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The Federal Supreme Court (F S C) has been convened on 18.12.2014 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-Tamimi, 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: (feh.mim.sin.mim) – his agent the barrister (sad.shin).

The Defendant: (1) the President of the Republic/ being in this capacity.  
(2) the head of commissioners' council in the high independent electoral commission/ being in this capacity.

### The Claim

The agent of the plaintiff (feh.mim.sin.mim) the barrister (sad.shin) that his client the plaintiff aforementioned had candidate himself for the elections of the ICR in the current cycle (2014) in al-Basra governorate, and when the votes were counted he hasn't among the winners. The high independent electoral commission had approved the results of the elections according to its decision No. (70) On 18.5.2014. The plaintiff wasn't satisfied by the decision aforementioned, he proposed to challenge it at the judicial committee for the elections, and his challenge was rejected. Then, the plaintiff proposed to challenge the decision of the high independent electoral commission No. (70) For 2014 above-mentioned at the FSC, he claimed that the aforementioned decision is violating the law and the constitution because of the error from the commission in counting and sorting of the votes he deserves, whereas his merit was (8327) votes not (8259) with a disparity of (32) votes. The mechanism of counting the votes had violated the provisions of article (47) of the constitution, the high independent electoral commission should count the nominees' women out of

the women's quota with a percentage of (25%) which allocated for women, as well as it didn't take the third step of the ICR seats distribution No. (14) For 2014 in consideration. This matter led to not let him acquires a seat in the ICR for Al-Basra governorate. For the aforementioned reasons, the agent of the plaintiff requested (to judge by unconstitutionality of the commissioners' decision No. (70) For the ordinary minutes (81) by approving the results of the ICR's elections for (2014) and all the procedures were accomplished according to it, according to the provisions of article (93) of the constitution 1<sup>st</sup> and article (4) of the FSC's law No. (30) For 2005). The agent of the first defendant/ being in this capacity had answered the petition of the case that his client (the President of the Republic) is not a litigant in this case, and the primary election results sent to him after being approved by the FSC according to its capacities stipulated in article (93/4<sup>th</sup>) of the constitution, and he has no power to amend it, it's also obliging for all authorities including the President of the Republic according to the article (94) of the constitution. The call of the Republic's President for the ICR to be convened according to the article (73/4<sup>th</sup>) of the constitution is a constitutional procedure, and constitutionally obliging for him. This procedure hasn't any relation to the objections of the plaintiff, in this case, therefore he requested to reject the case against his client for Non-litigation according to the provisions of article (4) and article (80) of the civil procedure law No. (83) For 1969 amended. The head of the commissioners answered the petition of the case with his answering draft presented to this Court on (3.8.2014) that the plaintiff claimed there was an error occurred during the process of counting his votes, while there are complaints and objections presented to the commission in this concern, and the commission made some corrections. The plaintiff hasn't included them, this indicates that the plaintiff wasn't right in his complaint and challenge. Moreover, the electronic system of the data entry center in the national office whose responsible for data entry of the lists into the computers had been designed with a form that doesn't accept any false results in the lists received from the branches. Therefore, manipulating the votes is unacceptable from the aspect where the plaintiff claimed, and the plaintiff mentioned in his case's petition that the mechanism of counting the votes was violating the constitution and the law of the ICR elections No. (45) for 2013 is violating the articles (2/1<sup>st</sup>/beh & 13/2<sup>nd</sup> & 14 & 49) of the constitution). The distinction between the winner man or the winner woman

shouldn't be accepted, the seats must be dedicated to this man regardless of reaching (women's quota) which is it (25%) of the ICR's seats or not. Distribution of votes should be corresponding with the article (14) of the ICR elections law No. (45) For 2013, from up to the down for the winners. The aforementioned law had indicated to Sainte-Laguë method (amended) in distributing the seats, but for (women's quota) the clause (2<sup>nd</sup>) of the article (14) of it had stipulated only on ((woman acquiring for 25% of the seats should be guaranteed...)) without clarifying the mechanism which accomplishes the (women's quota). Therefore, the high independent electoral commission and according to its powers which stipulated in the law No. (11 for 2008) the law of the first amendment of the high independent electoral commission No. (11 for 2007) and this article had established the bases to accomplishes the women's quota. As for the women's quota in Al-Basra, whereas the plaintiff is from this governorate. The number of the seats which dedicated for the aforementioned governorate are (25) seats, hence the women's quota seats will be (6) seats, and according to the clause (alif) of the third step from distributing the ICR's seats No. (14) For 2014 by dedicating a seat for the woman after each (3) winners of men, for example, the (law state) list had gained (12) seats, (3) seats of it must be dedicated for women. The citizen alliance gained (6) seats (1) seat must be dedicated for women, and by adding (3) seats from the (law state) with (1) seat from (the citizen alliance) the summation will be (4) seats, in this point the women's quota will not be accomplished which they are (6) seats dedicated for women and the seats which dedicated for Al-Basra governorate. As for the rest of the lists, the abovementioned base wasn't applied for it because no lists gained (4) seats, and this matter violates the constitution, then clause (beh/1) from the third step above should be applied. This step adjudge with dividing the number of each winner list seats on (3), except the law state because it used all the women's share, by applying this text the share of (citizen alliance) will be (2) seats and (1) seat should be given to the (freemen list) and the summation of the seats (3 & 2 & 1) will equal (6) seats, by this the women's quota will be accomplished in Al-Basra governorate. This matter is corresponding to the constitution and the law, whereas the number of votes for the minimum winners in the list of the plaintiff is (8304) votes and the number of the votes he gained were (8295) votes, and this number doesn't qualify him to get a seat. Therefore, he became out of the competition circle for any seat.

Moreover, the judicial committee of the elections had rejected two challenges presented by the plaintiff. Accordingly, the agent of the second defendant/ being in this capacity had requested to reject the case. After registering this case according to the provisions of clause (3<sup>rd</sup>) of the article (1) of the FSC's bylaw No. (1) For 2005, and after completing the required legal procedures according to the clause (2<sup>nd</sup>) of the article (2) from the aforementioned bylaw. The day 18.12.2014 has been scheduled to try the case, on this day the agent of the plaintiff and the agent of the second defendant attended, while the agent of the first defendant didn't attend despite his presence in the previous session. The public in the presence argument of both parties has proceeded. Both parties repeated their sayings and previous requests. Whereas nothing left to be said, the end of the argument has been made clear and the decision was recited publicly.

### The decision

During the scrutiny and deliberation by the FSC, the court found that the plaintiff (feh.mim.sin.mim) had been nominated for the elections of the ICR for the third cycle for 2014 within the list of (citizen alliance) of Al-Basra governorate, these elections had been ratified according to the decision of the high independent electoral commission No. (70) and the ordinary minutes No. (81) on 18.5.2014, his name didn't appear within the winners, because the plaintiff wasn't satisfied by the abovementioned decision, he proposed to challenge it at the judicial committee of elections at the federal cassation Court. His challenge had been rejected, then he initiated his case before this Court by challenging the commission's decision abovementioned too, for the reasons he listed in the petition of the case. He requested to judge by unconstitutionality of it, and the procedures which token according to it. The FSC finds that the law of the high independent electoral commission had clarified in the article (8/3<sup>rd</sup>) of it, that the body who's trying the challenges which referred from the commission's council or by those who had been aggrieved from the council's decision, the judicial committee of the elections in the federal cassation Court. Therefore, the trying of this case is not a competence of the FSC according to the article (93) of the constitution, and the article (4) of its law No. (30) For 2005. The Court decided to reject the case for the reasons abovementioned, and to

burden the plaintiff the expenses and the advocacy fees for the agents of the defendants Mr. (feh.jim) and (alif.ha.ain) amount of (one-hundred) thousand Iraqi dinars divided between them equally. The decision has been issued unanimously and made clear on 18.12.2014.