

(Translated from Arabic)

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 150/federal/media/2018



Kurdish text

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The Federal Supreme Court (FSC) has been convened on 5.12.2018, headed by the Judge Madhat Al-Mahmood and the membership of Farouk 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:

Objectors Objections of Others:

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|-------------------------|---|--|
| 1. (Alif. Ain. Ha. Mim) | } | their agents the attorneys (Kha. Nun. Mim.)<br>and (Heh. Kha. Nun. Mim.) |
| 2. (Kha. Alif. Jim.)    |   |  |
| 3. (Kha. Mim. Jim.)     |   |  |
| 4. (Alif. Sin. Ain.)    |   |  |

Objector Against it Objections of others: Head of the Commissioners council of the Independent High Electoral Commission from the (assigned judges)/ being in this capacity, his agent the legal official (Alif. Ha. Ain.).

## The Claim:

The agents of the prosecutors claims that their client are candidates for the elections which took place in (12/5/2018), and have been affected by the explaining of the Objector Against it ( Objections of others) of the Third Amendment code for the elections code and to article (1) of it, where the F.S.C. has already ratified this article by its decision No(99/104/106/federal/2018) on 21/6/2018, its decision has stated (this orientation doesn't include violation to the provisions of the Constitution), which explain that what listed in article (1) from the Third Amendment code of the Parliament elections code, is correct and approval to the Constitution ,from one hand, on the other hand the F.S.C. has reject the received challenges on the article (1), and so the contents of that article are correct, and the relevant authorities are requires to implement it, and whereas the F.S.C. serves as Court of cassation when considering the challenges on the legislation enacted by the Parliament, so when rejecting a challenge against a particular article or paragraph of any legislation, this means that the court has ratified that article or paragraph. Since the defendant/ being in this capacity has explained the F.S.C. decision (misinterpretation), and because the court ratified the article (1) of the Third Amendment of the elections code literally which is obligated by the code in the article (1) application of what listed in the code by applying the total manual counting and sorting for all stations in Iraq (Inside and outside Iraq). For that the agents of the plaintiffs requested to issue a decision to implement the paragraph (1) of the Third Amendment code for the elections code which was issued by the Parliament and ratified by the F.S.C. by its decision No(99/104/106/federal/2018) On 21/6/2018 to perform (the total manual counting and sorting) in all stations inside and outside Iraq by the Objector Against it (objection of others)/ being in this capacity. The Objector Against it objection of others has replied

to the case petition with his answering draft dated on 12/8/2018 with the following:

- 1) it is not within the F.S.C. jurisdiction to explain the cods but it is the jurisdiction of the State Council.
- 2) the Judiciary Electoral Commission rejected all the challenges submitted to it related to the aforementioned Commissioners decision, and the decisions of this Commission are decisive and cannot be challenged on according to the provisions of article (8/7<sup>th</sup>) from the Independent high Electoral Commission code.
- 3) the Board of Commissioners in the Commission has explained the Third Amendment code in the same orientation as the F.S.C in its aforementioned decision, since it is agreed that the legislator's goal of enacting the Third Amendment code is to ensure the integrity of the electoral process and procedures and to deal with the violations that accompanied it, and it was not his goal to cancel the entire election or to (manually re-count and sort) to all the votes, and if the legislator's will is to do so, he would provide a clear and direct text that does not need interpretation or explanation. On the other hand the article(1) of the Third Amendment code, has obligate the Commissioners to manually re-counting and sorting for all stations without specifying the percentage of votes covered by the manual re-count and sort, and it did not mentioned specifically and clearly whether re-counting and sorting included all stations or the stations that were manipulated and counterfeit.
- 4) the agents of the plaintiffs was mistake when explained this phrase (and this orientation doesn't include violation to the provisions of the Constitution) from the aforementioned F.S.C. decision, were they relied on that phrase from the court's decision which consists of 18 pages, and they overlook some of the obligating and ruling paragraphs in the same decision, and

the origin in the texts is not to explain its phrase with what take it out of its meaning, the Commission has been discreet to study what listed in the F.S.C. decision extensive study, in line with the actual purposes that the Court wished to achieve by editing these text as way to it, so it decided on a completely convinced to depends on partial manual counting and sorting to ensure complete neutrality and objectivity for the following reasons:

- 1: the F.S.C. decision has been directed to three official bodies designated by name and addressed to them exclusively and not for example, and specify precisely what belongs to each of them and what they are required to implement in order to put the decision on the right track in the implementation, and these bodies are (the Parliament, the Electoral Commission and the Judiciary Electoral Commission).
- 2: the decision first began to the Parliament and requested to be notified by the cancellation of Article(3<sup>rd</sup>) of the Third Amendment for being unconstitutionality, because the Parliament is the only body that have the authority to amend the codes or repeal it based on its jurisdiction which is legally held to it.
- 3: the decision, second also grant to notify the Electoral Commission and its components Stands for the reasons of the judgment of unconstitutionality of the article (3) -which is the subject of the challenge - and to consider that in the received complaints, the commission according to its stipulated jurisdiction in article (8) from its code, decided that it is not permissible for any other party to dispute it and take it for itself which include (its exclusive jurisdiction in resolving disputes arising from the preparation and implementation of the elections, however its decisions subject to the judiciary of the elections). it is noted that the F.S.C. requires the

Commission to take into account Article (8) of its Bylaw when considering complaints of the violations or the official reports about violations, however its decisions in that shall be subject to challenge before the judicial Commission that referred to above.

4: according to the decision of the F.S.C. the judiciary of the elections was also notified of what listed in it for taking it into account when exercising its jurisdiction that is stipulated in article (4) of the Third Amendment code and article (8) of the Electoral Commission code, and that is by canceling the votes in the elections stations in all parts of Iraq and outside it, which raised and will be raise about it complaints or what listed from the violations in the official reports, that related to if such violations are proven in obtaining the votes such as forgery and other types of violations that affect the on the freedom of the elections or distortion the will of the voter and that after the process of manual counting and sorting which stipulated in article (1) of the Third Amendment code for these votes without the other, and not to affect the votes that a complaints are raised on it in both inside and outside Iraq according to the provisions of the articles (14,20,38/1<sup>st</sup>) of the Constitution. And the third amendment granted another jurisdiction to the judiciary Commission which is to cancel the results of the elections in some stations that require the cancellation of its results, where the court established a governing and obligatory standard to the Electoral judiciary Commission, which is ((to separate between two cases)) when acting their role. First: is about the violation that were complaints or official reports about it so the courts instruct to cancel these votes, if the violation were proven in its obtainment, after the process of manual "counting and

sorting" which stipulated in article (1) of the Third Amendment code. Second: is the votes of the voters which obtained in legal status without any violation and no complaints have been received about it, or to be mentioned in the official reports that related to the violation (without the need to the procedure of "manual counting and sorting" whether the votes were obtained inside or outside Iraq) and that to implement the provisions of the Constitution.

it's clear from what above that the F.S.C. intent and its purpose is clearly directed to not (re-count and sort) in any station which no complaint has been received about it, in respect to the constitutional principles that respect the will of the voter and not to waste his vote, if it obtained without violation, and to the fact that the cancellation of the right votes is a serious violation of the rights and freedoms that established by the Constitution and ensured its protection. For the above the defendant requested to reject the case. After the case has been registered according to the provision of paragraph (3<sup>rd</sup>) of article (1) from the F.S.C. Bylaw and the required procedure has been completed according to paragraph (2<sup>nd</sup>) in article (2) of the mentioned Bylaw, the date 5/12/2018 was set to proceed with the case, the court has been convened, the agent of the (Objectors Objections of Others) has attend, the agent of the (Objector Against it Objections of Others) also attend under the agencies outlined in the case petition, the agent of the Objectors repeated what listed in the case petition and requested to judge for what listed in it, the agents of the Objector Against it Objections of Others repeated what stated in the answering draft and requested to reject the case for what listed in it. The court examined the request contained in the case petition and found that the case was completed for the judgment, and where nothing left to be said the argument is closed and the decision is issued publicly.

## The Decision:

During scrutiny and deliberation by the (FSC), the Court found that the agents of the (Objectors Objections of Others) has claimed in the case petition that their clients are candidates for the elections which took place in (12/5/2018), and the Commissioners council of the high Electoral Commission explained the article (1) of the Third Amendment code of the Election code No(45) for 2013, misinterpretation so that the implementation of manual counting and sorting is (partial) in contrary to what stated in it, and what stated in the F.S.C. decision No(99/104/106/federal/2018) on 21/6/2018, therefore they initiate a request to the F.S.C. to issue a decision to implement the paragraph (1) of the Third Amendment code of the Iraqi Parliament Election code No(45) for 2013 that were mentioned above, in order to be able to total counting and sorting in all stations in Iraq. The F.S.C. found that it already adjudicated the subject of this case according to its decision No(99/104/106/federal/2018) on 21/6/2018, through the challenge submitted to it about the unconstitutionality of the code No(15) for 2018 the Third Amendment code of the Iraqi Parliament Election code No(45) for 2013, therefore it cannot reconsidered the case subject again, because the F.S.C. decisions is decisive and obligatory to all authorities in accordance to the provisions of Article (94) of the Constitution, and so the reconsidering of this case - is irrelevant- because its subject has already been adjudicated, which requires to reject it according to this point. For the above the F.S.C. decided to reject the case and to burden the (Objectors Objections of Others) the expenses and advocacy fees for the agent of the (Objector Against it Objections of Others) amount of one hundred thousand Iraqi dinars according to the code and the decision has been issued decisively and obligatory to all authorities according to provisions of article (94) of the Constitution, and article (5/2<sup>nd</sup>) of the F.S.C. Bylaw and unanimously and issued publicly on 5/12/2018.