



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

The Plaintiff: : (Heh,Feh,Ain,Ain)/ the secretary general of badr organization- being in this capacity his agent the barrister (Ha,Lam,Ain).

The Defendant:

1. the prime minister/ being in this capacity- his agent the counselor (Ha,Sad).
- 2.(ICR) speaker/ being in this capacity- his agents the legal officials, the manager (Sin,Ta,Yeh) and the assistant counselor (Heh,Mim,Sin).

The Claim:

The plaintiff's agent claimed before the FSC. in the claim No.(170/federal/2018) that the first defendant being in this capacity issued an order No.(qaf,2/5/31/42/1688) on 9.5.2018. included the no-objection of the secretariat of council of the ministries to except the elect (Mim.Mim,Mim), and the possibility of considering to except him from the procedures of his inclusion by provisions of the law (6/1st) from the higher national commission for justice and Accountability law relying on the provision of the article (12) from the same law, also the second defendant –being in this capacity- issued an order No.(2112) on 1.5.2018. also included no-objection to except the aforementioned from his inclusion by the procedures of the higher national commission for justice and Accountability law. the issued orders from the first and second defendants violated the provisions of the valid laws in text and core as following :

First : in respect of the first defendant the prime minister – being in this capacity :

1. when the first defendant issued the aforementioned administrative order, he violated the provisions of the article (12) from the higher national commission for justice and Accountability law No.(10) for the year 2008. which stipulated (council of the ministries have the right to hear the exceptional situations for returning to the career for who are covered by this law and according to the public interest requirements based on the request of the specialist minister and arrangement with the commission and take the suitable decision about it, the decision isn't being valid unless the ICR. approve it). The aforementioned text has been cleared the necessity of providing a group of formality conditions which allowed the council of the ministries to issue the private decision of the exception from the procedures of the higher national commission for justice and Accountability law , these conditions are :

Alif. the exception decision should be private for a general former employee who are covered by the higher national commission for justice and Accountability law then he was excluded from the career that he was working on and it doesn't relate to except an employer from the procedures of the mentioned law and for returning to his ex-career .

Beh. The exception should be based on the request of the specialist minister for the ministry which the excluded employer from the career was working on because the procedures of the higher national commission for justice and Accountability law, but there weren't any request presented by any minister to except the aforementioned excepted person from the procedures of the aforementioned law because he wasn't an employer in the government and that's clearly violates the aforementioned text.

Jim. There must be arrangement between the specialist minister who requested the exception and the higher national commission for justice and Accountability to heard the exception request and the availability of public interest conditions which require to issue this exception and in respect of the aforementioned there are no such thing as these.

Dal. The exception decision isn't being valid until the agreement of the ICR. which already didn't happen , even the illegal approval that issued from the ICR. speaker was during the vacation of legislative term and which isn't constitutional for the ICR. speaker to issue any order relate to the ICR. works

2.the exception decision should be issue from the council of ministers not from the prime minister or secretariat of the council of ministries, and the aforementioned has been excepted by a letter issued from the secretariat of the council of ministries addressed to the higher national commission for justice and Accountability, so he violated the law in text and core. Also the letter violated the rules of procedure for council of the ministries No.(8) for year

2014. where he stipulated competences which the prime minister practice it apart without return to approval of the council of ministries and there aren't between these competences the approval of the exception request from the employer who covered by the procedures of the higher national commission for justice and Accountability.

Second : in respect to the second defendant the ICR. speaker being in this capacity :

1.The second defendant violated the text of the article (12) of the higher national commission for justice and Accountability law where it listed in the text a sentence (the decision can't be valid unless the approval of ICR.)which mean the issued exception decisions from the council of ministries must be approved from the ICR. and doesn't mean the approval of ICR. speaker or community presidency or a member of community presidency.

2. the second defendant violated the ICR. rule of procedure which stipulated the competences and validities of ICR. speaker and none of it was the approval on the council of ministries private decisions for exception the employers who are covered by the procedures of the higher national commission for justice and Accountability.

Third :the arranged results on the aforementioned violations whether it was from the first defendant either the second defendant it violated number of valid laws for conditions of holding the ICR. membership . the most important of it the approval condition on the elect by the independent higher commission for the s before the dated day for the elect which mean one day before 12.5.2018. as following :

1.violation the item(1) of members replacement law No.(6) for the year 2007. which stipulated (if the vacant seat within the compensatory seats which determined by the s law so the meant person from the compensatory draft of the political entity is compensated but the elect should be from those who are already their approved by the commission to engaging in irrespective of the governorate) and there isn't an approval for the aforementioned before the s, it happened later against the valid laws.

2.violation the article law (9/2nd) from the independent higher commission for s law No.(36) for year 2013. which stipulated (the elects subdue for the approval of commissioners council) so the approval of the election isn't being after electing day so the plaintiff agent request from the FSC. for the above reasons to annul the issued order from the first defendant also to annul the issued order from the second defendant for its violation of the valid laws provisions and to annul all the arranged results on these illegal approvals cause he is lacking one of the membership condition that stipulated in the article (8/2nd) from ICR. law

No.(45) for year 2011. And burden both defendant all the fees and charges of the advocacy. the first defendant agent – in addition to his client capacity-answered the case petition by answering draft dated on 5.8.2018. request in it to reject the case and to burden the plaintiff its expense and fees of the advocacy because the competences of the FSC. determined in the article (93/1st) of the Constitution to oversight on the Constitutionality of the laws and valid systems and the plaintiff agent challenge build on what he named in his draft (order) but it isn't (order) it's a letter of referring citizen request according to the normal procedures for citizens requests and it wasn't include the sentence (no-objection or exception from the procedures of justice and Accountability.) or a directive for the higher national commission for justice and Accountability according to what came in the challenge statue so it isn't right to being a contested before the FSC. and that's what the judges of the FSC. progress in its decisions, some of it (38,63,65/2017) and (59,88/2018) also the dispute is not provided in the case against his client according to what listed above because his client didn't issue any exception form the procedures of the higher national commission for justice and Accountability and he didn't issue any directive or requested from it to except the aforementioned who are the challenge subject to achieve the dispute in suing him before the FSC. relying on the provision of the article (4) from the civil arguments law which its condition for the defendant to being a litigant is to arrange on his declaration a decision for estimation of his declaration issuance and he should be sentenced or obliged by something on estimation of the claim validity also his client didn't violate the constitution or the laws when he issued the letter which is the challenge subject , he practiced his administrative competence to referring the citizen request to the competence side to hear his request (the higher national commission for justice and Accountability) according to its texted competence in the laws , so the letter he issued within his legal and constitutional authority as a normal routine procedures in the official speeches because it isn't his competence for looking in its content and because it isn't permissible to interfere in his constitutional validity relying on the article (47) of the constitution because it didn't include any violation for its provisions , so the plaintiff challenge has no rely in the law and constitution, both agents of the second defendant in addition to their client capacity-answered on the case petition by an answered statue dated on 12.9.2018 requested in it to reject the claim and burden the plaintiff all of expense and fees of advocacy from competence side because the competences of the FSC. came strictly in the article (93) of the constitution and the request of plaintiff agent is out of the mentioned competences in the constitution because the order which is the challenge subject in the claim consider from the administrative decisions , on that the plaintiff claim doesn't have its constitutional

substantiation and must be rejected from non-competence side , also the (FSC) has been approved on the result of s for the (ICR) for year 2018 and that approval consider as evidence that the winner elects and one of them is mister (Mim,Mim,Mim) met the constitutional and legal conditions to hold the parliamentary seat in the ICR. so it make the challenge on the procedures of the elections and winning of the mentioned member of parliament has no substantiation from the law and for the mentioned reasons they requested to reject the claim with burden the plaintiff all of expense and fees of advocacy. The court has been called the two parties to the argument and in the appointed day for the argument the plaintiff agent the lawyer (Ha,Ha) presented under his agency that related in the case file, also the first defendant agent and both agents of second defendant presented under their agency which related in the case file , the public argument and in presence had been started . the plaintiff agent repeated what came in the case petition and requested to reject the claim and to burden the defendant all the expense and fees of the advocacy. The defendant agent repeated his previous sayings and requests and requested the judge , where as nothing left to say the argument made clear and the court issued the following decision on (9/10/2018)

The Decision :

During scrutiny and deliberation by the FSC, the court found that the plaintiff agent challenge the administrative order which issued from the secretariat of the council of ministries secretariat / the legal department No.(Qaf/2/5/31/42/1688) on 10.5.2018. for its violation of the article (12) of the higher national commission for justice and Accountability law No.(10) for year 2008. which is amended and he requests from the FSC. the judgment of void it and annul all the arranged result on it from the illegal approvals which issued for exception of the elect (Mim,Mim,Mim) because he is lacked for one of the membership conditions which is texted in the article (8/2nd) from parliament 's law No.(45) for year 2013. and he requested to not approve the result for the elect for the reason he cleared in the case draft . when the court get back to the administrative order which issued from the aforementioned council of ministries secretariat it cleared that the administrative order is just a letter issued from the council of ministries secretariat it allocate in accordance with it the request of the elect citizen (Mim,Mim,Mim) to the higher national commission for justice and Accountability to look in his request of his exception from the higher national commission for justice and Accountability law No.(10) for the year 2008 . the other order which issued from the council of ministries No.(2112) on10.5.2018 which is challenged , it cleared that it issued from the council of ministries signature of head of the council which included (we have no-objection) for the exception of the aforementioned from

the mentioned law , where as the competences of the FSC. determined in the article (93) from the constitution of Iraq republic for the year 2005 and the article (4) from the law of the FSC. No.(30) for the year 2005, and none of them is hearing in the constitutional of the issued letter from council of the ministries secretariat or the aforementioned ICR. therefore the plaintiff case is out of competences of the FSC. which implies to reject the case about this request, as the request to not approved the result for the elect (Mim,Mim,Mim) the challenge subject in the aforementioned letters, also is not included because the FSC. has been approved on the public result for the ICR. according to its competences which is texted in the article (93/7th) of the constitution , and it available to challenge the membership of the winner elect in the according to the method set in the article (52) of the constitution of Iraq republic for the year 2005. So the case according to this request must be rejected, for the aforementioned reasons the FSC. decided to reject the plaintiff case and burden him all the claim expense and fees of the advocacy for the first defendant agent and both agents of the second defendant , amount of one hundred thousand Iraqi dinars is paid for them according to the law . The decision has been issued decisively presently, unanimously and made clear on 9/10/2018.