

Republic of Iraq  
Federal supreme court  
Ref. 15/federal unified with  
16&17&18&19&20/ federal /2018



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The Federal Supreme Court (F S C) has been convened on 1.29.2018 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 Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. Niazi Mohammed Mahdi.

2. Mohammed Nasir Dalli.

3. Ala'a Tahseen Habeeb AL-Talbani.

4. Nahla Hussein Saad.

5. Abbas Khadhim Amir.

6. Khula Manfi Juda.

Their agent the barrister  
Yassir Mohammed AL-Shami

The Defendant: the Speaker of the ICR/ being in this capacity- his agents (general director assistant of the legal department PhD. (Fareed AL-Shibani) and the director Salim Taha Yaseen and the legal consultant assistant Haytham Majid Salim).

### The Claim

The agent of the plaintiff Niazi Mohammed Mahdi claimed that the defendant previously issued decision No. (1) For 2018 the law of first amendment of law (45) for 2013, whereas this law had included many constitutional violations, so he requests from the FSC to annulling the clauses and articles which required to be annulled because of unconstitutionality and all traces based on it, which is it: first: article (14) of the constitution for 2005 stipulated on Iraqis are equal before the law without discrimination... and the

social status means the cultural ratio and the scientific grade as it is permanent, therefore what listed in law No. (1) For 2018 the first amendment of law (45) for 2013 article (2) the item 3<sup>rd</sup> & 4<sup>th</sup> & 6<sup>th</sup> shall be amended and adds item 7<sup>th</sup> to the text of article (8) to be read as following (fourth- in conditions of nominating for the ICR membership (8/4<sup>th</sup>) the candidate must acquire a bachelor's degree or what equal, and this contrariwise the constitution. Therefore, the aforementioned article violates the constitution. Second- article (16) of the Iraqi constitution stipulated on (equal opportunities shall be guaranteed to all Iraqis) and in the challenged law may your integrity court notice the obvious violation, whereas this matter may lead to inequality between citizens which cause a clear violation to article (2/jim) of the constitution which stipulates on (no law may be enacted that contradicts the rights and basic freedoms). Therefore, article (2/amending article (8/4<sup>th</sup>) will restrict a freedom of a big segment of citizens. Third- article (20) of the constitution stipulated on Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office. In this case the article was absolute, not restricted or ruled by a phrase (regulate by a law) or indication to any review, so what listed in law No. (1) For 2008 amending to law No. (45) For 2013 is unconstitutional and restricts the basic rights of the citizens in nominating as the constitution stipulated on. Fourth- article (39) of the constitution stipulated on the freedom to form and join associations and political parties shall be guaranteed. And this is a constitutional text because there is no segment from the Iraqi people exempted. Fifth- article (54) of the constitution stipulated on the eldest member shall chair the first session, and the Iraqi enactor when drafted the constitution did not mention to their highest scientific degree or acquiring a high certificate, but its text was clear (the eldest). Therefore, nominating for the ICR is justified right for each legally competent Iraqis which not convicted with a crime. Sixth- the reformations which all Iraqi people demand it requires this people to be represented by all its colors, segments and social levels, and when scrutinize the advanced world constitutions your court will notice that all people's segments are represented by its parliaments even if those regimes

were capitalist or socialist. Our Iraqi people suffered calamities because of Ex-regime and the terrorist works followed that, which motivated many citizens to not finish their study, and this what the Iraq enactor cared about in article (20) of the constitution. Seventh-article (3) stipulated on adding clause (waw) to item (2<sup>nd</sup>) of article (11) to be read as following (the component of Faylee Kurds (1) seat in governorate of Wasit) and this is clear violation, whereas the constitution clarified that for (100.000) Iraqi citizens has a parliamentary seat to represent them, and the Iraqi government (Ministry of planning) did not perform till now the census which could be reliable, besides deducting a seat from a social component's share of Wasit governorate is unconstitutional matter, and pointing to this matter by the defendant/ being in this capacity before the census may produce rage and anxiety for the people of Wasit and the other governorates, whereas there is not a legal standard to adopt this deduction. Eighth- the defendant/ being in this capacity already approved the law No. (36) for 2015 (political parties' law) and it was challenged in article (9/6<sup>th</sup>) of the challenged law, whereas it included that who found the party must acquire a bachelor's degree or what equals. In your honorable court's decision Ref. (3/federal/2016) on (8.9.2016) that this matter is a true violation of constitution provisions in articles (14&16&38/1<sup>st</sup>&46), whereas the constitution did not conditions to whom carrying out the President of the Republic post to be of those whom acquired a bachelor's degree or what equals. This matter will lead to deprive many people from exercising their constitutional right, and the history of Iraq is full of those who occupied the political posts and they do not have a bachelor's degree. Ninth-article (2/jim) of the Iraqi constitution for 2005 stipulated on ((no law may be enacted that contradicts the principles of democracy)) and inhibiting a big segment of people and politicians whom the political ideas had been crystallized in them, and they have wide public. And this procedure forms a true violation of the constitution of the constitutional article's text and its other articles. Tenth- the door of political coalitions of the parliamentary elections for 2018 has been closed more than a week ago from the date of approving the challenged law, and in article (4) mentioned to amend item (1<sup>st</sup>) of article (14) about distributing of seats and counted the

percentage (1-7) instead of (1-6) which caused mystification in coalitions, and no equal opportunities will be existed between it. All the coalitions were built on that base, so how is it possible to amend the law on coalitions approved in a previous time of its approval. Accordingly, and to what reasons your honorable court may see. The agent of the plaintiff requested from the FSC to judge by annulling the texts of articles clause (4<sup>th</sup>) of article (8<sup>th</sup>) and clause (waw) of article (11) and item (1<sup>st</sup>) of article (14) of the law No. (1) For 2018 the law of first amendment of Iraqi Council of Representatives' elections No. (45) For 2013, as well as the plaintiff Mohammed Nasir Dalli by his agent had initiated the case No. (16/federal/2018) against the defendant the Speaker of the ICR/ being in this capacity for the same reason and the same recitals. He requested from the FSC to judge by annulling the same texts which the plaintiff requested in the case (15/federal/2018). As well as the agent of the plaintiff Ala'a Tahseen Habeeb AL-Talbani initiated the case No. (17/federal/2018) against the same defendant in the previous case, and for the same reasons and recitals. He requested to judge by annulling the legal texts listed in law No. (1) For 2018 the law of first amendment of Iraqi Council of Representatives' elections No. (45) For 2013 which requests to be annulled in the abovementioned cases. Also the agent of the plaintiff Nahla Hussein Saad initiated the case No. (18/federal/2018) against the same defendant the Speaker of the ICR/ being in this capacity, and he requested to judge by annulling the legal texts listed in law No. (1) For (2018) the law of first amendment of Iraqi Council of Representatives' elections No. (45) For 2013 which challenged because of unconstitutionality in case No. (15/federal/2018). As well as the agent of the plaintiff Abbas Khadhim Amir initiated the case No. (19/federal/2018) against the same defendant in the case No. (15/federal/2018). He requested from the FSC to judge by annulling the same legal texts which challenged because of unconstitutionality in the aforementioned case which listed in law No. (1) For (2018) the law of first amendment of Iraqi Council of Representatives' elections No. (45) For 2013 and for the same reasons and recitals mentioned in the aforementioned case. The agent of the plaintiff Khula Manfi Juda initiated the case No. (20/federal/2018) against the same defendant

the Speaker of the ICR/ being in this capacity, and he requested from the FSC to judge by annulling the same legal texts which challenged because of unconstitutionality in the case No. (15/federal/2018) which listed in law No. (1) For (2018) the law of first amendment of Iraqi Council of Representatives' elections No. (45) For 2013 and for the same reasons and recitals. The agent of the defendant answered the abovementioned cases as an answer on the aforementioned cases by a written draft dated on 1.25.2018 that the agent of the plaintiffs in the cases initiated against his client/ being in this capacity, and he requested in the draft to judge by unconstitutionality of some articles of law No. (1) For (2018) the law of first amendment of Iraqi Council of Representatives' elections No. (45) For 2013 and to annulling all the traces based on it, and answering that the plaintiffs claims there are a number of constitutional violations in the law (challenge subject) and article (2) of it listed ((conditioned in whom candidate for the ICR membership...)) and in item (4<sup>th</sup>) of it listed ((the candidate must acquire a bachelor's degree or what equals)) and he claims that there is a clear contradict in the constitutional articles (2/jim) and (14) and (16) and (20) and (39) and (54) of the constitution, and we answer that as following: there is no contradict between the constitutional articles which mentioned by the plaintiff and conditioning of the ICR for whom candidate to its membership to be acquirer of a bachelor's degree or what equals because the ICR seeing that this matter is better and more logic. Regarding to the heaviness of the task which sets on the ICR's member shoulders especially that all world's peoples looks to the parliament with respect and sanctity because of what authorities this foundation enjoys which enables it from building the state. By these authorities the state can move forward with successful steps, and it could move the state a centuries back without it. The parliament remaining the leader, founder, monitor, enactor and director of all the state's activities and its citizens because it monitoring and accounting the executive power and respect the judicial power, as well as scrutinizing and approves the financial issues and works on achieving the prospects and hopes of the people. The body of the legislative power logically remains the highest body in the state; it is planning and minimizing the texts to draw the stage which ruling

its existence and planning for both executive and legislative power. Therefore, success of all the state's foundations or its failure reflects automatically on all state's joints, and it will effect on the people. Actually the parliament system in Iraq indicates to that the Iraqi state since established depends on this system, and if the ICR was not able to reach the perfect performance in its work for many reasons, some of these reasons are security, political and partial, but the ICR members seeing that the most important reason is what related to the representatives themselves and their scientific qualification and their ability on performing the tasks, and the last reason had diminished the confidence of the Iraqi citizen by the ICR which needs to make a review to this condition and raise the roof to higher certificate by the ICR to correct its route, and to rebuild this constitutional foundation in a way shall improve its view in the people's mind. Spite of all what aforementioned, the Speaker of the ICR tried to count the number of the representatives whom voted with yes about what related to the clause of the candidate conditioning to acquire a bachelor's degree or what equals, and according to the authorities which granted to him according to the bylaw by re-voting three times on this clause but the result was it got the enough number of votes which pass it successfully, and claiming that it is violates article (3) of the law to the constitution, which stipulates on ((adding clause (waw) to item (2<sup>nd</sup>) of article (11) reads as following:- (waw) Faylees component (1) one seat in governorate of Wasit)). Whereas the plaintiff claimed it is violates article (49/1<sup>st</sup>) of the constitution which stipulates on ((The Council of Representatives shall consist of a number of members, at a ratio of one seat per 100,000 Iraqi persons representing the entire Iraqi people. They shall be elected through a direct secret general ballot. The representation of all components of the people shall be upheld in it)). We answer that this matter did not introduce any new, because the enactor previously granted quota to many components (Christian, Yzedi, Sabie, Mandaie and Shabaki) according to a previous laws, and the FSC did not judge on it by unconstitutionality because it was an adequate implementation of constitution articles, and maintaining a stable representation of these components. In summary, the ICR seeing that enacting this law is a legislative choice does not contradicts

with the provisions of constitution, on the contrary it is regarded an adequate implementation and never cause any additional financial obligation on the government, and does not conflicts with its general policy or tangent the judicial independence. This is what the constitutional judiciary in Iraq settled on as a base when enacting the laws which represented by the FSC in many judgments issued by it, for example what listed in the case No. (21/federal/2015) and its unified cases issued on (4.14.2015) and the case No. (85/federal/2017) on (10.10.2017). Therefore, and for the mentioned reasons, the agent of defendant requested to reject initiated cases in the abovementioned numbers, and to burden the plaintiffs all the judicial expenses and fees. The court called upon the two parties of the case for pleading, and on the day set for pleading the agent of the plaintiff the barrister Yassir Mohammed AL-Hashimi attended according to the power of attorney which attached to the file of the case, and the agent of the defendant attended. The public in presence pleading proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it, with burdening the defendant the case's expenses and advocacy fees. The court noticed that there are initiated cases before the FSC has the same subject this case No. (15/federal/2018) which numbered (16/federal/2018) and (17/federal/2018) and (18/federal/2018) and (19/federal/2018) and (20/federal/2018) against the same defendant the Speaker of the ICR/ being in this capacity and for the same reasons and recitals, the agents of the plaintiff requested from the FSC to judge by annulling the texts of articles clause (4<sup>th</sup>) of article (8<sup>th</sup>) and clause (waw) of article (11) and item (1<sup>st</sup>) of article (14) of the law No. (1) For 2018 the first amendment of the ICR elections law No. (45) For 2013 because of its violation to the constitution, and it is the same request which listed in the case No. (15/federal/2018) and the same reasons and recitals. Whereas the aforementioned cases initiated by the same abovementioned plaintiffs against the same defendant the Speaker of the ICR/ being in this capacity and for the same subject. For saving time and effort, and according to article (76) of civil procedure law No. (83) For 1969. The FSC decided to unify the cases numbered (16/federal/2018) and (17/federal/2018) and (18/federal/2018) and (19/federal/2018) and (20/federal/2018) with

the case No. (15/federal/2018) and to proceed it together and regarding the case No. (15/federal/2018) as it is the original in initiating. The agent of the plaintiffs repeated what listed in the petition of their client case and they requested to judge according to it, and to burden the defendant/ being in this capacity the expenses and advocacy fees. The agent of the defendant what listed in the answering draft which presented to the court as an answer on the petition of the case and requested to reject the case with burdening the plaintiffs its expenses and advocacy fees. Therefore, whereas nothing left to be said, the end of the pleading made clear and the decision recited publicly.

### The decision:

After scrutiny and deliberation by the FSC, the court found that the plaintiffs in the unified cases had challenged unconstitutionality of some articles listed in the law No. (1) For 2018 (the law of amending the ICR elections law No. (45) For 2013) as following:

1. Challenging unconstitutionality of item (1<sup>st</sup>) of article (4) of amending law aforementioned which includes dividing the correct votes of the competitive list on sequential numbers 1,7, 3,5,7,9...Etc, and by the number of the seats which dedicated for electoral district. Whereas this amendment (challenge subject) became as a replacement of the last dividing which stipulated on in item (1<sup>st</sup>) of article (14) of the ICR elections law aforementioned. The FSC finds that the change which performed by the ICR in dividing the votes was a legislative choice according to its competence stipulated on in clause (1<sup>st</sup>) of article (61) of the constitution and does not contradicts with its provisions; therefore, the challenge has not a substantiation in the constitution.
2. Challenging unconstitutionality of clause (waw) which added according to article (3) of amending law aforementioned to item (2<sup>nd</sup>) of article (11) of the ICR elections law abovementioned, and added clause (waw) which added with Faylee component one seat in governorate of Wasit. The challenge of its unconstitutionality was based on one reason which is it lacking to census in governorate of Wasit, and this matter is standard to determine the parliamentary seats in the governorate. The FSC finds about the abovementioned challenge that the census in general meaning was



not performed in all regions, and another standards were approved to determine it, besides the text (challenge subject) finds its substantiation in clause (1<sup>st</sup>) of article (49) of the constitution which obliges to regard represent all the Iraqi people components in the ICR, and Faylee component is obvious in governorate of Wasit and they have population density in it, and the population density which meant by article (4) in its clause (4<sup>th</sup>) of the constitution interpreted by the FSC in its decision No. (15/federal/2008) issued on 4.21.2008 that these groups which forms a weight and prominent appearance, and it has effects in the community process and its movement, but it is not necessary means majority of the population. This matter obliges that the Faylee Kurdish must be represented in the ICR similar to the other components of Iraqi people which had been granted such right such as Christian, Yzedi, Sabie Mindae and Shabaki component. Therefore, the FSC finds that the aforementioned challenge has not substantiation in the constitution and does not violates its provisions.

3. Challenging unconstitutionality of item (4<sup>th</sup>) of article (2) of amending aforementioned law which amended by item (4<sup>th</sup>) of article (8) of ICR elections law which conditioned in the candidate for the membership of the ICR to acquire a bachelor's degree or what equals, while the text was before amending conditioning the candidate be acquirer of high school certificate or what equals minimum. The FSC finds about the challenge that the constitutional articles which the challenge based on it is not valid to be a support to judge by unconstitutionality of the text (challenge subject), as well as the examples which listed in the challenge because the challenged text for unconstitutionality was before amending conditioning in the candidate for the membership of the ICR to be acquirer of high school certificate or what equals minimum, and this what the plaintiffs accepted and inclusively requested to keep it in their cases. As well as what it was applicable in the last terms of the ICR, and this matter does not unbalancing the principle of equality and equal opportunities, also it does not unbalancing the right of the citizen to participate in general business includes the right of voting, electing and candidate. These rights are stipulated on in articles (14, 16, 20) of the constitution. The equality and equal opportunities means no distinguish or

preference between whom equalizes or the same conditions are availed in them which the law stipulated on, and to give equal opportunities for all whom the conditions are availed in them, and this what the FSC confirmed in the decision issued by No. (27/federal/2015) dated on 6.29.2015 about the concepts of equality and equal opportunities. Listing the conditions is a required principle in those whom carrying out a public responsibility in one of federal powers which stipulated on in article (47) of the constitution, and he should have a scientific degree or academy certificate corresponds with this responsibility uphill. And after returning to the competencies and tasks which exercised by the ICR's member which stipulated on in article (61) of the constitution, we finds it is circulating between enacting the federal laws and monitoring the executive power performance, as well as electing the President of the Republic and approving the nominations of leader's posts of the state. These tasks are enormous and needs to whom occupy it shall have a scientific level and high academic attainment, and the text (challenge subject) which requests that the candidate of the ICR's membership shall acquire a bachelor's degree or what equals is starting from this postulate, taking in consideration the expanding of University education in Iraq and the big number of graduates whom works in the political field. Besides, the post of the ICR's member – in addition to the tasks which he assigned for – is equalize in his post with the Minister's post as article (4) of the ICR's law No. (50) for 2007 stipulated on and texts as follows ((the member of the ICR enjoys all the rights and privileges which the Minister enjoys in all material and moral fields, and he protocolized treated on this base)). And the Minister as clause (2<sup>nd</sup>) of article (77) of the constitution obliges conditioning in him what conditioned in the ICR's member, and one of the necessary conditions that he should acquire a bachelor's degree or what equals. As long as the matter is like that, it is not permissible that the ICR's member in his academic attainment less that the Minister's one, as they are in one post, the candidate of the ICR's membership should not be individualize of the Minister in judgment. As for the quoting of the plaintiffs that the constitution did not conditions in the candidate for the Presidency of the Republic post to be acquirer of a study

certificate includes the conditions which listed in article (68) of the constitution, so, the circumstance is contrariwise of that if whom assumed this post is not acquirer of a bachelor's degree. In addition to that, the President of the Republic is a sovereign symbol, and the conditions of choosing him is very high, might be more difficult to be accomplished than he acquires the bachelor's degree. As for quoting of the plaintiffs of what the FSC went to in the decision it issued No. (3/federal/2016) dated on 8.9.2016 of not conditioning the scientific certificate in parties' Heads, so this matter referring to the difference of the ICR's member tasks and the Head of the party tasks, besides the Head of the party is not personnel of the three federal powers. Therefore, challenging unconstitutionality of item (4<sup>th</sup>) of article (2) of the ICR elections amending law is lacking to substantiation in the constitution. Based on the FSC verification by reviewing the legal articles (challenge subject) and discuss it according to the provisions of the constitution, and according to what the defendant listed the Speaker of the ICR/ being in this capacity in his draft as an answer on claim of the plaintiffs dated on 1.25.2018 of defends summarized to requesting of rejecting their cases, because it does not relying on a constitutional texts. In addition to that the Council when issued the amending law aforementioned was relying on clause (3<sup>rd</sup>) of article (49) which texts: ((law shall regulate the requirements for the candidate, the voter, and all that is related to the elections)). Accordingly, and for the reasons which affirmed next to each challenge of the challenges listed by the plaintiffs in the three clauses of the judgment: the court decided to reject the case of the plaintiffs in the sixth unified cases which mentioned in the forefront of this judgment, and to burden them the expenses and advocacy fees of the defendant/ being in this capacity agents amount of one hundred thousand Iraqi dinars. The decision issued decisively, unanimously and recited publicly in the session.