to practice any other duties but his judicial position, on the other hand, article (91) of the constitution which specified the exclusive specialization of the Supreme Judicial Council, this article didn't mentioned what indicates to the authority of the council in the administration or supervision of the elections, also the code stated that the judges shall manage the administration of elections and administration of the Commission's offices in the elections, which means that the judge practiced an executive work, because the fact that the administration is purely executive work.
6. The assignment of judges to the supervision and administration of the elections makes the judicial authority the litigant and the judge in the same time, when the appeals is submitted against the counting and sorting results, and it also will be the same party that considering the appeal, which violates the principle of powers separation, and the independence of the judiciary that stipulated in the constitution.
7. The granting of the supervision and electoral administration to the judges violates the article (102) of constitution which stipulated the establishment of the Independent High Commission and to organize its work by code, and that the code of the Independent High Electoral Commission, which consider a constitutional code, the code grant the authority to supervise and implement the elections to the Commission.

8. Article (4) from the code stipulated that the accused is innocent until proven guilty in a fair legal trial, while the article (4) of code stipulated that the judges will continue in their duties until the completion of the forgery crimes that referred to by the decision of the Council of Ministers, where the parliament violated the principle that the origin in the accused is innocence, and the determination that the committed act is a crime or not is judiciary jurisdiction and not the parliament. Therefore the agent of the plaintiffs request the F.S.C. the following:

First: the implementation of the code produces legal effects that cannot be addressed, and to prevent the consequences of the code implementation from mistakes as far as its treated, and negatively affect the constitutional process, and waste time, effort and money and confuse the constitutional situation and introduce them into difficulties, that may put the government's institutions in a constitutional vacuum, therefore they request the F.S.C. to issue an custodian judgment to not apply the code until the court has issued a decision in the aforementioned case, accordance to provisions of article (151) of the modified Civil Procedure code No(83) for 1969.

Second: judgment that the third amendment code of the modified parliament elections code No(45) for 2013 is unconstitutional, and to burden the defendant the expenses and advocacy fees. The agents of the defendant responded to the case petition with editorial draft dated on(26/6/2018) as the following:

1. The plaintiff's agent referred in his draft that the parliament has legislated the challenged code, in contrariwise to the legislative procedures that stipulated in article (136) from its bylaw, this claim is not true, and the code legislation was done after its first reading and discussion, and has been voted on four days later, note that the honorable court is not competent to investigate the constitutionality

of codes and not the fulfillment of their legislation, for what is included in the parliament's bylaw.

2. The plaintiff's agent points out that the exceptional session that held by the council remained open which violate the article (58/2nd) of the constitution, and the parliament invented something that intersects with the constitution and the code ,and legislated the code that is began challenged without going through the first and second reading, and the display for voting, also the council never before in previous courses has legislated a code in an exceptional session, so we show that the exceptional sessions that held by the parliament, were held under the invitation of the owner of constitutional specialty to held it, which is the Speaker of the House of Representatives according to article (58/1st) of constitution, so the meaning is in the invitation party to the exceptional session, and not for it to be open or not open, as for the fabrication of the House of Representatives to something that contradicts the constitution, in order to pass the code, it is a personal assessment from the plaintiff's agent which is not a producer because he has not assigned his challenge to constitutional text, and did not provide a constitutional provision that prevents the House of Representatives from legislating a code or amend it in an exceptional session, as for the House of Representatives has not legislate codes in exceptional sessions in the previous courses, that is not valid as evidence or presumption that the legislation during the exceptional sessions is illegal and does not fit as custom on it.
3. The plaintiff's agent claims in his draft that the implementation of the code that being challenged will cost the government budget large amount of money, and the council had to consult with the executive authority, we clear that the agents of plaintiff are not authorized to plead for the government, or to determine its ability to cover the expenses of correcting the course of the electoral process

or not, and if it was expensive for the government it would have objected to what is included in the code, which didn't occur.

4. The plaintiff's agent indicates in his draft that article (3) of the code that being challenged has kept the votes of minorities that is included in the quota system from canceling the results, and this is a distinction between Iraqis which is violation for the article (14) of the Constitution, and it is also evidence of the validity of the electoral process by the evidence of retaining the votes of minorities, we clear that the quota of minorities has limited effect on the electoral process overall, and that the number of seats that arise from it is predetermined, so to guarantee the rights of minorities and not to waste them or expose them to waste due to review and scrutiny, therefore the will of the people's representatives has been directed to preserve those results and the rights result from it, note that the exception of the minority quota does not represent evidence or even a presumption of the correctness of the electoral process, but is a presumption to the absence of its answer, and if the electoral process were correct, the minorities quota wouldn't needed to be excluded.
5. The plaintiff's agent claims in his draft that the code that being challenged is in counter with the exclusive authority of the Supreme Judicial Council that is listed in article(9) of the constitution, we explained that this constitutional article did not stipulate that what listed in it from authorities of the Supreme Judicial Council are exclusive authorities, we also show that article(90) of the constitution has shown the jurisdiction of the Supreme Judicial Council, which is subject to law, thus, the House of Representatives has followed the constitutional text when he grant the Supreme Judicial Council the jurisdiction to administrate the Independent High Electoral Commission, as for what the plaintiff's agent mentioned that the judge's work is limited to resolving disputes, and

that the commission's work is administrative and executive which is not correct.

6. The plaintiff's agent claims that the assignment of judges according to the code - the subject of the case - makes the judiciary authority the litigant and the judge, which violates the principle of power separation, we explain that the judiciary authority has jurisdiction over all and it is a verification and judgment party.
7. The agent of the plaintiff claims that the assignment of judges to administrate the Board of Commissioners and each of the Commission offices in the governorates violate the articles (98), (102) and (47) of the Constitution, we explain the big difference between the assignment of the judge to a temporary job for his neutrality, and between the judge to combine his judicial work and another work in addition, article(4) of the code that being challenged stipulated that (...the assigned judges functions shall be terminated when the Federal Supreme Court approved on the elections results...) which is enough to reject the suspicions of the plaintiffs because the work of the judges is temporary and will not be in line when they practice their duties as a judges therefore there is no contradiction between the assignment of judges and the provisions of article(98) of the Constitution.
8. The code that being challenged did not accuse a certain party as far as the results from an investigation and Procedures that are taken according to the constitution and the bylaw of the House of Representatives.
9. We also refer to the decision of your esteemed court number (99/federal/2018) and its unified dated on(21/6/2018)for the reasons that stated in it. About the code that being challenged and for the previous reasons, the agents of the defendant requested to reject the case and to burden the plaintiff all the expenses. The court scheduled a day for the argument and on the appointed day the court was convened, and the agent of the plaintiffs did not attend despite

the notification of the argument day according to the rules, the agents of the defendant has attend, and began the in present public argument with the absence of the agent of the plaintiffs, the agents of the defendant repeated what stated in the answering draft and requested to reject the case and to burden the plaintiff the expenses and advocacy fees. And where nothing left to be said the argument is closed and the decision is issued publicly on 5/12/2018.

The Decision:

During scrutiny and deliberation by the (F.S.C.), the court found that the plaintiffs challenged in their case petition that the third Amendment code of the Iraqi Council of Representatives Elections codes No(45) for 2013 is unconstitutional, and he requested the court to judge that this code is unconstitutional for the reasons he stated in the case petition, he also requested to issue custodian order to not implement the mentioned code during the pendency of -the case that is the subject of challenge - for the reasons he raised in his case petition, during scrutiny the court found that all challenges raised in the case petition were raised in the case numbered (99/federal/2018) and its unified (104/federal/2018) and (106/federal/2018), and the F.S.C. has issued a judgment that dated (21/6/2018) about it, therefore, the challenges raised in this case upon the code that is the subject of the appeal (the modified third Amendment of the Iraqi Council of Representatives Elections codes No (45) for 2013) is not subject that fit to issue a new judgment about it, because the F.S.C. has already adjudicated the aforementioned case and its unified, and the judgments and decisions of the F.S.C. are decisive and obligatory for all authorities accordance to article (94) of the Constitution of the Republic of Iraq for 2005, therefore, the case is obligatory to be reject from the point that its subject has been adjudicated earlier. Therefore the F.S.C. decided to reject the case and to support its decision that issued in the case petition on (13/6/2018) by rejecting the request of issuing an custodian order. And to burden the plaintiffs the expenses of the

case and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars distributed between them according to the law. and the decision has been issued in presence and in the absence of the agent of the plaintiffs, unanimously and decisively and issued publicly on 5/12/2018.