



The Federal Supreme Court (F S C) has been convened on 11.14.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mikael Shamshon Qas George, Hussein Abbas Abu Altemmen and Mohammed Qasim AL-Janabi who authorized in the name of the people to judge and they made the following decision:

Plaintiffs: 1- PhD. (sin.shin.ain).

2- (ain.ghain.ain.alif).

3- (sin.yeh.mim).

4- (teh.ain.ha).

5- (yeh.mim.jim).

6- (ha.feh.feh).

7- (alif.sad.ha).

8- (nun.ain.alif).

Their agent the barrister (zin.dhad.alif.yeh).

Defendant: Speaker of the ICR / being in this capacity – his agents the legal official as a general director (sin.ta.yeh) & the legal consultant assistant (heh.mim.sin).

Third party: the members of the higher commission of human rights.

Claim

The agent of the plaintiffs claimed, that the ICR had voted in its sixth session convened on 7.20.2017 on the nominees of the ICR for the higher commission of human right collectively, after they were nominated by the experts' committee which formed by the ICR, as well as the issuance if the Republican decree No. (26) Which decided to appoint the above-mentioned as incumbent members in the higher commission of human rights each of 1. Hayman Rasheed Zyadan. 2. Mrs. Basma Mohammed Mustafa. 3. Thamir yaseen Abdullah. 4. Ali

Akram Zain AL-Abedeem. 5. Mushriq Naji Aboud Salman. 6. Mrs. Wehda Mahmood Fahad Abd. 7. Ali Abd AL-Kareem Mayzar. 8. Fadhil Abd AL-Zahra'a. 9. Akeel Jasim Ali Hadi. 10. Zaydan Khalaf Abeed. 11. Amir Polus Ziyad. 12. Fatin Abd AL-Wahid Abbas, and to appoint the listed below sirs as an auxiliary members of the higher commission of human rights, each of 1. Barween Mohammed Ameen 2. Anas Akram Subhi 3. Faisal Abdullah Badir Adday. And a previously a committee of experts were formed by the ICR to nominate the higher independent commission of human rights members, and the agent of the plaintiffs that the nomination process of the commission members and appointing them contains many constitutional and legal violations. The constitutional and legal texts which had been violated are article (1/beh) of the constitution (no law may be enacted that contradicts the principles of democracy) and article (1/jim) of the constitution (law may be enacted that contradicts the rights and basic freedoms stipulated in this constitution) and article (8) of the constitution (Iraq shall observe the principles of good neighborliness, adhere to the principle of noninterference in the internal affairs of other states, seek to settle disputes by peaceful means, establish relations on the basis of mutual interests and reciprocity, and respect its international obligations) and article (14) of the constitution (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status) and article (16) of the constitution (Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken) and article (20) of the constitution (Iraqi citizens, men and women, shall have the right to participate in public affairs and to enjoy political rights including the right to vote, elect, and run for office) and article (45/1st) (The State shall seek to strengthen the role of civil society institutions, and to support, develop... Etc) and article (46) (Restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom) and article (102) (The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law) and principles of Paris

which related to the national foundations to protect human rights and upgrading it, which approved unanimously in 1992 by the human rights committee which belongs to the United Nations No. (134/48) on (20/January/1992). Moreover there were a violations in nominations in legal and constitutional fields for nomination and assigning of high commission of human rights members process, by relying on principle of sharing and conformity by the experts' committee in nominating the high commission of human rights members, which contradict with the constitutional texts listed in articles (alif,beh,jim) & (8) & (14) & (16) & (20) & (14/1st) & (46) & (102) of the constitution, and the experts were assigned to nominate the commission members from the ICR members who belongs to a political bloc not from the independent representatives, which means their association of directing the blocs they belong to, and they do not have experience in human rights field and among who had been nominated and voted to be a members in the high independent commission of human rights whom associated to a blocs and parties previously exercised working in is, as shown below

1. Hayman Rasheed Zaydan belongs to the Kurdistan Democratic Party.
2. Basma Mohammed Mustafa belongs to the Kurdistan National Union.
3. Thamir Yaseen Abdullah belongs to forces Union.
4. Ali Akram Zain AL-Abedeem a former nominee for reformation movement.
5. Mushriq Naji About Salman belongs to the liberal bloc.
6. Wehda Mahmood Fahad Abd a former member of the ICR the Iraqi roster/consultant of the ICR Speaker.
7. Ali Abd AL-Kareem Mayzar cousin of the representative Abd AL-Raheem AL-Shimmari.
8. Fadhil Abd AL-Zahra'a Fadhil AL-Gharawi a commission former member and a nominee of supreme council.
9. Akeel Jasim Ali Hadi and Zaydan Khalaf Abeed the manager of Mohammed Shiya'a AL-Sudani the general manager in the Ministry of justice and Amir Polus Zya the nominee of the Ashurian democratic party and Fatin Abd AL-Wahid Abbas spouse of the representative Kamil AL-Zaidi AL-Daawa party/Iraq office and attached to the petition of the case some private photos of the electoral campaign in a previous sessions for members were appointed in the commission in the present commission of human rights each of Basma Mohammed Mustafa and Ali Akram Zain AL-Abedeem and Mushriq Naji and Wehda Mohammed Fahad, and this confirms lack of independence of high commission of human rights. Therefore, unconstitutionality of their appointment and declarations via media

from some members of experts' committee confirms adoption of sharing principle in nominating the high commission of human rights members contrariwise to the text of article (102) of the constitution, among these the declaration of the representative Jasim Mohammed Jaafar the member of experts' committee and according to the dumped disk into a paper form, as well as what confirms that the resignation request presented by the civil community representatives in the experts committee each of Jamal Mohammed Ali AL-Jawahiri and Ala'a Abd AL-Hussein Mahdi. Also the withdrawal of the United Nations of human rights office in Iraq after his existence considered as a consultant according to the third amendment of the high commission of human rights law No. (53) of 2008 (amended) instead of considering him and incumbent member in the experts' committee which contradicts with text of article (8) of the constitution, and not committing of the ICR to the annual comprehensive report which represent Iraq and had been presented in the human rights council for (201) which regards the point of view of the Iraqi government and the ICR did not commit to the governmental and parliamentary reformation paper axes which were voted on and approved in the ICR and the other reasons listed in the petition of the case. The plaintiffs in this case fulfilling the listed conditions includes article (6) of the FSC bylaw No. (1) for 2005, therefore, the agent of the plaintiffs requested from the FSC and for the aforementioned reasons to judge the unconstitutionality of the ICR decision by approving the high commission of human rights members which took in its sixth session convened on (7.20.2017) because it is violates the Republic of Iraq constitution for 2005 as shown above, and to burden the defendant the expenses of the case and advocacy fees. The petition of the case were notified to the defendant/ being in this capacity and his agent answered it according to his written draft dated on (8.22.2017) and requested to reject the case for the following reasons: 1. The plaintiffs mentions in clause (3) of their draft eight constitutional texts and one legal text claims that the ICR had violated it when selected the high independent human rights commission members, but the plaintiffs mentioned a plain texts without indicating to violation point of the ICR to it or breaching, therefore, reporting legal and constitutional texts are Non-productive in this case as long as it does not linked to what prove the violation of the ICR for the aforementioned texts. 2. The agent of the plaintiffs indicates in clause

(4) that the ICR had adopted the principle of sharing and conformity from the parliamentary experts' committee and it is a committee from the ICR members whom belongs to political blocs not from the independent representatives, whereas article (7) of the high independent human rights commission law No. (53) For 2008 did not conditioned to in the members of the commission to be from independent movements of political blocs, but it conditioned in them the title of council membership and nothing else. 3. He indicates in clause (4/2nd) of the case draft that the voted members of the commission related to a blocs and parties previously worked in it, and to mention in this concern (alif). The case's draft indicated to the partial association for eight commissioners only of twelve commissioners, and what presented of documents represented by a copy papers not valid to be a legal plea. (beh). The agent of the plaintiffs did not clarify the political title and the partial association for the rest of the commission members in continuums (7, 9, 10, 12), therefore, what the plaintiffs mentioned about (lack of independence of the commission members) whereas it is not proper to includes the rest of the members about what had roused on some of them, if the claiming of their political association were true. (teh). If we assumed that some members of the commission are associating politically to some blocs or parties and they are not independents, that may be regarded a disorder in one of the conditions which must be available in the nominee for the membership of the commission council in the text of article (8/2nd/heh) and never forms a violation to a constitutional text, therefore, it is out of the FSC review specialty. According to the listed reasons in the answering draft, the agent of the defendant requested to reject the case of the plaintiffs, and to burden them all the expenses and advocacy fees. The court called upon the two parties of the case to the pleading, and the public in presence pleading proceeded. The agents of defendant repeated what listed in the answering draft which presented to the court as an answer on the petition of the case dated on (88.22.2017) and requested to reject the case and to burden the plaintiffs all the expenses and advocacy fees. The agent of the plaintiffs was commissioned to clarify the constitutional texts which violated by the defendant/ being in this capacity, as well as, the court decided to stand on what required to take a decision in the case and according to article (69/4) of civil procedure law to introduce the members of the high commission of human rights

as a third party into the case. The sirs' members of the high commission of human rights the incumbents and auxiliary members attended each of Mrs. Basma Abd AL-Zahra'a Mohammed Mustafa, Ali Akram Zain AL-Abedeem , Mushriq Naji, Wahda Mahmood, Fadhil Abd AL-Zahra'a, Akeel Jasim Zaydan Khalaf, Amir Polus Zya and Fatin Abd AL-Wahid, and from auxiliary members Mr. Anas Akram, Faisal Abdullah attended, and the other notables members did not attend because they were delegated according to the exhibited letters from their colleagues. The public in presence pleading proceeded against them, and the court enquired from the agent of the plaintiffs about the concept of independence in the Republic of Iraq constitution for 2005, so, he answered (to not associating with a political organization). The court requested from the third party to state their sayings of what ascribed to them of belonging to political organizations, and the agent of the plaintiffs presented a written draft dated on (10.4.2017) based on the request of the court, he clarified in it the violation of the defendant for the articles of the constitution when approved the members of the commission, and it was attached to the file of the case. The court reviewed the answering draft dated on 9.2.2017 presented by the agent of the plaintiffs on the answering draft of the agent of the defendant, also the high commission of human rights/ national bureau/ according to its letter No. (mim/99) on (11.12.2017) the illustration draft of the incumbents and auxiliary members of the high commission of human rights. And after reviewing it was attached to the file of the case, as well as the agent of the plaintiffs presented in written draft dated on (11.14.2017) as an answer on the draft presented by the third party, and it was clear that the high independent electoral commission (commission council) had answered in its captioned letter to the high commission of human rights/ national bureau/ number (kha/17/1429) on 11.6.2017) that it is after scrutinizing the saved data with it, the names of the high commission of human rights members were not exist in the established committees or the general of the registered parties in the commission till the preparation of this answer on (11.6.2017). one of third party members answered as a representative of the other members of the commission repeating what listed in the illustration draft presented by them, and the commissioners are not belongs to any party, and this what clarified in the letter of parties' offices in addition to concept of independence which we clarified in the answering draft we

presented to the honorable court. The agent of the plaintiffs answered that he has nothing more than what he presented to prove the case, and about involving of the commissioners to the partial bodies. Both parties repeated his previous sayings and requests and requested to judge according to it, therefore, whereas nothing left to be said, the end of the pleading ended and the decision made clear publicly in the session.

The decision

After scrutiny and deliberation by the FSC, the court found that the agent of the plaintiffs had challenged in the petition of his clients the unconstitutionality of the ICR decision dated on (7.20.2017) which decided to approve the high commission of human rights members in pretence that it is violates articles (102 & 8 & 14 & 16) of the Republic of Iraq constitution for 2005, and he requested from the FSC to judge the unconstitutionality of that decision for its violation to the provisions of the constitution. The FSC finds that article (8/1st) of the high commission of human rights law No. (53) for 2008 stipulated on (the council consist of eleventh incumbent members and three auxiliary members of those who were previously nominated by the committee, and the approval on choosing them shall be achieved with absolute majority of the attendants in the ICR). The ICR and relying on that and its challenged decision had approved to nominate he high commission of human rights members by the committee of experts formed from the ICR after the committee scrutinized their curriculum vitas and the required conditions in each one of them to carry out his post in the commission, and all what the agent of the plaintiffs presented to prove his claim cannot be reliable as an evidence for proof. In addition to that the political office had denied belonging of the commission members to the registered parties in its records according to what listed in the letter issued from high independent electoral commission/ commissioners' council/ No. (kha/7/1429) on 11.6.2017. The FSC also finds that the concept of independence listed in article (102) of the constitution according to the judgment it issued No. (228/the/2006) that its meaning the personnel of the commission each one in his specialty are independent in exercising their tasks stipulated on in the commission law no authority on them in doing these tasks but the law, and anybody has no right to interfere or effect on the performance of the commission of its tasks. Accordingly, the decision issued from the ICR in 7.20.2017 of approving the members

of the high commission of human rights correspond to provisions of article (102) of the Republic of Iraq constitution, and the case is lacking to its constitutional and legal substantiation, which must be rejected. Based on that, the FSC decided for the aforementioned reasons to judge with rejecting the case of the plaintiffs, and to burden them the expenses of the case and advocacy fees for the agents of the defendant misters (sin.ta.yeh) and (heh.mim.sin) amount of one hundred thousand Iraqi dinars. The decision issued decisively and unanimously according to provisions of article (94) of the Republic of Iraq constitution and article (5/2nd) of the FSC law No. (30) For 2005 and made clear on 11.14.2017.