



The Federal Supreme Court (F S C) has been convened on 4.9.2018 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, Hussein Abbas Abu Al-Temmen and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the representative (sad.jim.ain.kaf) – his agent the barrister (kaf.mim.ain.mim).

The Defendants: Speaker of the ICR/ being in this capacity – his agents the jurists the director (sin.ta.yeh) and the legal consultant assistant (heh.mim.sin).

The Claim

The agent of the Plaintiff claimed that the Defendant issued the law number (1) for 2018 the law of first amendment for the law number (45) for 2013. Whereas this law included a constitutional violation which represented by (seventh: shall not be from the employees of the higher independent electoral commission, including the commissioners' Council member, or high post occupiers. Whom finished two years of his service not less than two years from the date of nomination shall be excepted). Whereas this article considered a constitutional violation, and it also breaching the constitutional principles, the citizenship rights and abusing of civil and electoral rights which stipulated in articles (14) and (16) and (2/1st/jim) and (20) of the Constitution. So, what listed in the law number (1) for 2018 which amended the law number (45) for 2013 is unconstitutional and limiting the basic rights of nomination for the citizens. Whereas the outgoing commission members presently are citizens as the Constitution stipulated, and nomination for the ICR is a

legitimate right for every Iraqi legally competent which is not sentenced with a crime. Also there is not a constitutional text prohibit their nomination, otherwise it considered a challenge against the independent commission. This matter is what the Iraqi constitutional judiciary settled on, whereas the FSC issued its decision number (27/federal/2018) about the concepts of equality and equal opportunities. This part of people achieved their mission professionally, transparently and neutrally for the tasks which assigned to them by success of electoral sessions since the democratic exercise started, and there is not a sound reason to issue this law. The higher independent electoral commission is a commission formed by the Constitution, and it has a private law. It also yield to monitory bodies, and its employees are the same with those whom assigned to achieve a public service. This article came as a challenge for the members, employees, commissioners and all workers in the commission, and it may affect the public opinion and the elections' integrity, its independence. Therefore, the agent of the plaintiff requested to judge by unconstitutionality of (7th) of the ICR elections amending law. The agent of the defendant answered by their answering draft dated on 2.19.2018, and they requested to reject the case in addition to burden the plaintiff the judicial expenses, because the ICR enacted this law according to the provisions of article (49/3rd) of the Constitution. The stipulations listed in it are a legislative choice according to the Constitution. After registering this case at this Court, and completing required procedures according to the bylaw of the FSC number (1) for 2005. The day 4.9.2018 was set as a date for argument, and the agent of the plaintiff repeated what listed in the petition of the case. He requested to judge according to it. Also the agents of the defendant repeated what listed in the petition of the case, and they requested to judge according to it. Whereas nothing left to be said, the end of the argument made clear and the decision recited publicly in the session.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff challenges unconstitutionality of article (3) text of first amendment number (1) for 2018 which amended the ICR's election law number 45 for 2013. This article added clause (7th) to article (8) of the law which related to the stipulations of the nominee for the ICR's

elections which texts ((shall not be from the employees of the higher independent electoral commission, including the commissioners' Council member, or high post occupiers. Whom finished two years of his service not less than two years from the date of nomination shall be excepted). He pretended that this text violates the provisions of articles (14) and (16) and (2/1st/jim) and (20) of the Constitution which stipulates on equality equal opportunities, respecting the rights and the basic rights. It also stipulated on the right of the citizen in participating in public affairs and enjoying the political rights. The text of challenge subject restricts the citizen's right of nomination for the membership of the ICR. The FSC finds that the ICR had issued the text (challenge subject) according to its legislative competence which stipulated in article (61/1st) of the Constitution, and it relied on listing stipulations of the nominee of the ICR elections according to its authorities stipulated in article (49/3rd) of the Constitution. Also the Court finds that nomination for the ICR elections by the commissioners' Council member and high posts occupiers in the higher independent electoral commission while they are in their posts or those whom left his post and requested to nominate directly, or after he left the post. This matter may affects by a way or another in the line of neutrality which oblige the commission to be on, and its attitude will be in circle of uncertainty which requires to take it away from this doubt. This procedure will create tranquility in the nominees and electors, therefore excluding the text (challenge subject) for whom in the commission or after leaving it directly or with a short time doesn't violates the constitutional articles that the plaintiff mentioned in the petition of his case. Equality, equal opportunities, the right of participation in public affairs and the right of enjoying the political rights which these articles mentioned shall be for the people whom doesn't have a specific job title in a body that concerns directly in the elections which make them when nominating preceding on some others according to this job title. This may cause unbalancing the principle of equality and equal opportunities between the citizens. Based on that, and whereas the text (challenge subject) was enacted according to aforementioned consideration, and according to the provisions of article (49/3rd) of the Constitution. The case of the plaintiff is lacking to its substantiation in the Constitution and the law, and the Court decided to reject it with burdening the plaintiff the expenses and advocacy fees of the defendant's agents amount of one

hundred thousand Iraqi dinars. The decision issued decisively on 4.9.2018 according to provisions of article (94) of the Constitution and article (5/2nd) of the FSC's law number (30) for 2005.