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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 Plaintiffs :

1. the representative (Jim,Mim.Sin)
2. the representative (Alif.Beh.Mim)
3. the representative (Feh.Kha.Dal)
4. the representative (Ain.Nun.Mim)

Their agent the barrister (Kha.Nun.Mim)

The Defendants :

1. the president of the republic/being in this capacity-his agent head of jurists (Ghain.Alif.Jim)
2. the ICR speaker/being in this capacity- his agents the legal officials, the manager (Sin.Ta.Yeh) and the assistant counselor (Heh.Mim.Sin)
- 3.secretary general of the cabinet/being in this capacity- his agent the counselor (Ha.Sad)
4. head of the commissioners council for Independent High Electoral Commission/being in this capacity- his agent the legal official (Alif.Ha.Ain)

The Claim :

The Plaintiff agent claimed that the articles (5), (13/2nd) and (49/1st) of the constitution has stipulated the secrecy and this wasn't achieved in the elections held on (12/5/2018). it has been proved by the tangible evidence and the decisive the hacking of the acceleration device that the commission used :

1. the report of the national intelligence service and the national security service in the cabinet meeting which approved the hacking of these devices before the elections, then convening a committee from the cabinet to investigates the facts which approved the hacking of these devices and determined the huge amount of counterfeiting which prompted the cabinet to submit the committee reports to the ICR to take the required procedures which caused to issue the third amendment law.
2. The huge amount of counterfeiting which has prompted international agencies and newspapers to describe the elections as the worst in the world because the devices was hacked and un secretive.
3. Arson by counterfeiters of boxes and devices that have been voted through to blur the parameters of the crime. As you are aware that the process of forgery is a crime defects the honor and is it possible for Iraq to govern the ICR corrupt and fraudulent government.
4. mismatching in what the commission announced with the rams that distributed on the participating entities in the elections and this issued by one of the commissioners (Sin.Kaf), it has been proved there is difference up to (67%) and he said there was a intentional work by the commissioners committee to change the elections result for entities at the expense of other entities.
5. what presented by the representative (Mim.Jim) by video and audio about the deals happened between the election officer in Amman and others to forgery the elections.

6. the commissioners' committee promised the participating entities to announce the results on big screens and this didn't happen.

7. the former head of the commissioners' committee attended to the ICR and informed the council that the devices give the results in within hours by percentage 100% and it can't be accessed. based on that the ICR accepted to import the device, the truth otherwise.

8. the commissioners' committee didn't contract with Specialized company for the processing and suitability of devices.

9.the participating entities in the elections didn't receive the (source code) of the devices.

10. the commission (Ra.Beh) confession that there is (800) thousand violation and stuffing into the boxes after they announced in their conferences and meetings that the procedures are proper 100% and there is no doubt or distrust situation, it found that all their work is suspicious and questionable. For the above of reasons the Plaintiffs' agent requested :

First : annulling the second amendment of the elections law which made the elections by using the acceleration devices notorious which given the opportunity to the corrupted and forgers to forgery and going to far because it isn't secrecy.

Second: annulling the elections result that was on (12/5/2018) because the secrecy is not provided in it where it violates the articles (5), (13/second) and (49/first) of the valid constitution because there is a huge amount of forgery because of non-secrecy of this election which defects Iraq reputation.

Third: burden the Defendant all the expenses and fees of the advocacy.

The first Defendant agent answered on the case petition as following :

the case petition didn't include any request which directly addressed to his client or to oblige him something to be answered and this is contrary for the provisions of the article (2) of the civil arguments law No.(83) for 1969

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which obliged that the petition include ( a person requesting his right from another before the judiciary) and violates the article (4) of it, the case petition addressed generally to the Defendants including them his client although what listed in it included many requests differs in its situations among the Defendants. The Plaintiff should have determined those requests according to what related to each of the Defendants so every one of them can answer the request which addressed to him. For the above, the first Defendant agent requested to reject the case for his client. the agents of the second defendant (ICR speaker) being in this capacity- answered on the case petition as following :1. the agent of the Plaintiffs requests to annul the second amendment law for the elections law No.(45) for 2013 and it has known that ICR issued the third amendment law for the elections law which became valid from the date of voting on it and here it must be refers to the FSC decision No.(99/104/106/2018). And the reasons and considerations it included in reject the challenging against the aforementioned law and annulling the article (3) of it, based on this the request of the Plaintiffs is not effective anymore.

2. the competences of the FSC listed in the article (93/1<sup>st</sup>) of the Constitution, it didn't include ((annulling the results of the public elections)) that happened on 12/5/2018, based on this the request of the Plaintiffs is out of the FSC competence. for the above reasons the second Defendant agent requested to reject the case and to burden the Plaintiff all the judiciary expenses.

The third Defendant agent answered on the case petition as following :

First : in term of competence : the article (93/1<sup>st</sup>) determined the competences of the FSC and it didn't include hearing in the Plaintiffs request to annul the elections results which occurred on 12/5/2018 for the reasons they claimed, it is a request didn't include a challenging of a law or a decision or a valid regulation.

Second : in terms of litigation : relying on the provisions of the article (4) of the civil arguments law No.(83) 1969 (amended (( the Plaintiff is required to

be sentenced or obliged to something on consideration that the case ratified)) whereas the secretary general of the cabinet/being in this capacity, he specializes in implementation the instructions of the prime minister and the cabinet which he issues it relying on his authorities which was stipulated in the articles (78 and 80) of the constitution, his client relates directly to the prime minister and his competences is to practice the tasks given to him according to the article (30/3rd) from the bylaw of the cabinet No.(8) for 2014. The FSC judiciary settled on this in many cases including the decisions (65,36 and 38/federal/2017) and (59/federal/2018). he has practiced his authorities in the matter of providing logistic and security support and the requirements of the electoral process, implementing the instructions of the prime minister, not his authorities, from the beginning. Especially that including any work or action of the electoral process from the start of the nomination to the initial results issuing, thereby the litigation wasn't achieved in this challenging facing his client.

2. Assuming that the subject of the challenging is a case be the result of the implementation of the federal laws according to the article (93/3rd) of the Constitution. this makes it imperative for the prosecution to have an interest in, or a stake in it , relying on the article (4) of the civil arguments law No.(83) for 1969 (amended) whereas the articles (2 and 7) of the aforementioned law required the Plaintiff should have right in his case , whereas the subject of the challenging is (the elections and its result ) which isn't ordered or made any right for the Plaintiff only for their votes result ( in case they were within the candidates ), this case treated by the ICR elections law No.(45) for 2013 and the article (8) of the FSC law for the elections No.(11) for 2007 and the complaints system and the electoral challenging for the ICR elections No.(6) for 2018 which issued by the commissioners commission relying on the powers given to it, according to the article (4/2nd) of the law of the independent high electoral commission aforementioned above, it was stipulated in the article (2) of it, the authorities of the commissioners council (which replaced by the assigned judges) according to the third amendment for the ICR elections law No.(45)

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for 2013 which ratified by the FSC according to its decision No.(99,104,106/federal/2018) for Adjudication of the complaints related to electoral process. The damaged person has the right to challenge the council commission before the judicial committee for elections relying on the article (7/3rd) of complaints system, and the Plaintiffs are not concerned as stipulated in the article (93/3rd) of the Constitution to have the right to make the case, thereby the Plaintiffs don't have the right and litigation to make the case –the subject of investigation- especially they don't have the right and the litigation to challenge the elections results all of it as said before.

Third : in terms of subject : as implementing for the legal rule ( what done correctly according to law or a valid text must be considered) based on this the elections – the subject of the challenging- occurred according to the articles (6 and 20) of the Constitution and according to a time determined by the article (56) of the Constitution (via a calculation process for the forty five days of the electoral duration for ICR by four calendar years) the FSC ratified in its decision No.(8/federal/2018) thereby all the electoral process procedures from nomination to the initial results announcement done according to the Constitutional text and as implementing of it, the registered complaints could be hearing and deciding according to the provisions of the article (8) of the law of independent high electoral commission for elections, according to what clarified by the clause (2<sup>nd</sup>) of the article (2) of this draft, then the Plaintiffs will not have the right to make this case because annulling the results of the elections doesn't fit with the provisions of the Constitution because that leads to effecting the voters votes which occurred legally and properly without any violations, there were no complaints about it or in the officials' reports of violation.

Fourth : the FSC decided in this case previously.

1. the FSC decision No. (99/104/106/2018) on 21/6/2018 has been decided in the same subject previously and the decisions of the FSC is decisive and obliged for all the powers according to the provisions of the article (94) of the Constitution. Where it listed in the above decision (unconstitutional of

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the article (3) which decided the invalidity of the elections of out-country and movement population for some governorates and the displaced persons elections and the private voting elections in Kurdistan because the annulling was absolute without any discrimination between the votes which voted properly and legally, it is a waste of the voters' votes and confiscating the will of the voters, this contrary the provisions of the articles (14,20,38/1<sup>st</sup>) of the Constitution which costs the citizen his right of equality and his right in voting ,elections, nominating and the right to express his opinion in the public matter , top of the list is freedom of opinion in electing his representative in the ICR, which is similar to the mentioned opinion in the clause (2<sup>nd</sup>/2) of this draft, in purpose to proceed the remain steps of the electoral process legally, pellucid and announcing the final results..

2.unconstitutional issuing of the article (3) of the third amendment law of the ICR law for elections No.(45) for 2013 which excepted minorities votes who covered by the quota system from the annulling which the aforementioned article made it because it led to indiscriminate between the proper votes and the votes defect by violations , this violates the provisions of the article (14) of the constitution which stipulated equality between Iraqis before the law without discrimination for the aforementioned reasons in the text even if it defected by any type of violation.

3.what listed in the FSC decision ( notifying the ICR and the IHEC to outstanding on reasons for deciding the unconstitutionality of the article (3) of the third amendment law for the ICR elections and to consider that when practicing the texted authorities in the article (8) of its law when hearing in the listed complaints also hearing in the mentioned violations in the submitted official reports for about the violations and notifying the judicial commission for elections when it practice its authorities according to the article (8/3<sup>rd</sup>) of the commission law by annulling the votes in the electoral centers throughout Iraq and aboard which the complaints was submitted or will be submit about it or what listed of violations in the official reports that related to it, if a presence of violations had been approved in the acquiring

of those votes like forgery or other violations which affect the free of the elections and changing the voter will , after proceeding the manual counting and sorting process which was stipulated in the article (1) of the third amendment law for elections law for these votes without others and to no effects the voters votes which occurred legally without any violations and didn't mentioned any complaints about it or mentioned in the official reports that related to violations and with no necessary to proceed counting and sorting process manually for it whether these votes were acquired in Iraq or out as implementation for the articles (14, 20, 38/1<sup>st</sup>) of the Constitution respecting the voter will and his rights to participate in the public affairs and to not waste his vote which came with no violations, in addition to take in consideration the principle (what occurred correctly under a law or a text in law, remains considered). It was decided by the article (130) of the Constitution which mean what listed in the FSC decision is a judgment for part of voters votes in this concern as implementation for the judicial rule ( follower remains fowler and cannot judge by its self) it be better to not annul all elections results and to consider that in the FSC decision about this challenge. For the above the agent of the third defendant requested the decision in the following :

1. the decision to reject the challenge for incompetence .
2. the decision to reject the challenge in terms of litigation.
3. the decision to reject the challenge in terms of subject.
- 4.the decision to reject the challenge because it decided previously in the FSC decision (99/104/106/federal/2018) .

The agent of the fourth defendant answered on the case petition by his dated draft on 8/8/2108 as following : the Plaintiffs agent claimed that the elections which occurred on 12/5/2018 violated the secrecy principle which the Constitution confirmed it in the articles (5 and 49/1<sup>st</sup>) of it, because it was hacked in more than one place, the plaintiff have provided group of example of the hacking incidents which done in (( report of the national intelligence service and national security service which be on every

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newspaper and global agencies, the arson of the boxes and devices in the store of AL-Risafa office, mismatch of what the commission of the elections announced and the RAMs that was distributed for entities, what the representative (Mim.Jim) presented, the results didn't announced on big screens, head of the commissioners' council announced that the results will be announced within two hours and the devices can't be hacked, the confession of the commissioner (Ra.Beh) there are eight hundred thousand violation and boxes stuffing.))the Plaintiff agent requested in the end of the case petition to annul the second amendment law for the ICR elections law which concern using the accelerator devices and to annul the elections result which occurred on 12/5/2018. The Plaintiff determined two requests in the case petition :

First: annulling the second amendment law for the ICR elections law, this challenge was achieved by the third amendment law for the ICR election law which the article (1) of it stipulated (works by the accelerator device of the electronic result is annulled). For the second request of the Plaintiff to annul the elections result because of Non-confidentiality, the Plaintiff didn't present any conclusive evidence of the hacking of the electoral process. For the forgery cases which the Plaintiff mentioned it in the challenge petition, the case petition didn't include any real evidences about it, although the assigned commissioners council relying on the third amendment law for the elections law open and resorting for all the stations boxes that a complaints or challenges presented about it, after completing of this process the council announces the results of the counting and sorting in these stations as it found in those boxes, worthy to mention that the result which will be announced by the council can be challenged by any damaged person before the judicial commission for election which will do its task, deciding in those challenges and how correct is the results that announced by the council and to correct what must be corrected, then the final results showed to the FSC to ratify it. For the above, the fourth Defendant agent requested to reject the case. After registration this case at this court relying on the provisions of the clause (3<sup>rd</sup>) of the article (1) of the FSC bylaw No.(1) for 2005 and after completing the requested procedures

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according to the clause (2<sup>nd</sup>) of the article (2) of the mentioned system. The day 5/12/2018 appointed as a date to hear in the case. The court has been convened and the barrister (Kha.Nun.Mim) attended as agent for the Plaintiffs according to the power of attorney shown in the case file, head of jurists in the president republic office (Ghain.Alif.Jim) attended as the agent of the president of the republic/being in this capacity according to general attorney a picture of it shown. The agents of the Defendant the ICR speaker/ being in this capacity attended. The agent of the defendant secretary general of the cabinet being in this capacity attended. The agent of the fourth defendant head of the commissioners' council being in this capacity attended according to the attorney shown in the case file. The Plaintiffs' agent repeated the case petition and requested the decision according to it. The agents of the Defendants answered: the FSC has already ratified the final results for the elections of the ICR for 2018, there is no more legal reason for deciding in what the prosecution requested in those petitions. The court checked the case petition and what listed in the answering drafts, it found that the case completed the reasons of deciding, the agent of the plaintiffs comments that he made the case before the FSC ratified the final results for the elections. The agents of the defendant answered they have no comment. The agent of the first defendant comments that the third amendment law for the elections law has annulled the accelerator devices and it is the request of the plaintiffs. The end of the argument had been decided and the decision had been understood publicly in the session.

The Decision :

After scrutiny and deliberation by the FSC the court found that the Plaintiffs' agent requests the decision of (annulling the second amendment law for the law of the ICR elections No.(45) for 2013, which made the elections in the way of the use of acceleration devices that allowed counterfeiters and corrupt to falsify and going too far because it is not secret. As for requested by the Plaintiffs' agent to annul the elections final results which occurred on 12/5/2018 because it was not secret, it violates the provisions of the articles

(5), (13/2<sup>nd</sup>) and (49/1<sup>st</sup>) of the Constitution for the huge amount of forgery because the elections were not secret which damage Iraq reputation. The FSC find by checking the case petition and its documents :

1. the third defendant is not the party that issued the challenge law and it is not the party which concern to annul the results of the elections that occurred on 12/5/2018, the defendant required to be a litigant resulting by his declaration a decision, considering a declaration issued by him or he is to be sentenced or obliged by something, considering the case was approved relying on the article (4) of the civil arguments law No.(83) for 1969 (amended) so the litigation is not directed from this point.

2. for the listed challenge of the unconstitutionality of the Law No.(2) for 2018, the second amendment law for the law of the ICR elections No.(45) for 2013, the court noticed that the aforementioned challenge had been decided in the case No. (33/federal/media/2018) according to the issued decision by the FSC on (5/3/2018). It decided to reject the challenge that listed in that case, for the reasons given in decision recitals, whereas this challenging subject had been decided in the aforementioned case, it is impermissible to decide in it again which required to reject the case from this point relying on the article (94) of the Constitution.

3. for the request to annul the results of the elections that occurred on 12/5/2108, because It was not secret so it became violates the article (5), (13/2<sup>nd</sup>) and (49/1<sup>st</sup>) of the Constitution. Those results had been challenged by the damaged persons before the judicial commission for the elections according to the provisions of the article (8) of the IHEC law No.(11) for 2007, the decisions of the aforementioned commission are according to the provisions of the clause (7<sup>th</sup>) of the above article (8) it is decisive decisions and cannot be challenged in anyway, also those results had been ratified by this court according to the provisions of the clause (7<sup>th</sup>) of the article (93) of the constitution which its decisions consider as decisive and obliged for all powers according to the provisions of the article (94) of the Constitution, so this case has become irrelevant which required to reject it from this point. For the above the FSC decided to reject the case

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formally from litigation point, the remains challenges has already decided and to burden the Plaintiffs all the expenses and fees of the advocacy for the Defendants agents amount of hundred thousand Iraqi dinars according to the law. The decision was issued decisively and obliged for all the powers according to the provisions of the article (94) of the Constitution and the article (5/2nd) of the FSC law No.(30) for 2005 unanimously. The decision had been understood publicly on 5/12/2018.

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