



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: (fa.fa.fa.alif) – his agents the barristers (mim.mim.sin) and (ha.nun.sin).

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 their client had been nominated includes the nominees list for the Cabinet which presented by the Prime Minister as a nominee for the Ministry of defense during the session convened on 24.12.2018. The quorum was completed by attendance of (240) members in the ICR during this session, and after voting on the nominee of the Ministry of education and defense, our client found out that the majority weren't accomplished for the Minister of education. The number of voters for her were (108) votes from (240) attendees, in spite of that she was passed, on the contrary of not what happened to their client who got (138) votes from attendees which granted him the majority. The Speaker of the ICR declared that their client didn't get the majority, and he depended on counting the votes by his naked eye, as shown

below: 1. The defendant had violated the bylaw and the article (59) of the Constitution. 2. He violated the mechanism of manual counting which carried out by the rapporteurs of the session. 3. The Head of the session depended on his personal opinion, and decided that the majority wasn't accomplished. 4. More than (50) representative had objected, and signatures of (52) representative were collected during the session. They demanded to revote. 5. The Speaker of the Council behaved personally, this behavior was away from the representatives will, in spite of the voting by majority for their client. 6. The events which accompanied the voting process and takes the decision individually and hastily had caused a constitutional violation. The agents of the plaintiff requested to call upon the defendant for argument, and to judge by grant the position of the Minister of defense to their client. Their request relies on the simple majority which had been achieved, as well as they requested to judge by unconstitutionality of assuming nominee of the Ministry of education for this post. He requested the record of the session convened on 24.12.2018, and to count the votes by the Court. The defendant/being in this capacity has been notified by the petition of the case and its documents, he answered it by his draft dated on 15.1.2019. He mentioned in this draft that the request of judge by unconstitutionality of assuming the Minister of education for her post is not within the plaintiff's interests, and this matter regarded regulatory which the FSC is incompetent to try it. Also the request of judging by unconstitutionality of assuming the plaintiff for the post of Minister of defense by claiming that the plaintiff had acquired the majority, and the declaration of Speaker of the Council that the plaintiff didn't get the majority. The procedures of the session had been achieved according to the Constitution and the bylaw of the ICR. The quorum was complete in the session of 24.12.2018. As for what related to voting, it is regulatory matter concerns in session administrating by the committee of the presidency. Counting the votes, and declaring the approval or not, it considered an assessment of a matter returns to the Council's presidency. The minutes of 24.12.2018 session was presented along with a compact disc contains the video recording, in addition to the paper of counting the quorum. The agents of the defendant requested to reject the case, the Court called upon the both parties, and the agent of plaintiff and the plaintiff attended, as well as

the agents of the defendant. The public in presence argument proceeded. The agent of the plaintiff repeated the petition of the case, and he requested to judge according to what listed in it. The agents of the defendant answered, and they repeated their request by rejecting the case. Regarding that the case has a technical side, and according to the request of the plaintiff, the Court had asked the assistance of three experts. Those are experts in forensics, each of Major (heh.kha.mim) and Captain (ha.ha.kaf) and Captain (jim.kaf). The Court has assigned them for this task, this task which affirmed in the minutes of the session. The experts asked the Court to give them enough time to present their report. The experts presented the report on 3.3.2019, the agents of both parties were notified by the date of argument in 4.3.2019. The plaintiff presented a draft signed by his client which has been reported to the agents of the defendant. The plaintiff answered that he has no objection on the experts' report, and the agents of the defendant requested to reject the case. 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 plaintiff had claimed after he restricted his case that he obtained (138) votes out of (240) votes. This number is for attendee representatives in the session of the ICR which convened on 24.12.2018, in spite of that the Speaker of the ICR decided that required majority weren't achieved to grant the plaintiff the post of Minister of defense. This matter depended on the personal opinion of the ICR Speaker, and contrariwise the bylaw. Whereas the two rapporteurs of the Council didn't count the votes manually, accordingly the plaintiff requested to judge by unconstitutionality of his assuming for this post. He also depended of the complete recording of the session, and to correspond the ICR to send it and to count the votes according to what appeared in the aforementioned recording. The defendant/ being in this capacity answered that the procedures of the ICR session dated on 24.12.2018 were corresponding to the Constitution and the bylaw of the ICR, as for counting the voters above-mentioned and declaring approval or not, it

considered a regulatory issues which returns to the assessment of the Council's Presidency. Therefore, the defendant requested to reject the case by his agents. According to the request which presented by the plaintiff, the minutes of the aforementioned session has been demanded with the recording compact disc. The minutes and the compact discs had been received. As for the minutes, it hasn't just information which the plaintiff objected against, and the compact disc received from the ICR which the plaintiff depended on in his case. This compact disc has been reviewed in the argument dated on 4.2.2019, and both parties confirmed that this compact disc is the meant. The Court found from the contents of the disc needs to be analyzed by experts and those experts give their opinion about the points which mentioned by the plaintiff in the case. His agent requested to show the contents of the disc on the experts in the forensics, because this matter is their specialty. Whereas the agents of the defendant didn't object in this concern, the Court decided to send a letter to the aforementioned directorate to candidate three experts of specialists, and the aforementioned directorate had nominated three of them and the compact disc handed over to them after they took the oath. The agent of the plaintiff requested to issue a custodian order to postpone the voting of the Minister of defense post in the ICR till the Court takes a decision about it. The Court had scrutinized the request, and after deliberation it decided unanimously to take the required decision until the case is resolved. The three experts presented on 3.3.2019 their written report, this report was fortified by pictures for the session which the voting occurred during it. The experts clarified that what they found in the compact disc that the attendees representatives were (259) and they were sitting, and some others were standing or walking. It was difficult to recognize them, and some others were in the pathways about (12). The number of voters by lifting hands for the plaintiff were (44) representatives, and this result became after analyzing the compact disc contents because there were a number of technical problems in recording which hindered the reviewing, including blind spots in the back seats, as well as the camera coverage which didn't cover all the hall corners and dimensions with one level. In addition to the shortage of voting time and hesitation of some representatives in lifting their hands and move it down quickly. The experts didn't notice the rapporteurs counting

the votes manually, and the agent of the plaintiff were provided by a copy of the report, as well as the agents of the defendant/ being in this capacity. During the set argument on 4.3.2019, the plaintiff attended by himself and his agent didn't, in spite of he was notified. The plaintiff presented on behalf of his agent a draft signed by his agent which included some points listed in petition of the case, except one point. This point is that the subject of nominating the Minister of Defense didn't take in considerations the schedule of the Council, as for the report, the plaintiff said that he has no objection against the experts' report. Moreover, the plaintiff presented a picture for names and signatures, he said that these names informed the Speaker of the Council that winning quorum had been achieved. The number of signers were (52), and the agent of the plaintiff sent after the session a draft dated on 4.3.2019. This draft included a rehearsing to what listed in the petition of the case, and the presented draft by his agent, adding to that he mentioned in its permeable that the experts had approved the objections of his client. The Court found that the requirements of the case became ready, and it decided to postpone the argument till 9 o'clock of 5.3.2019 morning for scrutiny and this matter has been made clear. During the set argument to trying the case after postponing it for scrutiny, the agent of the plaintiff and the plaintiff himself attended, as well as the agents of the defendant/ being in this capacity. The public in presence argument proceeded, the draft of the agent of the plaintiff dated on 4.3.2019 has been reviewed during the argument, and the plaintiff said that he concentrates on what listed in clause (5/1st/2nd) of the draft. The agents of the defendant answered that they have no comment on what shown in the session 5.3.2019. After scrutiny by this Court, the Court found that the case had completed all procedures to take a decision about it. The end of the argument has been made clear, and the decision was recited in the argument publicly. Accordingly, whereas what the plaintiff relied on as a substantiation of his case the minutes of the session where the voting occurred during it, this voting was about his nomination for the post of Minister of Defense and the compact disc of recorded session. As for the minutes, it was narrating for the session events and it doesn't contains anything may help the claiming of the plaintiff. As for the compact disc, which had been analyzed by the experts, the information listed by those experts which

supported by pictures weren't approve that the plaintiff had obtained the majority stipulated in article (59/2nd) of the Constitution for the plaintiff to win the post of Minister of Defense. In this report there is legal considerable information, and what the plaintiff presented of the request to revoke from names listed in this request (52) signers, it's not regarded an evidence to enable the plaintiff from obtaining the required majority. As for the other objections which related to procedures taken contrariwise the bylaw of the ICR, these procedures regarded a regulatory issues and the FSC is incompetent to try it. Accordingly, the case is not relying on any reason in the Constitution, the Court decided to reject it and to annul the custodian order which taken to cease voting on the post of the Minister of Defense, and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to article (5) of the FSC's law No. (30) For 2005 and article (94) of the Constitution. The decision has been made clear on 5.3.2019.