The Federal Supreme Court (F.S.C.) has been convened on 18/12/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq 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:

The plaintiff: Hanan Saed Muhsen Alwan –her agent the attorney Hazem Rasol Alsafar.

The defendant:

1. The Chairman of the Board of Commissioners/ being in this post –his agent the legal official Ahmed Hasan Abd.
2. The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

**The claim:**

The agent of the plaintiff claimed in the case petition that first- defendant/ being in this post has illuminated the list of his client (the Wisdom Movement) of the wining list in Babylon Governorate in the election of the I.C.R. of 2018 according to paragraph (4) of first amendment law to the law of electing the I.C.R. No.(45) for 2013 that amended clause (1st) of article (14) of the I.C.R. electing law No.(45) for 2013, and his client challenged before the F.S.C. the constitutionality of the mentioned paragraph and the clause it amended for the following reasons: contradicting the constitutional principles: the first electoral divider in (Sainte-Laguë) system when increasing it to more than (1.5) contradict with the principle of equality, equal opportunities, and contradicts the right of the elector in choosing who represent him, because the increasing elevate, if the expression was correct, the (price) of the first seat compare to the value of the second seat, and the increasing is commensurate directly with the increasing of the electoral divider, as increasing of the electoral divider to (1.7) makes the (price) of first seat more than the (price of second seat) with ratio of (23.5%), as a result of implementing the mentioned electoral divider the Wisdom Movement was eliminated from the wining lists accordingly his client was deprived of the seat that she won by what she obtained of votes of the electors, we must stress on that amending the electoral divider to lower number than (1.5) requires legislation interfering, and to determine another divider other than the one that achieve equality and remove the contradicting with the constitution and that is out of the F.S.C. jurisdiction butt it is competent to rule the unconstitutionality of the legal text that stipulates exceeding the electoral divider that achieve justice (1.5) and to bind the related parties to implement the electoral divider (1.5) that achieve justice and equality between the competing lists, so it does not compliment the big lists, nor does it prevent the small lists from obtaining one seat that it deserve, so the results are modified accordingly, because the membership of the representative who arrives through a legal text that contradicts the provisions of the constitution is invalid.., therefore the agent of the plaintiff requested the F.S.C. to rule the unconstitutionality of article (4) of first amendment law to the law of electing the council of representatives No.(45) for 2013 and also clause (first) of article (14) of the I.C.R. electing law No.(45) for 2013 that was amended by the mentioned article, and requested to oblige first- defendant to amend the election results of Babylon governorate according to the result of the electoral divider (1.5) in order that the election result is compatible with the provisions and principles of the constitution. after informing the defendants with a copy of the case petition, first defendant the chairman of the board of commissioners/ being in this post responded with the answering draft dated on 26/3/2019 stating that it is not allowed to challenge the results of the election in accordance with the plaintiffs’ opinion after the F.S.C. has approved the election results, and there is no legal substantiation to modify these results according to what she has requested, also the independent high electoral commission is an executive party which based it system of distributing the seats on the elections law legislated by the council of representatives, as it is the authority competent to legislate laws, and therefore the litigation regard the commission is not available in this lawsuit and requested to reject it. The agents of second defendant the speaker of the I.C.R. being in this post responded stating that the plaintiff didn’t mention the constitutional text claiming to be violated when enacted the challenge text, also the text of article (4) of first amendment law to the law of I.C.R. election No.(45) of 2013 came as legislative choice for the I.C.R. under it constitutional jurisdictions, in addition that the text of article (14/clause 1st) of the I.C.R. election law No.(45) for 2013 which was amended by the aforementioned article consider as annulled and invalid, by that the request of the plaintiff is out of the F.S.C. jurisdiction that is competent to consider the laws and regulations in force, for the aforementioned reasons the agents of second defendant the speaker of the I.C.R. requested to reject the lawsuit. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 14/10/2019 was scheduled for the argument, the court convened and call upon the parties and continue with the argument in presence and public, the plaintiff’ agent repeated the case petition and requested to judge according to it, the agents of the first and second defendants repeated the answering drafts requested to judge according to it, on the session dated on 18/12/2019 the agent of the plaintiff stated that he has nothing to add to the case petition, and the issue is technical and requested to refer it to a committee of experts, the agent of first defendant repeated the answering draft and requested to reject the lawsuit for the reasons listed in it, and so did the agent of second defendant. During scrutiny, the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

**The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the agent of the plaintiff challenged in his case petition with unconstitutionality of article (4) of first amendment law to the law of electing the I.C.R. No.(45) for 2013, and the unconstitutionality of clause (first) of article (14) of the I.C.R. election law No.(45) for 2013 for the reasons listed in the case petition, he requested the F.S.C. to rule the unconstitutionality of article (4) of the first amendment law to the law of electing the I.C.R., and also requested to rule the unconstitutionality of clause (first) of article (14) of the I.C.R. electing law, and to compile first defendant the chairman of the board of commissioners/ being in this post to modify the election results of Babylon governorate according to the electoral divider (1.5) result in order to be compatible with the provisions and principles of the constitution, and to burden the defendants the expenses. when reviewing article (4) of the first amendment law to the law of electing the I.C.R. it stipulates (amending clause (first) of article (14) to be as the following: ((the seats shall be distributed on the competing lists according to the amended system of Sainte-Laguë as the following: (first)- valid votes of the competing lists shall be divided on the sequenced numbers (1.7, 3, 5, 7, 9, …etc.) according to the seats numbers allocated to the constituency.)), clause (first) of article (14) of the law of electing the I.C.R. stipulates ((the valid votes of the competing lists shall be divided on the sequenced numbers (1.6, 3, 5, 7, 9, …etc.) according to the seats numbers allocated to the constituency.)), by reviewing what listed in the case petition we found that the plaintiff’s agent didn’t mentioned the constitutional text violated by the legal article under challenge to be unconstitutional, by scrutinizing the submitted challenges, founds that the challenge against the constitutionality of clause (first) of article (14) of the I.C.R. election law was under challenge in the lawsuit No.(15/federal/2018 unified with 16, 17, 18, 19 and 20/federal/2018) were the F.S.C. has ruled in the mentioned lawsuits on the date (29/1/2018) that the challenged amendment (the subject of lawsuit) was an legislative choice for the I.C.R. according to it stipulated jurisdictions in paragraph (first) of article (61) of the constitution and it doesn’t contradicts with it provisions, as the lawsuit is not based on a constitutional substantiation therefore the court decided to reject it, therefore the defenses raised in this lawsuit is no longer a valid subject to issue new judgment in it because a judgment was already issued on the same subject of this lawsuit, as the rules and judgments of the F.S.C. are final and binding to all authorities according to the text of article (94) of the constitution, therefore the challenge –subject of this lawsuit- is binding to be rejected from this aspect, as for the second challenge regard the constitutionality of clause (fierst) of article (14) of the I.C.R. electing law, the mentioned text has been amended by the law of first amendment to the I.C.R. electing law No.(1) for 2018 and is no longer in force, whereas the jurisdiction of the F.S.C. according to article (93/first) of the constitution is overseeing the constitutionality of laws and regulations in effect, and not laws and regulations that are invalid, therefore the submitted challenge against that text is out of the F.S.C. jurisdiction which requires to rejects it also, accordingly the request of the plaintiff agent to compile first defendant to modify the election results of Babylon governorate according to the result of the electoral divider (1.5) is rejected because it is out of the F.S.C. jurisdiction, according to that and because the subject of the lawsuit is not based on substantiation of the constitution and law for the aforementioned reasons the court decided to reject the plaintiff lawsuit and to burden her the expenses and advocacy fees for the agents of defendants amount of one hundred thousand Iraqi dinars distributed by the law. This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 18/12/2019.