



The Federal Supreme Court (FSC) has been convened on 9.10.2018, headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen, Mohammed Rajab Al-Kubaise and Mohammed Kasim AL-Janabi who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff : (Alif,Nun,Nun,Ain) – his agent the barrister (Beh,Ha,Ain).

The Defendants :

- 1.Head of Commissioner council in the higher independent commission for the elections / being in this capacity his agent the legal official (Alif,Ha,Ain).
- 2.Head of the higher national commission for justice and accountability / being in this capacity his agent the legal official (alif,alif,jim).

The Claim :

The Plaintiff Agent claimed before the FSC in the case No.(169/federal/2018) that the first Defendant / being in this capacity issued a decision No.(69) on 9.8.2018 from the judiciary commission for the elections according to its letter No.(77-judiciary commission for elections/2018) on 16.8.2018, then it sent the names of the winners elects to the FSC to approve it. Whereas the Iraqi constitution for 2005 in the clause (1<sup>st</sup>) in the article (7) from it, it stipulated prohibition and prevention for the members from the party of baath (dissolved) to be members in the ICR. Whereas the mentioned Constitution and according to the clauses (1<sup>st</sup>,2<sup>nd</sup>) from the article (13) from it, it is the highest law and obliged in all Iraq. No law should be enacted which may conflict with this law, based on that the aforementioned prohibition applies on the members of the ICR. The clauses (1<sup>st</sup>) and (2<sup>nd</sup>) from the article (3) from the commission of justice and accountability law No.(10) for 2008 prohibit the return of baath party in any form to the authority and public life in Iraq. Also stipulated cleansing the government institutions and organizations of civil society from baath party. Also the federal cassation court emphasized the aforementioned provisions in number of its decision. and the challenged by the invalidity of the

commissioners council approval on the elect win (Jim,Ha,Mim,Ha) from iraqia coalition, Salah AL-Deen governorate his degree was a member in dissolved baath party, according to the report (director general) of the inspector general office in the national commission of justice and accountability No.(522) on 2.7.2018 . it listed in the mentioned report that the aforementioned elect was a member in the baath party (dissolved) . grant him (uncovered by the commission procedures according to the article (6/2<sup>nd</sup>) within the general capacity and it isn't valid to him to nominate for the elections). Based on what aforementioned the Plaintiff agent requested from the FSC to not approve on the commissioners council decision for the higher independent commission for the elections No.(69) on 9.8.2018 which included (the approval on the validity of the elect win (Jim,Ha,Mim,Ha) in the ICR elections for 2018 and to consider his agent as winner from the same electoral list as he get (5146) vote, and placed in the third position on the list which mean (first auxiliary). The first defendants answered on the case petition as following : the higher independent commissions for election has already sent relying on the article (8/2<sup>nd</sup>) from the elections law No.(45) for 2013. And the approval system for elects names, which the coalition and political bloc presented to the commission of justice and accountability which included the elect name (Jim,Ha,Mim,Ha) , and the aforementioned Commission emphasized by its letter No.(Mim,Kha706) on 19.3.2018 , uncovered the mentioned elect in its procedures. The plaintiff has already challenged the aforementioned commissioner council decision before the judiciary commission for the elections which decided uncovered him in the eradication procedures, the decisions of the mentioned commission and relying on the clause (7) from the article (8) from the law of the higher independent commission foe election No.(11) for 2007 is finality and incapable for challenged in any form. According to the aforementioned the agent of the first defendants requested to reject the case. The agent of the second defendant answered the case petition as following :

First: formality side : 1. The proceeding case isn't within the competences of the FSC which listed in the Article (4) from its law No.(30) for 2005.  
2.its not within the competences of the FSC to take a final decision in a case which have a reference for challenge. And the article(8) from the law of the higher independent commission for elections No.(11) for 2007 has been made the method for the procedure of challenging the commissioners council decisions before the cassation commission which competence in the commissioners , so the case should be rejected necessary because it not one of the FSC competences to hear it. The court took this principle in its decision No.(104/federal/2014). The FSC has been approved the final result for ICR elections for 2018.

Second : from litigation side : the commission of justice and accountability isn't the functionally competent side either to approve on the winners names in the elections or not. Because the higher independent commission for the elections law No.(11) for 2007 restricted the (legal reference) for deciding in the objections which presented to it. It's the cassation commission which has been stipulated in the article (8) from the mentioned law, as for there aren't anything within the law of the justice and accountability commission which mention that the commission is the competent side for deciding in the objections which presented on the approvals for the winners names in the elections. Thus required to reject the case from the litigation side.

Third : the commission of justice and accountability has already decided that the person who is challenged by illegality of his membership (Jim,Ha,Mim,Ha) is covered by the provisions of the article (2/2<sup>nd</sup>) from its law. The detector side for the names of who are covered by its provisions. But the cassation commission which is competent in hearing the presented objections on decisions (justice and accountability commission) and relying on the article (15) from the law of justice and accountability No.(10) for 2008. It decided uncovered him in the procedures of eradication. The decision of (justice and accountability commission) of uncovered him was came (following for decision of the aforementioned cassation commission which its decisions is decisive, final, obligatory). The law of the FSC doesn't include a provision clarify to it the discussion of the decisive judicial decisions, which the law made a methods for objection it. As for mentioned the agent of the second defendant requested to reject the case. After recording the case relying on the provisions of the clause (3<sup>rd</sup>) from the article (1) from the rules of procedures for the FSC No.(1) for 2005. After the requested procedures in the Clause (2<sup>nd</sup>) from the article (2) from the aforementioned law is completed, a dated for the argument has been determined. The court has been convened and the agents of the Plaintiff and the Defendants presented. The present public argument has been started. The agents of the Plaintiff and Defendants reported that they didn't have anything to add. The plaintiff agent presented a request to notify the ICR by the applying the article (52) from the constitution , and to postpone the hearing of the case and he requested to enter the ICR speaker as the third party in the case beside the two defendants . during scrutiny the court found the requests of the Plaintiff agent after the case completed for the reasons of judgment is unproductive . the court decided to reject the case and the end of the argument has been understood , the decision has been said publicly in the hearing.

The Decision :

During the scrutiny and the deliberation from the FSC the court found Plaintiff agent requests from the FSC to not approve the decision of the commissioners council No.(69) which issued on 9.8.2018 which included the approval on the win of the elect (Jim,Ha,Mim,Ha) in the elections of the ICR for 2018, and to consider the Plaintiff (Alif,Nun,Nun,Ain) is the winner from the same list ((Al\_Wataniya Coalition for Salah AL-Deen governorate )) because he got (5146) vote and placed in the third position in the menetioned list, which mean (substitution). With regard to his mentioned request whereas the FSC has been approved the final results for elections of ICR for 2018, so the hearing in the request (unapproved ) on the legality of the winner elect membership (Jim,Ha,Mim,Ha) became unproductive, the plaintiff can if he wanted, following what is stipulated in the article (52) from the constitution. For what mentioned early the FSC decided to reject the case and to burden the plaintiff the expenses and fees of the advocacy for the agents of the first and second defendants amount of hundred thousand Iraqi dinar. The decision issued decisive relying on the provisions of the article (5/2<sup>nd</sup>) from the law of the FSC No.(30) for year 2005 and the article (94) from the constitution unanimously and has been understood publicly on 13.11.2018