

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 112/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 Plaintiff : (Ha.Ain.Ain.Ain) /head of Saairun Allince - his agent
the attorney (Feh.Ha.Alif).

The Defendant: Speaker 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 Plaintiff claims that the Council of Representatives in his extraordinary session dated (6/6/2018) has voted on the third amendment code for the parliament elections code No(45) for 2013, which considered valid by the date of voting according to article (8)

of it, and that code is defected by the following constitutional violations:

First: the code legislation procedures occur in extraordinary sessions that violate the constitution, where it was displayed and read first reading in an extraordinary session on (30/5/2018), then it was read a second reading in the same extraordinary session, which transformed to (open session) on 2/6/2018, then it was voted on in the extraordinary session dated (6/6/2018), which violate the provisions of constitution from the following points:

1. Discussing subjects out of the topics for which the extraordinary session was held, as the text of article (58/1st) of constitution stipulated that (the session shall be restricted to the topics that necessitated the call for the session.) and when referring to the topic for which the first extraordinary session was called, it pointed to (the discussion and correction of the electoral process), while the proposed code that being challenged was read which is not included in the invitation for the extraordinary session.
2. The open extraordinary session - the second reading of the code was held in (open) extraordinary session with the absent of the quorum of the council, where it was a continuation for the extraordinary session that held on (30/5/2018), and as the F.S.C. issued a decision No (55and56/federal/2010) on 24/10/2010 that it is unconstitutional to keep the sessions open, therefore, the code is flawed because the second reading held in an open session, in contrary to the constitution.
3. voting on the code in an extraordinary session, which mean the challenged code is a code that has been proposed, read and voted on in an extraordinary session, that the invitation for it was not correct because its purpose was not specified, and assuming the purpose is determined, it was not for enact or amend a code.

4. The extraordinary sessions are not suitable for enacting codes because the code legislation requires a series of successive procedures that require time intervals (first reading, and second reading, then voting), while the extraordinary session is held once to discuss its topics and ends, therefore, the extraordinary sessions that were repeated in order to pass the code - the subject of challenge - do not meet the conditions of (the extraordinary session) as stipulated in the constitution, but the defendant used it for passing the code in contrary to the constitution, as the council of representatives has never before in all previous cycles enacted a code or amended a code in an extraordinary session, and has never read the a code draft or proposal first reading in an extraordinary session whatsoever.
5. The extraordinary session are held for urgent and serious emergency situations according to the provisions of the Constitution, while the extraordinary sessions that held by the defendant to pass the code were based on the case of (discussion and correction the electoral process), while the laws has stipulated certain mechanisms and parties to organizing and monitor the electoral process, which is a procedure that still ongoing didn't end yet, and are based on acts that are subject to challenge before the judiciary, and subject to ratification before the F.S.C., therefore there is no emergency or serious justification that requires the holding of extraordinary sessions, that is, the justification for holding the extraordinary sessions in which the code was ratified, consider violation for the constitution.
6. the invitation for the extraordinary sessions requires to issue an editorial order from the Speaker of the Council of Representatives that specify the purpose of the extraordinary session, and informs it to the Representatives in appropriate ways, that insure the arrival of

the invitation to all of them, but what happened that the Speaker did not issue the required editorial invitation and did not inform the Representatives, and have been relying on the social media to announce the holding of the extraordinary session, which cannot be relied on in the notification of the invitation to the extraordinary session.

Second: the code that being challenging to be unconstitutional was legislated on the basis of a proposal, which violate the constitution from the following points:

1. The F.S.C. decided by its decision No(64/federal/2013) on 26/8/2013 that codes cannot be legislated by a code proposal, only after its submission to the executive authority and the preparation of the bill, according to this decision, the code that being challenged is unconstitutional because it is based on a code proposal.
2. The F.S.C. confirmed its decisive support by its decision No (36/federal/2015) on 29/6/2015, and its decision No (59/federal/2015) and its decision (19 and 34 unified/federal/2015) on 6/7/2015, that any code includes an addition of financial obligations or burdens, requires the government to take action on it, which has not been taken by the code - being challenged -, therefore its flawed by another constitutional flaw that obligated to judge that its unconstitutional.

Third: the code which is challenged for being unconstitutional is subject to a conflict of interest, because most voters on it are from the losers in the elections that is related to the amendment of this code, because the amendment applies only to the elections in which they lose according to article (6) of the amendment code that being challenged which stipulate that (the provisions of this code shall apply on the elections of the Iraqi Council of Representatives for

2018), and it is not acceptable for the Representatives to legislate what they have a direct personal advantage in it, as it is a form of the legislation for the person himself, this violate the simplest rules of integrity and neutrality, which consider supreme constitutional principles that must be adhered to in any legislative, executive or judicial action.

Fourth: the elections that is related to the code that being challenged for its unconstitutionality, are the elections for the upcoming parliament, which is an early notification for the end of the legislative mandate for the current Council of Representatives , even if it took place in the last days of the current Council of Representatives cycle, but it remains an election that related to the next parliamentary cycle of the current Council of Representatives , which makes it outside of his legislative mandate, because it is about the next parliamentary cycle, and the current Council of Representatives does not have power upon the next parliamentary cycle, from the time of holding the elections, which the constitution stipulated to be held (45) days before the end of the current parliamentary cycle, according to article (56/2nd) of constitution that stipulate (the new Council of Representatives shall be elected forty-five days before the conclusion of the preceding electoral term.).

Fifth: the code that being challenged is flawed for disabling the formation of the constitutional authorities in the federal parliamentary Iraq, which was the basis for the F.S.C. in its decisions No(55and 56/federal/2010) on 24/10/2010, when it judged the unconstitutionality of the open session, because the effect of the code - the subject of immediate search and perspective - is a delay for the electoral process through the process of manual re-(counting and sorting), then open the door for the appeals upon the results... which its legal term has expired and lead to delay the F.S.C.

ratification on the final results, and thus lead to failure in the terms that stipulated in the Constitution, and delay the formation of the most important and the most dangerous authority in the parliamentary system, which is the legislative authority that consider breeding ground for executive power of the next parliamentary cycle, which requires the judgment of its unconstitutionality for delaying and disturbing the constitutional terms of forming the legislative and executive powers of the government.

Sixth: the Council of Representatives through the issuance of the code that is challenged for being unconstitutional has interfere in functions and duties irrelevant to his jurisdiction, as the Iraqi constitution is based on the separation of powers, and considering the elections the council of representatives has the power to enact the electoral code through general absolute rules, but the implementation of these rules is one of the duties and functions of the independent high electoral commission, whose decisions are subject to appeal before the judiciary, and the council of representatives should have left the electoral executive functions for the electoral commission, and he don't have the right to intervene in it, especially that the council of representatives assumed the existence of forgery, and based his judgment on it without any actual investigations or valid evidence, then issued an amendment for the electoral code, it's rules don't consider as general and absolute, because they related to specific event (the elections of 2018), therefore it lose the code status and transform them into executive decisions on a specific issue, which is the elections of 2018, thus the council of representatives has gone beyond the limits of its legislative jurisdiction and interfere by issuing an electoral executive rules which is out of his subjective jurisdiction, but interfere in the executive jurisdiction of the electoral Commission

which is an independent constitutional body according to article (102) of constitution, which its constitutional functions is equal in value to the Council of Representatives itself as an institution that is formed by the Constitution, therefore he has no right to interfere in executive affairs, the F.S.C. had previously judged by its decision No (57/federal/2011) on 18/10/2011, that the decision of the council of representative is unconstitutional because when he cancel the Council of Ministers decision that is the dues installment of the telecommunication companies, he has been interfering into an executive order and exceeded the principle of (the separation of powers), which applies to the code that being challenged because it focus on the intervene in the executive procedures specified for the elections of 2018.

Seventh: the code under challenge considered a serious precedent because it plant to give an opportunity for the subsequent Councils of Representatives to political intervene in the following elections of the Council of Representatives, by intervening in the electoral executive procedures, and impose the interests of the mass and parties that formed for the council of Representatives with the expired mandate, under the excuse of shiny delusional logos such as the elections correction and to ensure its transparency, which is a danger and a threat to the principle of democracy which is the second corner of the Constitutional corners according to article (2) of the Iraqi constitution for 2005, therefore the code that being challenged is unconstitutional for violating the principle of democracy and it consider a dangerous precedent that destroy the most important Constitution principles. For the above the agent of the plaintiff requested the following:

- 1- To judge that the third amendment code for the council of representatives elections code No(45) for 2013 is unconstitutional,

which was voted by the council of representatives in an extraordinary session on (6/6/2018).

- 2- Issuing an custodian order to stop the implementation of the challenged code, because the implementation of the code before a decision is issued on the case subject can arrange effects that cannot be removed, and for the Supreme Judicial Council, the body referred to by the law to implement the code by define a procedures to implement the code, including the determination of the assigned judges and suspension of the Electoral Judiciary commission.
- 3- Issuing an custodian order to stop the executive procedures taken by the Judicial Council until a decision is issued on the case subject. The agents of the defendant resounded to the case petition by the following:
 - 1) The extraordinary sessions that were held by the Council of Representatives were held under the invitation of the holder of constitutional jurisdiction in its convening which is the speaker of the Council of Representatives according to article (58/1st) of constitution, so the meaning is in the invitation party for the extraordinary sessions, and not for being open or not open, as for the fabrication of the Council for something that intersects with the constitution for passing the code - that being challenged- 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 council of representatives from legislating a code or amend it in an extraordinary session in the previous cycles, that is not valid as evidence or even presumption that code legislation during extraordinary sessions is illegal and does not fit as custom on it.
 - 2) the plaintiff's agent is 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 included in the code - the subject of challenge - which didn't occur.

- 3) All the Representatives who voted on the code under challenge are Representatives that continuing in the membership until the end of the third electoral cycle, which is the considered subject regardless the results of the elections for the council of representatives and this is the fundamental to be relied upon to know the extent of the code that being enacted is true, or not, as for the reliance on the elections results, and knowing that the Commission has become the weaker party, and that the Council has become litigant and judgment, it is personal assessments that are unproductive and is not related to the F.S.C. and it is not specified to study them, or pay attention to them.
- 4) The cancellation of some of the results was done based on the occurrence of serious violations during the electoral process which have been proven by the reports of the Parliamentary Committee and the State Committee, who are specialize in the investigation of the electoral violations, as the council is the representatives of the people and express their will, therefore there is no violation of constitutional articles (2/1st/Beh, Jim), (5), (6), (14) and (20) as the plaintiff's agent claimed.
- 5) The agent of the plaintiff claimed that the subject of the extraordinary session should be urgent, dangerous in accordance with the provisions of the Constitution, which do not apply in the subject of discussion and correction of the electoral process and therefore the holding of the session for that subject is contrary to the law and the Constitution, the answer to that is that these conditions, which were added by the plaintiff's agent as a condition for holding the extraordinary session, however they are his own conditions, nether the constitution or the law has stipulated it, therefore, the

assessment of the plaintiff's agent for the justification of convening the extraordinary session is groundless and unproductive, and the question is if the correction of the electoral process, which was flawed by fraud and deflection, does not require an extraordinary session, so what is the extraordinary matter ? with the knowledge that the solutions that contained in the code of elections for the council of representatives and the code of the Independent High Electoral Commission, and the council of representatives can copy them by any other legal texts that is suitable with the size of the flaw that affected the electoral process, which is matter that specializes in its assessment the Parliament, according to his jurisdiction as legislative and representative to express the will of the people.

- 6) what the plaintiff's agent refers to in paragraph (7) in the case petition, that expresses his point of view which have no legal basis from the Constitution or the law, we mentioning here the decision of the F.S.C. No(99/104/106/ federal/2018) dated 21/6/2018 for the recitals and reasons listed in it regarding the code that being challenged. For what listed the agents of the defendant requested to reject the case. After registration the case for this court according to the provisions of the paragraph (3rd)of article (1) of the F.S.C. bylaw No(1) for 2005, and after the required procedures has completed in accordance with paragraph(2nd)of article(1)from the aforementioned bylaw, the date 5/12/2018 has set to proceed with the case, the court was convened, the agent of the defendant has attend, the agent of the plaintiff did not attend despite being notified according to the low, and was decided to proceed with the case in his absence according to provision of the F.S.C. bylaw No(1) for 2005, the court has reviewed the case petition and the defendant answer, his agents repeated what listed in it requesting to reject the case for what listed in the answering draft, as the case was completed for the reasons of judgment the argument has been closed and the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the (F.S.C.), the court found that the plaintiff challenged in his case petition the code of third amendment for the Iraqi Council of Representatives Elections codes No(45) for 2013 for violating the constitution and the law and the council bylaw, so he requested to judge the following:

1. issuing a custodian order include the suspension of the implementation of the amendment paragraphs - subject to appeal-until issuing the judgment in the case.
2. issuing a judgment that the third amendment is unconstitutional and repeal it for the following reasons:
 - 1) it was considered effective from the date of voting under the article (8) of it, which violate the provisions of article (73/3rd) of constitution which made the ratification of codes and it issuance a jurisdiction to the President of the Republic, where it stated ((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)), it also violates the article(129) of the Constitution which stipulate that laws shall consider valid after being published in the Official Gazette, unless stipulated otherwise.
 - 2) The challenged code was issued in an extraordinary session held on 28/5/2018 and extended to 6/6/2018, and that violate the provisions of article (58/1st) of the Constitution, which stipulate that ((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)), where the session was originally devoted to the evaluation of the electoral process, but it deviated from the subject of the meeting to other things not related to the original topic.
 - 3) the suspension of the original commissioners work and the assignment of (9) judges instead as stipulated in article(5) of the

challenged code violates the provisions of article (61/8th/Heh) of the Constitution.

- 4) the code draft was submitted by the council of representatives and this violates the provisions of article (80/2nd) of the constitution which states that ((The Council of Ministers shall exercise the following powers: First: Second: To propose bills.)).
- 5) the council of representatives interferes with the functions of the executive authority, contrary to the principle of (separation of powers) contained in article (47) of constitution, and also violates the article(102) of constitution.
- 6) the code - subject of challenge- was issued being flawed because of (the conflict of interest) because most of the representatives who voted for it are losers in the elections.
- 7) It was issued outside (the legislative mandate) of the council of representatives, which was issued outside the scheduled electoral cycle.
- 8) issuing a custodian order to stop the executive procedures taken by the Supreme Judicial Council until the judgment is issued in the case.
- 9) the article (3) from the challenged code has violated the articles (13/2nd, 14 and 20) of constitution. By the scrutiny of the case petition and its documents the F.S.C. found that:
 - 1- The F.S.C. has previously decided to reject the request submitted to it regarding the issuance of a custodian order to suspend the implementation of paragraphs of the Third Amendment code for the council of Representatives Elections code according to its decision No(100/federal/2018).
 - 2- the procedures that was taken by the Supreme Judicial Council regarding the elections of the Iraqi Council of Representatives for the current cycle 2018, has another body to challenge the case before it, not only the F.S.C.
 - 3- regarding the appeal upon the article(3) of the Third Amendment code for the Iraqi Council of Representatives Elections code No(45) for 2013, it has already been adjudicated in the challenge

upon the aforementioned article in the case that No (99/104 /106/ federal/ 2018) on 21/6/2018, where it issued a decision that this article is unconstitutional and repeal it for violating the provisions of articles(14 , 20, 38/1st) of the Constitution, which requires the reject the case with reference to article (3) from the aforementioned code because it subject has already been adjudicated from this point.

4- as for the rest of the appeals upon the Third Amendment code for the Iraqi Council of Representatives elections code No(45) for 2013, that was listed in paragraphs from(1- 9) above, the F.S.C. has already adjudicated it by the aforementioned decision, were the court reject the plaintiffs request to challenge by the unconstitutional of the Third Amendment code for the Iraqi Council of Representatives elections code No(45) for 2013, therefore it cannot be reconsidered, because the judgment acquire the authenticity that stipulated in article (94) of constitution, and articles (105, 106) of the law of evidence No (107) for 1979 (the modified) which requires the reject the case from this point also.

5- based on what listed above the F.S.C. decided to reject the case for pre- adjudicated and jurisdiction

A. not to burden the plaintiffs the expenses and advocacy fees considering the challenge upon article (3) from the challenged code that was mentioned above, because they submitted the case petition requesting to judge by its unconstitutionality by date (14/6/2018), and the F.S.C. judgment that the article is unconstitutional and to repeal it was issued on 21/6/2018 by the decision No (99/104/106/federal/2018), therefore the plaintiff was right in his request that contained in this case (112/federal/2018) by the time of submitting it, therefore he shall not burden the expenses and advocacy fees for his litigant.

B. burden the plaintiff the expenses and advocacy fees for the agent of the defendant regarding the rest of the aforementioned challenges, amount of one hundred thousand Iraqi dinars. The decision has been issued decisively and obligatory for all

authorities according to article (94) of constitution, and article (5/2nd) of the F.S.C. bylaw unanimously and issued publicly on 5/12/2018.