

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 105/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 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, Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision:

Plaintiff: (mim. ain. he.) Chairman of the Board of Commissioners of the Independent High Electoral Commission and its legal officers (alif. ha.) and (ra. nun. ain.).

Defendant : Prime Minister/ being in this capacity his legal counsel (ha. sad.).

Claim:

The agents of the plaintiff claimed that the Council of Ministers had already issued its session on the date 24/5/2018 its decision No. (198) on 2018 contain ((Formation of a higher committee)) headed by the President of the Federal Financial Control Divan Agency and the membership of each (National Security Advisor, head of the National Intelligence Service/agency and chairman of the Integrity Commission/ agency and Chairman of the Supreme Security Committee for elections/ Undersecretary of the Ministry of Interior) examines the reports and information presented at the extraordinary meeting of the Council of Ministers on the electoral process, and issued its decision No. (222) of

2018 on 5/6/2018 Containing the ratification of the recommendations of the Committee of Ministers established by resolution (198), and since these resolutions are contrary to the provisions of the Constitution and the law in terms of the composition of the Committee and its recommendations, they have taken the initiative to challenge it for the following reasons: 1- the article (102) of the Constitution state that : ((The High Commission for Human Rights, the Independent High Electoral Commission and the Integrity Commission are independent bodies under the control of the House of Representatives and are regulated by law)). According to this constitutional text, the independent Supreme Electoral Law was promulgated No. (11) of 2007 amended, article (2) of the law stipulates that the Office of the High Commissioner is responsible for supervising all types of federal and provincial elections and referendums and in the non-regular governorates of the Territory. Accordingly, the decision of the Council of Ministers is contrary to the provisions of this constitutional provision as it contravenes the principle of "separation of powers" established by, in article (47) of the Constitution, the Commission is an independent government body, and this is an interference in independent bodies and contrary to the Constitution. 2- The law of the Independent High Electoral Commission N. (11) of 2007 amended has set the mechanism for resolving electoral disputes, making the exclusive authority to resolve such disputes to Commission and that the decisions of the Commission are appealable to the Electoral Tribunal and are regulatory authority a problem of the Court of Excellence consisting of three Judges consider such appeals and here we find that the Council of Ministers appointed himself a judge instead of the judicial authority. Whereas, the Council of Ministers doesn't have the constitutional authority to investigate electoral irregularities and this is contrary to the provisions of article (80) of the Constitution, which stipulate the powers of the Council of Ministers, including the investigation of the subject of the planned electoral violations intended to exist. The composition of such a committee does

not lead to health reasons. The Committee of Ministers did not seriously investigate the issue of allegations of fraud, did not look at one station or open a single ballot box or look at the results forms or make one visit to Commission headquarters to see more closely the mechanism for the introduction and sorting of results. It based its recommendations on unsubstantiated reports from some of the unsuccessful candidates and informants who refused to sign and name and did not provide one physical evidence of tampering with the election results. 3- Article (2) of Council of Ministers resolution No. (222) stipulates that the results of the elections abroad and the results of voting in the polling stations and stations for the voting of the displaced persons should be cancelled and this paragraph is contrary to the provisions of article (20) of the Constitution, which state that (For citizens men and women have the right to participate in public affairs and to enjoy political rights, including the right to vote, to be elected and to stand for election) and also violate the article (14) of constitution which state that ((Iraqis are equal before the law without discrimination on grounds of sex, race, nationality, origin, color or religion)) the cancellation of the votes of the electorate is not the prerogative of the cabinet and contradicts the above articles. 4- the paragraph (1) of the Council of Minister's decision No. (222) of 2018 which state that (Conduct of the counting and the manual sorting of at least 5% for all electoral centers in all governorates to conduct the audit and intersection) this text is an amendment to article (38) of the House of Representative Elections Law No. (45) of 2013 (amended) which state that (Counting and sorting using the electronic acceleration device....), thus, the Council of Ministers has exceeded its powers under article (80/3rd) of the Constitution, which provides for the promulgation of regulations, instructions and decisions with a view to implementing the laws. By its decision, the Council of Ministers amended article (38) of the law, bypassing its powers and violating article (38) of the Constitution.

5- At the end of the resolution (222), a reference was made to the restriction of travel by the Commissioners, Directors General and Assistant Directors General to travel only after obtaining the approval of the Prime Minister, which is violate to article (44/1st) of the Constitution, which stipulates (Iraqi Freedom of movement, travel and housing inside and outside Iraq), It is also violate to the provisions of article (46) of the Constitution, which stipulate that (no exercise or limitation of any of the rights and freedoms set forth in this Constitution shall be restricted or determined by law, but that such limitation or restriction shall not prejudice the essence of the right or freedom). From the above the request of the agents of the plaintiff to rule on the unconstitutionality of the decision of the Council of Ministers No. (198) of 2018 & (222) of 2018, the respondent's agent answered the petition with the following:

First: In terms of subject matter: In order to implement the rule of law (the whole thing is not leaving its part) when applying the provisions of the Constitution by the Council of Ministers requires that the work be loose implementation in a coherent and integrated manner and that some loose without other, they must be implemented in accordance with their complementarity and concomitant. Since article (5) of the Constitution stipulates (the people are the source and the legitimacy of the authorities exercised by direct secret ballot) and article (6) of the Constitution provides (the power is deliberated peacefully and through the democratic means provided for in the Constitution). Article (20) of the Constitution provides (citizens, men and women, the right to participate in public affairs and to enjoy political rights, including the right to vote, to be elected and to stand for election). In so doing, the Constitution has drawn up and defined the general policy of the State at the end of the four-year period stipulated in article (56/1st) of the Constitution the process of nominating, conducting elections, voting, counting, sorting and preparing the results of the elections and presenting them to the FSC for approval to achieve the peaceful circulation of power with integrity, transparency, security, stability and order and not to marginalize one side

at the expense of others and respect the voice of the voter and conduct elections are fair and impartial and the votes of voters are professionally, fairly and impartially counted. Since the Prime Minister is the executive officer of the general policy of the State and the Commander-in-chief of the armed forces, he manages the Council of Ministers in accordance with article (78) of the Constitution and article (80/1st) of the Constitution provides (the Cabinet shall exercise the general policy of the State and supervise the work of the ministries and non- associated with the ministry), article (80/1st) of the Constitution stipulates the competence of the Council of Ministers to promulgate regulations, instructions and decisions with a view to implementing the laws. After the House of Representative held the (legislature) with an extraordinary session and its members raised many notes and accusations about the electoral process and the report of the competent committee of the House of Representatives. The prevalence of allegations, objections and complaints, whether from candidates or political blocs, citizens, civil society organizations and some religious authorities, with cases of falsification and misrepresentation of results, coercion and control of some electoral centers and the complicity of many staff of the Independent High Commission For elections to stand with this candidate or bloc or other which led to be a matter of (public opinion) especially after the emergence and spread of it through the media and social networking which confirmed the investigation carried out by the Investigative Committee established by the Council of Ministers, which issued its decision to recommend (subject of challenge) after hearing reports of violations and forms that accompanied the electoral process in its various stages or that were provided by (the National Security Advisor The Federal Financial Supervision Office, the head of the National Intelligence Service and the head of the commission of Integrity), in the presence of the Supreme Judicial Council who supported the actions of the Council of Ministers, the Council of Ministers decided in its extraordinary session to form a higher committee

of the representatives of the above bodies and chaired by the President of the Federal Financial Supervision Office for the purpose of studying the reports and information presented by the extraordinary meeting of the Council of Ministers concerning the electoral process. Therefore, the establishment by the Council of Ministers of a higher committee for the above-mentioned purpose does not contradict the independence guaranteed by the Constitution to the Independent High Electoral Commission, as confirmed by the decision of the FSC No. (88/federal/2010). The Commission's work has focused on investigating allegations of fraud and misrepresentation of results, an executive work of the Council of Ministers that is not an interference in the work of the Independent High Electoral Commission and that the FSC is not competent to consider recommendations based on article (93/1st) of the Constitution. The decisions and recommendations made by the Council of Ministers to the above-mentioned bodies do not constitute an amendment to the laws (relevant to the elections) and are not an infringement of its powers and are not violate to the provisions of the Constitution but are properly applied to them. The presence of the Prime Minister's approval prior to the travel of officials of the High Commission for elections to the report of the Investigative Committee required the presence of Commission officials and the decision did not include a travel ban to be contrary to articles (44/1st) and (46) of the Constitution and a precautionary measure was necessary, Taken on the basis of the powers granted to the Council of Ministers under article (80/3rd) of the Constitution, where it is empowered to issue decisions on the implementation of laws, including the empowerment of the judiciary to investigate to expose the remaining associates by distorting the results of the election. According to the competence of the Council of Ministers, under article 80 of the Constitution, supervision of those not affiliated with a ministry, including the Independent High Electoral Commission, and the restriction of travel was not absolute, but for the purpose of

completing the inquiry procedure, thus the decision of the Council of Ministers did not commit any violation of article 46 of the Constitution.

Second: It is at the core of the FSC's Competencies is to control the constitutionality of laws, regulations and decisions under article 93 of the Constitution, and since the decisions of the Council of Ministers Nos. (198 & 222) of 2018 are executive decrees, the Prime minister, according to his constitutional powers, should not interfere Its functions and functions in application of the principle (separation of powers) provided for in article (47) of the Constitution. It is violate to the provisions of the Constitution that anybody enters into its decisions in fulfillment of its tasks and competencies established by the Constitution for the submission of the request of the defendant: 1- judgment to reject challenge because the plaintiff does not violate the provisions of the Constitution. 2- judgment to reject challenge lacks competence. After the registration of the case, according to the provision of paragraph (3rd), article (1) of bylaw of the FSC No. (1) of 2005 . After completion of the required procedures in accordance with paragraph (2nd) , article (2), of the mentioned system, a date of 5/12/2018 was set for the argument and the court was formed and the agent of the plaintiff and the agent of the defendant were present under the agencies attached to the case file and the pleading commenced in the presence of the parties and publicly. The agent of the plaintiff repeated the petition and requested the judgment under which the agent of the defendant replied that he had repeated what was stated in his answering plea, he requested to reject the case for the reasons set out in the court. The court checked the petition and the defenses presented by the defendant, found that the case had been completed for the reasons for the judgment and where nothing remains to be said , the end of argument has been made clear, and the decision had made clear in public in the session.

The Decision:

When scrutiny and deliberation the FSC found that the agents of plaintiffs claimed that the Minister Council has already issued its session date (24/5/2018) decision No. (198) of 2018 which includes the formation of a higher committee headed by Divan Federal Financial Supervision/ agency and membership of (National Security Adviser, Head of the Iraqi National Intelligence Agency/ agency, Head of the Integrity Commission/ agency and Chairman of the Supreme Security Committee for elections /Undersecretary of the Ministry of Interior for Police affairs) examines the reports and information presented at the extraordinary meeting of the Council of Ministers on the electoral process, and the Council of Ministers issued its decision No. (222) of 2018 contain approving the recommendations of the formed Ministerial Committee under the decision (198) of 2018, considering that the resolutions are contrary to the provisions of the Constitution and the law in terms of the composition of the Committee and its recommendations, the Prosecutor has taken the initiative to appeal the above-mentioned decisions for the reasons stated in the petition. From the examination of the facts and the merits of the case, the Federal Court found that the decisions (198 & 222) of 2018, they are administrative decisions with a reference to challenge not challenged before the FSC, which has competence under article (93) of the Constitution and article (4) of its law No. (30) of 2005. The FSC decided to reject the case in the form of jurisdiction and to charge the plaintiff with the fees and the legal counsel of the defendant's attorney (ha. sad.) an amount of 100 thousand dinars and the decision was made decisively and obligated on all the authorities on the basis of the provisions of article (94) of the Constitution and the article (5/2nd) of the law of the FSC No. (30) of 2005 and made clear and publicly on 5/12/2018.