



The Federal Supreme Court has been convened on 11/3/2019 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The plaintiff: (Ghain.Mim.Nun.Ain) – her agents the barristers (Ha.Mim.Ha.Sin.Ha) and (Zin.Ain.Ain).

The defendants:

- 1.ICR speaker/being in this capacity-his two legal officials, the manager (Sin.Ta.Yeh) and the assistant counselor (Heh.Mim.Sin).
- 2.the representative (Sin.Mim.Kha.Ghain).
- 3.head of IHEC/being in this capacity-his legal official (Alif.HA.Ain.).
- 4.head of the higher national commission for justice and accountability/being in this capacity-his legal official (Alif.Alif.Jim).

The claim :

The plaintiff agents claimed that their client is a candidate for the ICR elections for 2018 for the fourth session, AL-Anbar governorate ((national assembly for reform-action) which belonging to (Alwataniya entity) list No. (185) serial (7) she has earned a number of votes (1729) of the correct votes. After issuing the Law No.(15) for 2018, the third amendment law of the ICR law, and the issuing of the FSC decision No.(99,104,106/federal/2018) the recounting and sorting had been repeated, based on this (960) votes has annulled from the correct votes which belong to his client within the

conditional voting for the displaced people. Relying on the text of the article (52/2nd) of the Constitution, his client initiated on (13/9/2018) to present a challenge to the first defendant (ICR speaker) of the non-validity of the second defendant membership the representative (Sin.Mim.Kha.Ghain) considering that the second defendant belong to the same entity of his client (the national assembly for reform-action) , his client is the first auxiliary member by votes number within women quota for Alwataniya entity, it was supported by the letter of the IHEC No.(Mim.Dal/36/4761) on 11/10/2018. The plaintiff presented another additional request to the ICR speaker on 30/9/2018 enhanced her first request of the non-validity of the second defendant membership (Sin.Mim.Kha.Ghain) because of the presence of priorities issued by the higher national commission for justice and accountability very important, essential and productive which enhance and confirms that the aforementioned defendant is covered by its procedures so the unconstitutionality of its nomination. The priorities are:

1.an letter issued by the higher national commission for justice and accountability No.(Mim.Kha706) on 9/3/2018 directed to the IHEC calls upon it to notify the defendant (Sin.Mim.Kha.Ghain) within other candidates to attend to its headquarters with their certified documents.

2.in another letter No.(Mim.Kha805) on 4/4/2018 also was directed to the IHEC, the commission of justice and accountability considered those who didn't attend to its headquarter covered by its law No.(8) for 2008, it notified the ICR about this in its letter No.(Qaf. Teh. Qaf./8/1191/16552) on 10/10/2018.

3.then the higher national commission for justice and accountability returned, and it retreated its previous decision and presented that the objector by her is not covered by its procedures according to its letter No.(18/13893/2446) on 12/12/2018 directed to the ICR-speaker office.

4.a clear pledge signed by the higher national commission of justice and accountability enhanced the covering of the objector against her in its procedure, it upheld in it that she is an active member in Al-Baath entity (dissolved) she is not a section member, her declaration is a clincher against her. Also, the higher national commission for justice and accountability has a

worksheet which her name marked (Sin.Mim.Kha.Ghain) that she is an active member and she is a member of the ministry of education. Based on this, the first, third, fourth defendant has violated the Constitution and the laws and the provisions of the Iraqi judiciary whereas the articles (7), (35/3rd) and (13/2nd and 3rd) of the Constitution had been violated. As for the judiciary violations, the competent cassation commission has decided previously according to its decision (271/cassational/justice and accountability/2018) on 28/3/2018 (a person who had member grade shall not be nominated to the ICR elections.) whereas as the courts decision are plea on all people caused it is provisions issued according to article 7) of the justice and accountability law.as for the judiciary violations, the article (8/2nd)of the ICR elections law N.(45) for 2013 made a condition that candidate shall not be covered by the law of justice and accountability or another law instead of it so how the IHEC accepted the nomination of the representative which is being objected although there is a letter issued by the justice and accountability uphold that she is covered by its procedures because she is a member in AL-Baath entity (dissolved). Also, the article (15) of justice and accountability law No.(1) for 2008 had been violated which determined a specific duration to challenge the commission decisions, why the commission accept to review the objector against her for the judiciary after the end of the determined duration for challenging its decisions. Also, the article (3/1st and 2nd) of the justice and accountability law No.(10) for 2008, had been violated which related to AL-Baath eradicating. Whereas the article (6) of the aforementioned law prevent the occupation of the private grades posts by someone had a member grade or above of AL-Baath entity (dissolved) and became rich at the expenses of public money. As for the original request of the plaintiff that presented to the ICR on (16/9/2018) of the non-validity of the representative (Sin.Mim.Kha.Ghain) membership, it included reasons and recitals other than those used to challenge by it before the commissioners' council considering her win was according to the manual counting and sorting mechanism which makes its membership non-validity and contrary for the Constitution, the law and what the Iraqi judiciary settled on. Because the commissioners' council annuls the results of the ballot boxes in AL-Anbar governorate only. This consider as a violation for the provisions of the article (94) of the Constitution, according

to the decision of the FSC No.(99, 104 and 106/federal/media/2018) the results and votes shall not be annulled only by the judiciary committee which was convened in the cassation court exclusively, commissioners' council members were judges but but their act was as an election commission not (judiciary committee) thereby they don't have any right to annul the results of the elections. The council of commissioners' didn't determine the kind of easing or damage that happen to the ballot boxes and prevented the procedure of the manual counting and sorting for the boxes. When the commission announced the results previously and the wining of the plaintiff, she was complete its legal form (existence of records, the existence of results forms (43), the existence of all the boxes in these stations, all main locks numbers installed in results forms) did the mess happen in all these details? For the above the plaintiff agent requested :

1.the decision of illegality and unconstitutionality of the fourth defendant decision /being in this capacity(head of the higher national commission for justice and accountability) No.(13893/20446) on 12/8/2018 and to keep on the covering of the second defendant (Sin.Mim.Kha.Ghain) by the justice and accountability law No.(10) for 2008.

2.the decision of the unconstitutionality and illegality of the ICR decision in its session No.(20) dated on 20/12/2018, and the non-validity of her membership and to accept the plaintiff membership in the ICR and to grant her the parliamentary seat of AL-Anbar governorate for (the national assembly for reform-action) part of Al-Wataniya collation No.(185) serial (7) instead of the second defendants the representative (Sin.Mim.Kha.Ghain). the agents of the first defendants/being in this capacity answered on the case petition by an answering draft dated on (13/1/219) as following: verification of covering the second defendant (Sin.Mim.Kha.Ghain) in the justice and accountability law is one of the elections commission tasks, especially that the FSC ratified the results of the election, this consider as evidence that the candidates had all the required conditions which make the challenge has no law substantiation, especially the higher national commission for justice and accountability has already issued its letter No.(13893) on 12/12/2018 submitted to the ICR/ office of the speaker including (annulling the commission letter No.(805) on 4/4/2018.

For the above, the agents of the first defendant requested to reject the case. The second defendant, the representative (Sin.Mim.Kha.Ghain) answered on the case petition by her draft dated on (12/1/2019) and requested to reject the case for the same reasons that listed the agents of the first defendants. The head of the commissioners' commission of the IHEC (the third defendant/being in this capacity) answered on the case petition by his draft dated on 22/1/2019 as following: according to the article (8/2nd) of the ICR law No.(45) for 2013 (amended) and the regulation of ratification on the candidates names and the ratification procedures on the candidates names, the commission sent all the lists of the candidates names for the ICR elections for 2018 which presented by the collations and the political masses to the commission of justice and accountability by its letter No.(1 Dal/36/1078) on (1/3/2018), the letter of the justice and accountability commission listed to the commission No.(Qaf.Teh.Qaf/18/13893/20446) on 12/12/2018, which upheld that the defendant (Sin.Mim.Kha.Ghain) is not covered by the justice and accountability procedures. The plaintiff has already challenged the decision of the commissioners' council No.(69) for the regular report No.(41) on 9/8/2018 before the judicial commission for elections and the decision of the judicial commission issued by No.(1390/cassation/2018) on 15/8/2015 to reject the challenge and the decisions of the judicial commission are decisive and cant be challenged in any form, for the above the third defendant requested to reject the case.the agent of the fourth defendant (the head of the higher national commission for justice and accountability answered by his answering draft dated on 16/2/2019) on the case petition as following:

1.the higher commission for justice and accountability is a revealing party of who covered by the procedures of the commission law according to the text of the article (3/2nd) of it and the aforementioned law made a method to challenge the decisions that issues according to its provisions according to the text of the article (2/9th and 10th) before the cessation commission which competent in hearing the challenges on the commission decisions.

2. the higher commission for justice and accountability decided to cover the second defendant by its procedures because she didn't come to the commission location, but after the second defendant changed its opinion and

came to the commission location and after the scrutiny and studying the priorities and checked it, the commission issued decision that she is not covered in the procedures of the justice and accountability and annulling the previous decision in this matter.

3.the litigation is not directed to the higher commission for justice and accountability because it is not the functional competence party to ratify on the winners' names in the elections or not and the law of the IHEC No.(11) for 2007 has limited the validity for the commissioners' council and has determined a legal reference to challenge its decision.

4.the FSC has ratified on the public results of the ICR elections according to its competences that were stipulated in the article (93/7th) of the Iraq republic constitution for 2005. For the above reasons, the fourth defendant requested to reject the case. After registration of this case at this court according to the provisions of the clause (3rd) of the article (1) of the bylaw of the FSC No.(1) for 2005. After completing the required procedures according to the clause (2nd) of the article (2) of the aforementioned regulation, the day 5/3/2019 had been appointed as a date to hear the case. The court had been convened. The plaintiff agents attended and the agents of the defendant and the representative that her membership is challenged and the agent of the higher national commission for justice and accountability, the argument had been started publicly and presently. The agents of the plaintiff repeated what they listed in the case petition and their comments. The agents of the first defendant answered that the answer of the higher national commission for justice and accountability is explicit and clear that the representative that her membership is challenged is not covered by the justice law. The agents of the three other defendants answered that they don't have any comment on our previous sayings and what reported by the plaintiff's agents. The court checked the case and it found that the case completed for the deciding reasons, the end of the argument had been decided and the decisions had been understood publicly on the session.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the plaintiff claimed by her agents that she is a candidate for the ICR elections of

2018, for AL-Anbar governorate within (the national assembly for reforming) which is part of (AL-Wataniya collation) her win was announced during the electronic counting and sorting but after recounting and resorting manually (960) votes had been removed from her votes which are (1729) votes, based on this the IHEC replaced her by the defendant (Sin.Mim.Kha.Ghain) as a member in the ICR, the plaintiff has objected before the ICR because the mentioned defendant (Sin.Mim.Kha.Ghain) is covered by the procedures of the justice and accountability, the ICR reject her request so he initiated to challenge the ICR decision before this court according to the provisions of the article (52/2nd) of the Constitution requesting the unconstitutionality of the ICR decision of rejecting her objection because the ICR decision relying on the decision of the head of the higher national commission for justice and accountability which issued by No.(13893/20446) on 12/12/2018 which she challenges it by its unconstitutionality too because the representative (Sin.Mim.Kha.Ghain) despite she is covered by the provisions of the justice and accountability law No.(1) for 2008 but the commission did reverse that so the ICR decision to reject her objection violated the provision of the article (7/2nd) of the Constitution and the other aforementioned articles in the case petition. The FSC found that the decision of the higher national commission for justice and accountability to not cover the representative (Sin.Mim.Kha.Ghain) by its procedures after checking the records and her documents, the decision was right and the plaintiff challenged this decision and her challenge had been rejected. Based on this and whereas the ICR relied on what the commission of justice and accountability decided which be connected with the ratification of the cassation commission that competent in hearing the submitted challenges on the decisions of the justice and accountability commission of not covering the representative (Sin.Mim.Kha.Ghain) by the procedures of the justice and accountability so its decision didn't conflict with the Constitution.for what raised in the argument session dated on 5/3/2019 as it listed by the inspector general in the justice and accountability committee in his presented letter in that session is not more than an opinion and the decision in this matter still for the seven members committee in the justice and accountability committee, it is responsible for it legally which be connected with the ratification of the cassation commission which is

competent in hearing the submitted challenges on the justice and accountability decisions. Based on this the court decided to reject the plaintiff case and to burden her all the expenses and fees of the advocacy for the agents of the defendants' amount of hundred thousand Iraqi dinars divided between them according to the law. The decision had been issued unanimously, decisive according to the provisions of the article (94) of the Constitution and the article (5/2nd) of the FSC law No.(30) for 2005 and had been understood publicly on 11/3/2019.