



The Federal Supreme Court (F S C) has been convened on 6.11.2013 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, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff / Mr. Osama Abdul Aziz Al-Nujaifi – Baghdad –
Al-Qadisiya complex – occupying the post of the ICR
Speaker- his agent the Barrister Dhiya Al-Saadi.

The Defendant / Mr. Nouri Kamil Al-Maliki – the Prime Minister/ being
in this capacity – his agent the consultant Ala'a Saleem
Al-Amiri.

The Claim

The agent of the plaintiff claimed before the FSC in the numbered case (27/Federal/2013) that the Council of Ministers, in its tenth regular session held on (19 March 2013), issued the decision numbered (118) for 2013 which adjudged (postponing the holding of elections for the councils of the governorates of the governorates incorporated into a region in (Nineveh and Anbar) for a maximum of six months for the reasons mentioned in the decision). Since the cabinet's decision is contrary to the Constitution in 2005, the law on the election of governorate councils, districts and sub-districts No. (36) For 2008 and other laws related to governorates councils elections. Based on the provisions of article 4/2nd of the FSC law, which gave each plaintiff the right to request from the FSC to adjudicate disputes concerning the legitimacy of laws, regulations and decisions issued by any party that has the right to issue them in order to end them, and as he considered a general agent of the plaintiff in addition to his interest of initiating the case for the aggrieve which took place and

latterly effected which produced of illegitimacy and legitimacy of postponing the elections in the two aforementioned governorates as he considered the Head of the electoral entity which took the name (united) and participated in the governorates councils elections. This matter requires and according to the provisions of the law to request from the FSC according to its legal provisions to annul the decision of the council of ministers No. (118) on (19.3.2013) which adjudged by postponing the elections in Nineveh and Anbar governorates because it violates the provisions of the constitution and the law, and for the following reasons and facts: before clarifying the direct legal reasons which we relied on the case of annulment, it is worthy to mention to a basic legal considerations which may enlighten the public principles that governs the case submitted before the constitutional judiciary. The legal system which means the constitution and laws related to the governorates councils incorporated into a region including the governorates council's elections law No. (36) For 2008 and the higher independent electoral commission law No. (11) For 2007 had discussed clearly and with details the electoral process, in its regulatory and procedural parts, but it didn't mention the government body or non-government which has the power and the legal jurisdiction of postponing the elections. Moreover, it didn't clarify the exclusive legal reasons which its estimations returns to the body which has the power and jurisdiction when taking the postponement decision. The constitutional basis adjudges preliminary that there is not postponing of elections, whether in all governorates or in some parts of it under all circumstances, conditions, and ineffective considerations on its conduction and participating it. The postponement if occurred, it will considered out of the binding constitutional and legal frame and can't be imagined but with the case of coup or the regime removal with its institutions, or pounce on it or deviate from it because the elections are a political right that is effective and enshrined in international laws and the living embodiment of democracy and is exercised in time as soon as it is resolved, which is irreversible or the legal texts governing the electoral process do not accept interpretation to provide answers that are not accepted by the methods of legal interpretation, whether with regard to the competent authority to postpone or the reasons on which it is based on the postponement. Bending, or adapting or forcibly developing them would create a wide margin for political purposes and electoral maneuvers that are far from the

requirements of the constitution and the law, which requires in the beginning to distinguish between the decision to hold elections for provincial councils in accordance with the paragraph (1st) of article 46 of Law No. (36) Of 2008 and postponing the elections process in an electoral circle or more. Postponing of elections will produce a legal trails, especially wasting of the public funds and it will inherit a number of difficulties which may not be avoided, as well as it will damage the right of nomination and election. Otherwise, there will be an impossibility in reorganizing the electors' records by adding the electors' names for reaching the age of electing within the period of postponement, as well as it will lose the opportunity for those who reached the nomination age for the membership of governorates' councils during the postponement. This matter forms a violation for the political and civil rights which every one of Iraqis should enjoy, and not digest these rights because of postponing the elections. For the aforementioned considerations we clarify the direct which required to annul the decision of the Council of Ministers of postponing the elections in the governorates of Al-Anbar and Nineveh, as following:

First- The article (46/1st) of the governorates elections law No. (36) for 2008 had determined the jurisdiction of the council of ministers according to a proposal from the Higher Independent Electoral Commission to take a decision or announcement for the elections in all governorates incorporated into a region, and the aforementioned law didn't authorize the Council of Ministers the right to postpone the elections, not expressly or in any indication, as the articles (110, 114 and 80) of the Constitution enumerate the jurisdictions of the federal authorities or joint powers and the powers of the Council of Ministers, which came exclusively and specifically and did not include in the preparation of these constitutional texts the competence of the Council of Ministers to take decisions to postpone the elections of the Governorate Council neither part nor all, and therefore the decision of the Council of Ministers to postpone is a clear violation of the provisions of the Constitution, because of taking a procedure or decision that does not fall within its exclusive and limited jurisdiction.

Second- The postponement of the elections in Anbar and Nineveh governorates is not straight, but it contradicts and intersects with the provisions of paragraphs (2nd and 3rd) of article (46/1st), which required a

one-day vote for all councils, and if they are not held, the governorates councils will continue to run their affairs until new councils are elected. The text of these two paragraphs of article (46/1st) of the aforementioned law has been adopted on the principle that elections cannot be divided in time and place, i.e. limited to one or several governorates, and this is supported by the case of the legal texts established in these paragraphs and the evidence of the last sentence of paragraph 2nd (for governorates councils) and 3rd (the governorates councils shall continue) which came as plural, and the benefit of the not electoral law mentioning is not to divide the elections, otherwise, what adopted by the law if the pronouncement existed in a legal text for one meaning as in (the vote shall be held on one-day for all governorates) and for comprehensive implementing, it had been moved to all governorates without a limitation in a specific number because in general not on comprehensive. The general shall not be dedication, or it will be improvise without evidence, but with the case of creating the legal evidence of limitation. This is what the law No. (36) For 2008 didn't stipulated, contrariwise the elections law (annulled) No. (16) For 2005 stipulated which authorized postponing the elections in a circle or several electoral circles. Therefore, he requested from the FSC after taking the required procedures to judge by unconstitutionality and legality of postponement decision issued by the council of ministers No. (118) for 2013 for not achieving the constitutional quorum of postponement, and for unconstitutionality and legality of postponing the elections or dividing it in time and place when it's limited for the governorates of Anbar and Nineveh, and to oblige the defendant by the judicial expenses and advocacy fees. After registering the case at this court and paying the legal fee for it and in accordance with article (3rd) of article (1) of the Bylaw of the FSC and after completing the required procedures in accordance with the provisions of paragraph (2nd) of article (2) of the aforementioned Bylaw, a date has been set for the case and the parties were notified by the aforementioned date. The requestor of introducing the third party the barrister Dhia'a Al-Saady on behalf of the introducing requestor Mr. Ahmed Hameed Mahal according to its request dated on (8.5.2013), and because his client the introducing requestor as a third party is a candidate for the governorates councils elections including the electoral entity (united) in the elections of Alnbar governorate council and for the aggrieve occurred to him because of elections postponement in this

governorate, and for his actual proceeding of the electoral propaganda which cost him lot of money, in addition to the efforts of moving into a different regions. For the other legal reasons he listed in his request according to the article (69 & 70/2) of the civil procedure law within the meaning of article (19) of the FSC's law, he requested to initiate this case side by side with the plaintiff, and he requested to judge by annulling the decision of postponing the elections in these two governorates. On the scheduled day of argument, the agent of the plaintiff the barrister Dhia'a Al-Saady attended according to the power of attorney attached to the case's dossier, at the same time he is the agent of the introducing requestor in the case as a third party in addition to the plaintiff Ahmed Hameed Mahal according to the power of attorney attached to case's dossier. The agent of the defendant/ being in this capacity the legal consultant Ala'a Saleem Al-Amiri has attended too, according to the power of attorney attached to the case's dossier. The public in presence of both parties argument proceeded, and the plaintiff's attorney reiterated the claim and requested to reject the case, with the defendant charging the expenses of the lawsuit and the advocacy fees, as he repeated his client's request to accept him in the case a third party beside the plaintiff and to corresponding to the request for the law the court decided to accept the request of the plaintiff agent requested his client Ahmed Hameed replaced a third party in the case beside the plaintiff and he paid the legal fee for his client's request, and he requested to judge according to the petition of his client's request and to burden the defendant all the expenses. The Court had reviewed the shown letter by the defendant dated on (21.5.2013) which included the decision of the council of ministers No. (200) for 2013 by approving the suggestion of the Higher Independent Electoral Commission of determining the day (20.6.2013) as a date for proceeding the governorates councils elections in Alanbr and Nineveh. The agent of the plaintiff clarified that the case of his client is concentrated on incompetence of the council of ministers of changing or postponing the date of the elections of the governorate councils, but in two cases, the case of regime changing or the natural catastrophes. This matter didn't happen, and the agent of the defendant answered that the date of the elections is determined by the council of ministers based on a proposal from the Higher Independent Electoral Commission, and had been set initially. For the security reasons, the elections in Alanbar and Nineveh had been

postponed, a new date has been set (20.6.2013) according to a proposal from the commission and determining the elections date is a power of the council of ministers, it also has the power of postponing it for a security reasons. According to the paragraph (4) of article (69) of the civil procedure law, the Court had decided to introduce the Higher Independent Electoral Commission as a third party in the case for inquiry about the debate matter, the official jurist Ahmed Hasan Abed who has the post of a director according to the power of attorney attached to the case's dossier. The Court had reviewed the letter sent by the Higher Independent Electoral Commission No. (Kha/13/202) on (11.7.2013) which included about what related to determining the date of the elections, and the body which determining its date. Therefore, the law of governorates councils and districts elections No. (36) for 2008 (amended) had indicated the body which determines the elections date (the council of ministers) according to the text of paragraph (1st) of article (46) whereas it stipulated (the date of the elections determined by a decision from the council of ministers according to a proposal by the commission, and announced by the different media means before the date of its proceeding (60) days before). But the aforementioned law didn't indicate the cases which allows elections postponement, while the elections law No. (16) For 2005 (amended and valid) had indicated in item (2nd) of article (4) to the possibility of postponing the elections in a circle or more if the security circumstances required this procedure. Moreover, article (49) of the law No. (36) For 2008 stipulated (no text shall considered effect, if it's contradicts the provisions of this law) especially since law No. (16) Of 2005 is still in force and the postponement is authorized for security reasons, and the body responsible for estimating the security conditions is the one that appreciates these conditions. Therefore, no obstacle of postponing the elections in Alanbar and Nineveh governorates, especially that the security committee had presented a security report dated on (19.3.2013) which included the postponement request in these two governorates. Each party had repeated his previous requests and sayings, and requested to judge according to it. The court reviewed it all, as well as reviewed the exchanged drafts, whereas the court inquired from the third party, the agent of the Higher Independent Electoral Commission. The court decided to eject it out of the case. Whereas nothing left to be said,

the end of the argument has been made clear and the decision has been made clear publicly.

The decision

Upon scrutiny and deliberation by the FSC, the court that the plaintiff is challenging in the petition of his case the unconstitutionality of the cabinet's decisions numbered (118) and (124) dated respectively in (19.3.2013) and (26.26) 3.2013) The Council of Ministers decided in its decision numbered (118) in (19.3.2013) to postpone the holding of elections for the councils of the governorates incorporated into a region of Nineveh and Anbar for a maximum of six months which based on the letter of the Supreme Security Committee for Elections dated 19.3.2013, based on the requests of the Anbar Governorate Council, official bodies and some political blocs, and decided in its decision numbered (124) in (26.3.2013) to confirm his decision numbered (118) in (19.3.2013) on postponing the elections in the two governorates mentioned until the disappearance of its reasons. When extrapolating the legal texts on the subject of the case show that article (46/1st) of the Governorates, District and Sub-District Council Elections law No. (36) for 2008 (amended) to (the date of the elections shall be determined by a decision of the Council of Ministers on the basis of a proposal of the Commission announced by the various media before the scheduled date of the holding of it by (60) days) and provided in the (2nd) of it (voting shall take place in one day for the Governorates Councils) and it also stipulated in item (3rd) of it (in the event of a postponement of the elections, the governorate councils, districts and sub-districts will continue to manage their affairs until the elections of new councils at the suggestion of the Higher Independent Electoral Commission, the legislator in article 46/3rd noted the state of postponement of the elections, but did not go into details to postpone the elections in the constituencies in the event of emergencies such as natural disasters like floods and earthquakes, God forbid or security conditions that hinder the conduct of the electoral process and direct voters to the ballot boxes and not logic to postpone elections in all governorates councils and throughout Iraq because one of the electoral districts in the governorates in one of the governorate was subjected to an emergency incident from the above-mentioned incidents, and since the electoral law

no. (16) Of 2005 amended in force stipulated in article (4/2nd) that (elections may be postponed in one or more governorates if so security conditions) and since the aforementioned text, so according to the advanced text, it is the Council of Ministers that determines the date of the elections based on a proposal from the Higher Independent Electoral Commission, but the legislator in article (46/3rd) even if he indicated to the state of elections postponement but he didn't discussed the details of elections postponement in the constituencies if an emergency state occurred, such as floods or earthquakes (God forbid) or the security circumstances which hinders the election process and heading of the voters to the ballot. It's not logic to postpone in all governorates councils and all over Iraq because one office in a governorate exposed to emergency status from the incidents above-mentioned. Whereas the elections' law No.(16) for 2005 (amended and valid) had stipulated in article (4/2nd) on ((it's permissible to postpone the elections in a constituency or more if the security situation required)). Whereas the aforementioned text is valid and in effect, and had not been annulled which allowed elections postponement in a constituency or more if the security situation required. This text was listed in the elections law, therefore, we can rely on it in necessity to postpone the elections, as happened in the postponement decision for the governorates of Nineveh and Alanbar. The saying of that all the elections shall proceeded in time and place in one day is rejected, because the governorates councils elections didn't take place all over Iraq, whereas it didn't take place in Kurdistan region, Kirkuk as well. Therefore, this procedure is applicable on the governorates which decides to process the elections, the postponement doesn't includes the governorates which decided to postpone it. Higher Independent Electoral Commission (commissioners' council) had clarified in its letter (Ha/17/101) on (11.7.2013) that the body which determines the elections date is the council of ministers according to the text of paragraph (1st) of article (46) of the governorates, districts, and sub-districts elections law No. (36) For 2008 (amended). The aforementioned law didn't indicates to the cases where is it possible to postpone the elections, while the elections law No. (16) For 2005 (valid and amended) had indicated in item (2nd) of article (4) to the possibility of postponing the elections in a constituency or more if the security situations required, whereas the law No. (36) For 2008 was silent about the cases

which allows the postponement of the elections, therefore, there is no obstacle of postponing the elections in Alanbar and Nineveh according to the provisions of the law No. (16) For 2005, especially that the supreme security committee of the elections had presented its report dated on 19.3.2013 which included the request of postponing the elections in these two governorates. Accordingly, the decision of postponing the elections in these two governorates Nineveh and Alanbar according to the decision issued by the council of ministers by the number (118) on (19.3.2013) and the decision No. (124) for 2013 which adjudged in the first paragraph on confirming the council of ministers decision No. (118) for 2013 about postponing the elections in the governorates of Nineveh and Alanbar, the court finds that it came corresponding to the law and relying to a substantiation in the elections' law No. (16) For 2005, and it had been issued for a security necessities. Therefore, the case of the plaintiff is not relying on a reason in the law. Therefore, the FSC decided to reject the case of the plaintiff and the third party Ahmed Hameed Mahal with burdening them the case's expenses and the advocacy fees for the agent of the defendant the consultant Ala'a Saleem Al-Amiri amount of one-hundred thousand Iraqi Dinars. The decision has been made clear, decisively and unanimously on 6.11.2013.