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The Federal Supreme Court (F S C) has been convened on 5.3.2019 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, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rijab AL-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (alif.nun.nun) – his agents the barristers (yeh.mim.heh) and (mim.ghain.ra).

The Defendant: the Speaker of the ICR/ being in this capacity - his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

### The Claim

The agents of the plaintiff claimed that the results of the ICR elections for 2018 were approved by the FSC, and the President of the Republic as well. This approval was according to what stipulated in articles (93/7<sup>th</sup>) of the Constitution. Their client, and according to provisions of article (52/1<sup>st</sup>) of the Constitution had challenged the authenticity of (jim.ha.mim.jim) membership which is candidate for Salah Al-Deen governorate because their clients is coming after him in the number of votes. These votes qualifies him to get a parliamentary seat within the same governorate and the list (National alliance) which has the No. (185), and the sequence of their client is (6) in the aforementioned alliance. But the ICR rejected the challenge presented to it on 20.8.2018, so they proceed to challenge the ICR decision above-mentioned because it's illegal and unconstitutional

for the following reasons: 1. the candidate (jim.ha.mim.jim) is a member in the Ba'ath party (dissolved) and this matter is permanent by the decision of competent judicial committee of trying challenges against the commission of accountability and justice decisions by Ref. (21/cassation committee/2013) on (25.3.2013). According to aforementioned decision, the candidate is not allowed to participate in the elections. His exercising for parliamentary work is unconstitutional and illegal. 2. Article (7/1<sup>st</sup>) of the Constitution had prohibited any policy that adopts racism or terrorism, especially Saddami's Ba'ath. This matter can't be considered within the political multiplicity, as well as article (3/3<sup>rd</sup>) of the National commission of accountability and justice law No. (10) For 2008 inhibited the return of Ba'ath party ideally, administratively and exercising. As well as to purify the government and civil foundations from it...). So, it's not possible to accept one of Ba'ath party (dissolved) member includes the parliamentary working system. 3. The judiciary of cassation Court had been settled on not including who has the post of member with the procedures of accountability and justice, if his richness wasn't proven by depending on public fund because the nature of employments are different. The ICR member exercising an important sovereign work, such as appointing the President of the Republic, the high posts employees, declaration the state of emergency and declaration of war...etc.). As well as, the federal cassation Court didn't allow in a several of its decisions for any member in the Ba'ath party (dissolved) to participate in the ICR elections for parliamentary session (2018-2022), including the decision No. (441/cassation accountability and justice/2018) on (10.4.2018). Accordingly, the agents of the plaintiff requested the following: 1. to judge by unconstitutionality and illegality of the ICR decision which rejected the challenge presented by the plaintiff in the session No. (20/2018) on (20.12.2018). 2. To oblige the defendant/being in this capacity to judge by Non-authenticity and constitutionality of (jim.ha.mim) membership whose candidate for Salah Al-Deen governorate, and he is including the National alliance by the No. (185) sequence (6) and replaced him by the plaintiff within the same governorate and the alliance by sequence (15) whose votes become after his ones. The plaintiff (alif.nun.nun) became a member in the ICR for the session (2018-2022). The agents of the

defendant (the Speaker of the ICR/ being in this capacity) answered the petition of the case by their draft dated on (13.1.2019) as following: the verification of including the representative (jim.ha.mim.jim) by the law of accountability and justice No. (10) For 2008 is one of higher independent electoral commission tasks, especially that the FSC had ratified the results of the ICR elections for 2018. This ratification is associated to fulfilling of winning candidates including aforementioned representative for the constitutional and legal stipulations to occupy a parliamentary seat, and this matter will make the challenge nomination and winning procedures of the representative aforementioned has no substantiation in the law. Accordingly, the agents of the defendant requested to reject the case. After registering this case at the Court according to provisions of clause (3<sup>rd</sup>) of article (1) of the FSC bylaw No. (1) For 2005, and after completing required procedure according to clause (2<sup>nd</sup>) of article (2) of aforementioned bylaw. The day (5.3.2019) set as a date for argument, and on that day the Court has been convened. The agents of the plaintiff, the plaintiff himself and the agents of the defendant attended. The public in presence argument proceeded, the agents of the plaintiff repeated what listed in the petition of the case and requested to judge according to it. the agents of the defendant answered that they repeats what listed in the answering draft and requesting to reject the case for the reasons which mentioned in this draft, as well as what listed in the annexed draft and its attachments. The letter which indicates to not includes the representative (jim.ha.mim.mim.jim) by the procedures of accountability and justice. The agents of the plaintiff commented, the permanent fact about the current representative (jim.ha.mim.jim) was a member in the Ba'ath party (dissolved) and he was excepted when nominated for governorate Councils, the challenge is concentrating on the ICR decision according to clause (2<sup>nd</sup>) of article (52) of the Constitution. The Court had scrutinized the case, and found it completely prepared to take a decision about it. The Court decided to make the end of the argument clear, and the decision was recited in the session publicly.

## The Decision

During scrutiny and deliberation by the FSC, the Court found that the agents of the plaintiff claims that after ratifying the results of the ICR elections for 2018 by the FSC and the President of the Republic according to provisions of article (93/7<sup>th</sup>) of the Constitution, their client had challenged the authenticity of the representative (jim.ha.mim.jim) membership whose candidate for Salah Al-Deen governorate. They claimed that their client comes next in the number of votes which qualifies him to win the parliamentary seat, and they are candidates from the same governorate and the same list (the National alliance). But the ICR had rejected the challenge presented to it by their client on (20.8.2018), so they propose to challenge the ICR decision above-mentioned because it is illegal and unconstitutional, and they claims that the candidate (jim.ha.mim.jim) was a member in the Ba'ath party (dissolved). This matter is violates the provisions of article (7/1<sup>st</sup>) of the Constitution as they claims. Whereas the aforementioned article had banned any measure that adopts racism or terrorism, especially Saadami's Ba'ath. It also violates the provisions of article (3/3<sup>rd</sup>) of the National commission of accountability and justice law No. (10) For 2008. Accordingly, the agents of the plaintiff requested: (to judge by unconstitutionality and illegality of the ICR decision which presented by the plaintiff in the session No. (20/2018) on (20.12.2018), and to oblige the defendant to replace the plaintiff instead of the representative (jim.ha.mim.jim) whose membership is unauthenticated for the reasons mentioned in the petition of the case. The FSC finds that all matters were clear for competent cassation committee which specializes in trying the challenges presented against the decisions of accountability and justice commission by its decision No. (21/cassation committee/2013) on (25.3.2013) to not include the candidate whose membership is challenged (jim.ha.mim.jim) by the procedures of accountability and justice, and this office considered competent to determine whom might be involved by these procedures or not. Whereas the higher independent electoral commission is relying from this aspect on the decisions of accountability and justice commission decisions of involving the elections candidates by the procedures of accountability or not, and it's clear that the aforementioned individual is not included by these procedures. Therefore, he was allowed to be

nominated for the elections of the ICR for the 4<sup>th</sup> session for 2018 above-mentioned. Whereas the challenged decision of the ICR had relied on procedures and decisions taken by the two offices above-mentioned when it had been issued. It is considered a correct procedures and correspond to the Constitution. Accordingly, the challenged decision of the ICR is correct and doesn't violates the Constitution. Therefore, the FSC decided to reject the case, and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendant the jurists (sin.ta.yeh) and (heh.mim.sin), amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to provisions of article (94) of the Constitution and article (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005. The decision has been made clear on 5.3.2019.