



The Federal Supreme Court 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-Nagshabndi, Abood Salih AL-Tememi, 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 :

The Plaintiff : (Alif.Ain.Ain.Jim) – his agent (Jim.Kaf.Heh.Ain).

The Defendant : ICR Speaker/ being in this capacity –his agents the legal officials, the manager (Sin.Ta.Yeh) and the assistant counselor (Heh.Mim.Sin).

The Claim :

The Plaintiff agent claimed that the ICR previously issued the third amendment for the ICR elections law No.(45) for 2013 (amended) on 6.6.2018 and the aforementioned law -challenged- included constitutional legal violations so he initiated to challenge it for the following reasons :

1- the amendment –challenged- in its third article which stipulated (exception of the votes of the minorities which covered by the quota system and that violates the article (14) of the constitution which treated all citizens equal without any discrimination of the minorities from the rest of people.

2- the amendment –challenged- in its third article annulled the out-country result for all governorates and the elections of the conditional voting in the displaced persons camps and the population movements for AL-Anbar, Salah AL-Deen, Nainawa, Diyala, governorates, and the votes of inmates in

prisons and the elections of the private voting in Kurdistan region, this is contrary to the provisions of the article (20) of the constitution which guaranteed for the citizens men and women the right of the participation in the public affairs and enjoying the political rights included the right of voting, electing, nominating. Where all out-country results were annulled without any discrimination and all the remain aforementioned results before it getting decided by the judicial commission in the federal cassation court. Thus, a large segment of the people has been excluded from participating in the electoral process by the annulment of their votes.

3- the ICR has legislated the law of the third amendment in an open special session which is contrary for the text of the article (58/1st) which stipulated (The President of the Republic, the Prime Minister, the Speaker of the Council of Representatives, or fifty members of the Council of Representatives may call the Council to an extraordinary session. The session shall be restricted to the topics that necessitated the call for the session.) This means that the special session is devoted to a specific subject without going to find (new legislation) As in the usual legislative term in the ICR. That's what the Bylaw of the ICR confirmed in its article (38).

4- The amendment –challenged- stipulated in its fourth article (the current members of the commissioners commission shall be suspended from the work and the managers of the governorate's offices until the end of the investigation in the counterfeit crimes which mentioned by the ICR and this violates the provisions of the article (61/8th/Heh) of the constitution. Also, the provisions of the article (61/8th/Jim) of the constitution determined the method to interpellation the ministers. Also the assignment of judges to the higher national commission for justice and accountability for elections violates the law of the higher national commission for justice and accountability for elections No.(11) for 2007 specifically the text of the article (6) with its seven paragraphs which didn't include any text that enables the ICR any authorities to replace the members, as for the paragraph (5) which guaranteed the ICR the authority to exemption the Commissioners council assembled or apart from its tasks by the absolute

majority, after having proved their legal violation and this shall be with a decisive judicial decision which didn't happen.

5- the aforementioned amendment in its seventh article texted that the implementation shall start from the date of voting on it and this violates the provisions of the article (73/3rd) of the constitution which according to it the president of the Republic approves and issues the laws that enact by the ICR and considered as approved on it after (15 days) from the date of receiving it publicly, it should be pointed out that the supreme judicial council has preempted things and has implemented the amendment before its approval by the presidency and publishing it in the Gazette which is precedent has no similar.

6- The amendment draft presented by the ICR itself, it is not prepared by the cabinet according to what listed in the article (80/2nd) of the Constitution, whereas some of the amendment articles sent as scraps to the judicial commission which got enough by reading it for the members during the session to vote on it in the council and this violates the judiciary of the FSC in this matter, the court decided in one of its decisions (the unconstitutionality of the law of amended the university service) because the law draft didn't present by the cabinet.

7-It listed in the article (4th) of the law of the amendment that the FSC shall assign nine judges to run the council of the higher independent commission for elections and to take the authority of the commissioners council instead of the current commissioners council, one judge for each office of the commission offices in the governorates instead of the current officers and this violates the provisions of the article (98) of the Constitution which stipulated ((A judge or public prosecutor is prohibited from the following: First: Combining a judicial position with legislative and executive positions and any other employment.)) the assignment of the judges violates the provisions of the Judicial Organization law, in this matter mentioned made to the FSC decision which issued No.(55/federal/2010) on 24.10.2010 about the opened session where it listed in it (the FSC found that the parliamentary republic system as it confirmed in the countries that adopt

Federal Supreme Court - Iraq - Baghdad

radhaa

Tel – 009647706770419

E-mail: federalcourt_iraq@yahoo.com

Po.box55566

this system has three powers (Legislative, executive, judiciary) each of them practice its competences and tasks based on the principle (separation between the governmental powers) in terms of tasks and competences , it works simultaneously, cooperating, complementary to operates the government and its citizen affairs and the Iraqi Constitution stated this principle in the article (47) of it , this doesn't mean that the judiciary shall not take any executive tasks.

8-The ICR shall not amended the article (38) of the ICR elections law No.(45) for 2013 after the conclusion of the elections because the members of the council who voted on the law, they are in fact a litigations considered as beneficiaries and have an interest to deciding this amendment because most of them were not lucky to win the elections for 2018 . the ICR should amend the law before the elections and the declaration of its result because the third amendment for the law of the ICR elections No.(45) for 2013 which is challenged before the FSC has violated many constitutional and legal texts according to the prosecution- so the Plaintiff agent requested ((The Decision of annulling the third amendment for its violation for the Constitution of the Iraq republic and the Bylaw of ICR and the law that depending on, and to burden the Defendant all the expenses and fees of the advocacy)). The Defendant agents answered on the case petition as following :

1- The impact of minorities quota is limited and the number of the seats which emanating is determined previously, so and to guaranteed the minorities rights and to not lose it because of the operation of reviewing and deliberation on it, the results are being retained and the rights emanating because of it.

2- The annulment of some of the results was based on the incidence of serious violations during the electoral process proved by the reports of the parliamentary committee and the government committee which are competent in the investigation in the electoral violations as considering the council as people representative and reflects their will.

3- The ICR is not in the phase of interpellation or withdrawal phase from the independent commissions heads until the ICR depend on the above constitutional article (61/8th/Heh), but the ICR did the special procedure of suspension of work of commissioners council members to guarantee the assignment judges will do their work tasks without any interference with others, in addition to expel those who are in the electoral process which contained a serious violations, until the end of the investigation procedures.

4-The special sessions which the ICR held are done according to the constitutional competent in held the session, he is the ICR speaker according to the article (58/1st) of the constitution, the meaning is in the calling party to the special session not if it open or closed session.

5-The ICR determined the date of the law validity-which is challenged- by the date of the voting on it, with the competencies it has to determine the dates of the validity of the laws according to the provisions of the article (129) of the constitution. The ICR turn to make the validation of the law of the third amendment from the date of voting on it to guarantee the correcting of the electoral process and considering the constitutional special periods of the starting of the new legislative term which required expedite in the procedures.

6- The FSC is not competent to hear a case of the existence of a contradiction between the legal texts in the various laws, but rather the constitutionality of legal texts.

7-The claim that the law violates the provisions of article 98 of the Constitution on the basis of combining two posts of assigned judges is incorrect since the difference between assigning a temporary assignment to a judge for his neutrality and bringing the judge together between his or her judicial and other work has been added. The article (4) stipulated –the subject of the challenging- ((The tasks of the assigned judges will end when the FSC has ratified the results of the elections.)).

8- All members of the ICR who voted for the law -subject of challenging-are members who their membership is continuing until the end of the third

electoral term, which is considered important despite the results of the elections of the ICR, this is the basis for finding out the extent to which the law is valid or not. the depending on the results of the elections and the clarification that the Commission has become the weakest party and that the Council has become a litigant and a referee are personal evaluations that are not productive, and do not concern the FSC and are not competent to study them or to deal with them.

9- the Defendant agent refers to the FSC decision No.(99/federal/2018 and it's unified dated on 21/6/2018) and the reasons listed in it which related to the law –the subject of the challenging-- . for the above the Defendant agents requested to reject the case and to charge the Plaintiff all the expenses. After recording the case relying on the provision of the clause (3rd) of the article (1) of the FSC bylaw No.(1) for 2005 and after completing the requested procedures according to the clause (2nd) of the article (2) of the aforementioned system, a date of 5/12/2018 is set for the hearing of the case. The court has been convened, the Plaintiff agent and the Defendant agent attended and the argument has proceeded publicly and presently. The Plaintiff agent repeated the case petition and requested the decision according to it. The Defendant agents answered we repeated what listed in the answering draft and request the decision for the reasons listed in it. During scrutiny, the court found the case has completed the required procedures for judgment. the end of the argument has been decided and the decision has been understood publicly in the session.

The Decision :

During scrutiny and deliberation by the FSC, the court found the Plaintiff challenges in his case petition the third amendment law for ICR the election law No.(45) for 2013 because it issued contrary for the Constitution and the ICR bylaw so he requested the decision :

1- the decision of unconstitutionality of the aforementioned amendment and annulling it for the following reasons :

1-it was considered valid from the date of voting on it according to the article (8) of it and this violates the provisions of the article (73/3rd) of the Constitution which made the ratification on the laws and issuing it a competences of the president of the republic which stipulated (To ratify and issue the laws enacted by the Council of Representatives. Such laws are considered ratified after fifteen days from the date of receipt by the President.) also its issuing violates the article (129) of the Constitution, Laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise.

2- the Challenged decision issued in a special session held on 28/5/2018 continued to 6/6/2108, and this violates the provisions of the article (58/1st) of the constitution which stipulated ((The President of the Republic, the Prime Minister, the Speaker of the Council of Representatives, or fifty members of the Council of Representatives may call the Council to an extraordinary session. The session shall be restricted to the topics that necessitated the call for the session)) for evaluating the electoral process but it deviated from the specific topic of its convening to another, unrelated to the original topic.

3- suspending the original commissioners from their works and assignment of (9) judges instead of them as stipulated by the article (5) from the challenged law, it violates the provisions of the article (61/8th/Heh) of the Constitution.

4- the Draft law presented by the ICR violates the article provision (80/2nd) of the Constitution which stipulated ((The Council of Ministers shall exercise the following powers: Second: To propose bills.))

5- the ICR interferes in the functions of the executive power contrary for the principle (separation between the governmental powers) that listed in the article (47) of the Constitution also violates the article (1020 of the Constitution.

6-the law – the subject of challenge- was issued and it defects (conflict of the interests) because most of the representatives who voted on it are losers in the elections.

7- It was issued outside ICR (legislative mandate) which was issued outside the decided electoral term.

8-it violates the article (3) of the law –challenged- -the articles(13/2nd,14,20) of the constitution. From scrutiny the case facts and its documents the FSC finds :

(1) the procedures taken by the supreme council of the judiciary about the ICR elections for the current term 2018, it has a method to challenge it, other than challenging it before the FSC which its competences was determined by the article (94) of the constitution and the article (4) of its law No. (30) for 2005.

(2) for the listed challenging against the article (3) of the third amendment law for the ICR elections No.(45) for 2013, this challenging has already decided in the case (99/104/106/federal/2018) on 21/6/2018. The court decided the unconstitutional of the aforementioned article (3) and annulled it for its violations for the provisions of the articles (14,20,38/1st) of the Constitution which required to reject the case for the case has been already decided for this side.

(3) for the remain listed challenges of the Law No.(15) for 2018 , the third amendment law for the ICR law No.(45) for 2013 which aforementioned in the clauses (1-8) , it has been already decided too by the FSC , according to the aforementioned decision whereas the court rejected the Plaintiffs requests of challenging the unconstitutionality of the third amendment law for the ICR elections law No.(45) for 2013. Based on this the hearing in the subject is unlawful because the aforementioned decision acquired the authoritative reason which was stipulated in the article (94) of the constitution and the articles (105 and 106) of the of evidence No.(107) for 1979 (amended) which required to reject the case from this side.

(4) based on the above the FSC decided to reject the case :

Alif- unburden the Plaintiffs the expenses and fees of the advocacy for the listed challenging against the article (3) of the aforementioned challenged law because they initiated the case requesting the decisions of its unconstitutionality on 14/6/2018 and the issued decision of the FSC of its unconstitutionality and annulling it was on 21/6/2108 by the decision No.(99/104/106/federal208) so the Plaintiff was right in his listed request in this case (110/federal/2018) when the court made it so they unburden from the expenses and fees of the advocacy of his litigant.

Beh- burden the Plaintiff all the expenses and fees of the advocacy of his litigant in the remain aforementioned challenges amount of hundred thousand Iraqi dinars and the decision issued decisive and obliged for all powers according to the article (94) of the Constitution and the article (5/2nd) of the FSC law and has been understood publicly on 5/12/2018.