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The Federal Supreme Court (F S C) has been convened on 5.12.2018 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 Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

Plaintiff / (qaf. alif. teh. jim.) his agent (jim. kaf. heh. ain.)

Defendant / President of the House of Representatives/ being in this capacity his two agents are human rights officers director (sin. ta. yah.) Assistant Legal Advisor (heh. mim. sin.).

Claim:

The agent of plaintiff claimed that The Iraqi House of Representatives has issued the third amendment to the law of the elections of the Iraqi House of Representatives No. (45) of 2013 amended at its special session open on 6/6/2018 and where this law included violations of the provisions of the Constitution initiated by the challenge for the following reasons:

- 1- The project amendment submitted by the House of Representatives itself and not the preparation of the Council of Ministers as stated in article (80/2<sup>nd</sup>) of the Constitution, which was clearly demonstrated the facts of the session of the House of Representatives that some of the articles of the amendment sent paper scraps to the Legal Committee, which only read the members during the session to vote on it of the Council noted that the court had previously ruled that the law of university service was

unconstitutional because the draft law was not submitted by the Council of Ministers.

- 2- Making the amendment law valid from the date of voting on 6/6/2018 does not in any way mean that it is not necessary to pass the ratification procedures of the President of the Republic and published in the Official Gazette as stated in article (73/3<sup>rd</sup>) of the Constitution which state that ((The President shall have the following powers: Third - The laws enacted by the Chamber of Deputies shall be ratified and issued and shall be ratified after fifteen days from the date of their receipt. The law shall not be effective unless it is published in the Official Gazette, even if it is in force retroactively, knowing that the Supreme Judicial Council has pre-empted matters and implemented the amendment before approving it. Or published in the Official Gazette in an unprecedented precedent
- 3- The House of Representatives legislated the law in an extraordinary open session and this is violate the state of article (58/1<sup>st</sup>) of the Constitution, the extraordinary session dedicated to a specific topic not going to find new legislation as in the usual legislative term in the House of Representatives and this is confirmed by the bylaw of the House of Representatives where differ between the article (38) which is talk about the extraordinary session and the state of article (136) which is talk about the mechanism of legislation in the legislative chapter on the work of the House of Representatives and how to be the mechanism of legislation and how long between the first reading and the voting session.
- 4- The Third Amendment law mentioned above violate articles (14& 20) of the Constitution as stated in the article (14) (Iraqis are equal before the law without distinction between sex, race, nationality, origin, religion, creed, belief, opinion, or economic or social status) the article (20) of the Constitution state that ((citizen have the right to participate in public affairs and to enjoy political rights, including the right to vote to be elected and to be nomination))

where the law was annul –subject of challenge – all outside election without any discrimination and the election of voting or movement of the population even before being separated by the judicial body formed in the Cassation Federal Court. For the above the plaintiff's agent request:1- Issued custodian order contain suspend the implementation of the amendment paragraphs – subject of challenge – to the outcome of the case. 2- The cancellation of the third amendment for violation of the Constitution of the Republic of Iraq and the bylaw of the House of Representatives and to charge the defendant fees, expenses and fees lawyers. The defendants' agents responded to the petition with the following : 1- The law - subject of challenge - The law has been enacted by the House of Representatives with the competence to enact federal laws under the articles (60/2<sup>nd</sup>) & (61/1<sup>st</sup>) of the Constitution especially the election law, which was legislated in particular in article (49) thereof. As for the agents of the plaintiff to shorten the legislation of the laws on what was originally a draft law from the executive branch is not true and contrary to what was settled by the FSC, especially in its decision No. (21/federal/2015). 2- The House of Representatives has specified the date of entry into valid of the law - subject of challenge- on the date of voting on it with the competence to determine the dates of entry into valid of the laws. Article (129) of the Constitution stipulates that the law shall be effective from the date of its publication unless otherwise stated. The Council's follow-up to this path is the necessity of implementing the Third Amendment Law as soon as possible to ensure that the electoral process is corrected, taking into account the constitutional role of the beginning of the new legislative session, which requires speeding up and avoiding traditional procedures in approving and promulgating laws. 3- The extraordinary session which was held by the House of Representatives was made under the invitation of the holder of constitutional competence to hold the President of the House of Representatives under article (58/1<sup>st</sup>) of the Constitution. This is the

reason for inviting the extraordinary session and not to be open either for fabricating the Council is a cross with the Constitution in order to pass the law – subject of challenge - is a personal assessment of the plaintiff's agent is not productive because he did not give his thought to the texts of the Constitution and he did not mention a constitutional provision that prevents the House of Representatives from enacting a law or amending it in an extraordinary session in previous sessions. It is not valid evidence nor even his presumption on the illegality of legislation during the extraordinary sessions and does not fit in custom. 4- The cancellation of some of the election results was based on the occurrence of serious irregularities during the electoral process proved by the reports of the Parliamentary Committee and the Governmental Committee competent to investigate the violations of the election as the Council representative of the people and expressed his will. 5- The FSC's decision must be made in this regard No. (99/104/106/federal/2018) on 21/6/2018 and the reasons stated therein in respect of the law (subject of appeal). The application of the defendant's agent to reject the claim and to charge the plaintiff all expenses and after the registration of the case on the basis of the provisions of paragraph (3<sup>rd</sup>) article (1) of the bylaw of the FSC No. (1) of 2005. After completion of the procedures required in accordance with paragraph (2<sup>nd</sup>) of article (2) of the mentioned bylaw. On the day 5/12/2018 argument was held in which the court was formed. The plaintiff's agent and the defendant's agents were present. The argument was initiated immanence and public. The defendant repeated the petition and request judgment under it. the defendant's agents replied that they were repeating what was stated in their answer draft, they added that the subject of the case had been decided by rejected in the case (99/federal/2018). As the case has been updated for reasons of the decision the end of argument has been made clear and the decision had made publicly in the argument.

## The Decision :

For scrutiny and deliberated by FSC found that the plaintiff challenge the Law of the Third Amendment to the Law of Elections of the Iraqi Council of Representatives No. (45) of 2013 because it's issued violate to the constitution and the bylaw of the House of Representatives he asked for judgment: 1- Issued custodian order contain suspend the implementation of the amendment paragraphs – subject of challenge – to the outcome of the case. 2- The Judgment of the unconstitutionality of the third amendment referred to and cancellation it for the following reason: 1- Shall be considered valid from the date of voting under article (8) of it. This violates the provisions of article (73/3<sup>rd</sup>) of the Constitution, which made ratification and promulgation of the laws of the President of the Republic, where it stated (ratification and promulgation of the laws enacted by the House of Representatives and ratification of it after fifteen days from the date of receipt and as contrary to the issuance of Article 122 of the Constitution, which states that the laws are not implemented until published in the Official Gazette unless the laws provide otherwise). 2- The issuance of the law contested in an extraordinary session held on 28/5/2018 and extended to 6/6/2018 and this violates the provisions of article (58/1<sup>st</sup>) of the Constitution, which state that ((The President of the Republic or the President of the Council of Ministers or fifty members of the Council may call the House of Representatives to an extraordinary session. The meeting shall be limited to the subjects that were called for. The session was originally devoted to the evaluation of the electoral process, but it deviated from the specific subject for its holding to other matters unrelated to the original subject)). 3- The draft law was submitted by the Council of Representatives and this violates the provisions of Article 80 of the Constitution, which states ((The Council of Ministers exercises the following powers: second Proposal of draft laws. 4- The House of Representatives interferes with the functions of the executive branch contrary to the principle of separation of powers contained in article (47) of the Constitution and contrary to article (102) of the Constitution.

5- The challenge law has been issued and is defective (conflict of interest) Because most of the deputies who voted for it are losers in the elections. 6- Issued outside the (legislative mandate) of the House of Representatives, which was issued outside the scheduled electoral session. 7- Issued custodian order contain suspend the executive measures taken by the Supreme Judicial Council to resolve the outcome of the case. 8. The article (3) of the law challenged articles (13/2<sup>nd</sup> & 14 & 20) of the Constitution and found the FSC (1) The FSC has already decided to reject the request for issuing a custodian order containing the suspension of implementation of the provisions of the Third Amendment Law to the law of the elections of the House of Representatives in its decision No. (103/federal/2018) on 13/6/2018. (2) That the measures taken by the Supreme Judicial Council regarding the elections of the Iraqi House of Representatives for the current session 2018 have a reference to challenge other than the FSC. (3) With regard to the appeal contained in article (3) of the Third Amendment Law to the Law of Elections of the Iraqi Council of Representatives No. (45) of 2013, it has already been decided to challenge the above article in the case No. (99/104/106/federal/2018) on 21/6/2018. Where it ruled that the article is unconstitutional and invalidated because it contravenes the provisions of articles (14 & 20 & 38/1<sup>st</sup>) of the Constitution, which requires the rejection of the case for the dismissal of this side. (4) As for the rest of the challenges contained in the Third Amendment Law to the Law of Elections of the Iraqi Council of Representatives No. (45) of 2013 and referred to in paragraphs (1-8) above, it has also been adjudicated also by the FSC in its decision referred to above where the court responded to the requests of the plaintiffs from During which to challenge the unconstitutionality of the Third Amendment Law to the law of elections of the House of Representatives No. (45) of 2013, accordingly, it shall not be reconsidered for its authentic acquisition provided for in articles (105 and 106) of the Evidence Law No. (107) of 1979 (amended), which requires the rejection of the case by this body as well. (5) Based on the above, the court decided to dismiss the case for dismissal and jurisdiction:

Alife - The plaintiff does not charge the expenses and legal fees for the appeal contained in article (3) of the contested law, as stated above, because they filed the claim, demanding that it be unconstitutional on 11/6/2018 and that the judgment issued by the FSC of unconstitutionality of those articles and cancellation on 21/6/2018 and by the decision (99/104/106/federal/2018) the plaintiff was right in his application in this case when he established so he cannot bear the expenses and fees of the lawyer of his opponent.

Beh- The plaintiff's costs and legal fees for the defendant's agent in respect of the rest of the challenges mentioned above amount to one hundred thousand dinars. The ruling is binding and binding on all the authorities under article (94) of the Constitution and article (5/2<sup>nd</sup>) of the Law of the FSC with unanimity the decision had made clear public on 5/12/2018