



The Federal Supreme Court (F S C) has been convened on 11.7.2017 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:

Plaintiff: (1) The barrister (dad.ha.sin).

(2) The barrister (ain.kaf.ra).

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).

Claim

The plaintiffs claimed, that the ICR issued the high independent electoral commission law No. (11) For 2007 and listed in article (3/2nd) of the aforementioned law what texts ((the council of commissioners consist of nine members, two of them at least from the attorneys chosen by the ICR with majority, after nominating them by a (committee from the ICR) and they must be from those who has experience and witnessed to them with efficiency, integrity and independence with caring of women representation)). And granting the ICR the authorities according to the abovementioned article violates the constitution, by its exceeding the executive power, which represented by the cabinet, and because of unsatisfied of the plaintiff to what listed in the text of the abovementioned article, they proposed to challenge it before the court and requested to cancel it according to provisions of article (4/2nd) of the FSC law No. (30) For 2005 and for the following reasons: 1. The Iraqi constitution had approved in article (47) of it the principle of (powers' separation) and restricted exclusively the tasks and jobs of

each power without passing one of it on the other ones. 2. The principle of (separation between powers) which approved by the thinkers, and adopted by the international pacts and announcements, which based on an idea its basic content is to not gathering the powers of the state in hand of an individual or one power, because that will lead to uniqueness and despotism according to what listed above, and the plaintiff relied in his case on the following substantiations: alif. Article (3/2nd) of the high independent electoral commission No. (11) For 2007 forms a violation to the rules and provisions of the constitution for 2005 that article (61) of the constitution had counted the specialties of the ICR exclusively and not among them the specialty of forming a committee from the ICR members to choose the commission council members. Beh. Article (61/5th/beh) of the constitution had granted the authority to the ICR to approve on appointing the ambassadors, and the state senior officials which include them the members of the private commission which stipulated on in the constitution based on suggestions which presented from the cabinet. Which means it is not right of the ICR to form a committee to choose the nominees for the membership of the commission, and its specialty restricted on assignment only. Jim. Article (80/5th) of the constitution indicated to the authorities of the cabinet in this concern ((to recommend to the Council of Representatives that it approve the appointment of undersecretaries, ambassadors, state senior officials...)). Therefore, the nomination to the membership of the commissioners' council done by the cabinet and they were approved by the ICR, so, it is not within the powers of the ICR to form a committee of its members with a specific mechanism to show nominees before it to approve on accepting them, because the constitution inhibited to gather between the two tasks in the same time first of them to choose the nominees and second of them to approve on their acceptance. Dal. Article (103) of the constitution, counted the independent commission of elections one of independent commissions and its specialty to monitor the ICR without having a role in presenting the nominees of commissioners' council members, through a committee forms for this purpose. Heh. The high independent electoral commission according to article (103) is an independent commission submits to the monitory of the ICR, and the aforementioned article did not indicate to the body which administratively associated to, as it did with some other commissions. Based on that the plaintiffs requested to:

1. regarding the case as an urgent according to the provisions of article (9) of the FSC bylaw No. (1) For 2005. 2. Notifying the presidency of the ICR to immediate halt of presenting the nominated members by the (ICR) for the membership of commissioners' council in the high independent electoral commission on the ICR, to voting on them till the final decision token in the case. 3. issuing a decision with unconstitutionality of article (3/2nd) of the high independent electoral commission No. (11) For 2011 and cancelling it according to the reasons listed in the draft of the case individual and combined guided by the judicial precedence in the decision issued from the FSC No. (105/federal/2011) on 12.30.2012. 4. Notifying the ICR to cancel the aforementioned article according to the legal and constitutional provisions. The agents of the defendant (the Speaker of the ICR/ being in this capacity) answered the petition of the case with the following: 1. The two plaintiffs has not direct interest and effective in their legal, financial and social situation and the direct actual damage which independent in its elements which is possible to remove, if there is a judgment issued in the case article (6/1st) of the FSC bylaw No. (1) For 2005. 2. The claim of the plaintiff that text of article (3/2nd) of the high independent electoral commission No. (11) for 2007 violates the text of articles (61 & 80) of the constitution which included the mechanism of nominating undersecretaries and state senior official, close to rightness because of difference for each subject of them, so, it is necessary to distinguish between the mechanism of appointing the Minister and the undersecretary to let the plaintiffs says that there is a constitutional violation in granting the authority of nominating the commissioners' council to a committee formed by the ICR whereas the power of the cabinet restricted in recommendation of appointments, for the undersecretary and the difference if very clear between whose appointed as a Minister or undersecretary, or who has their posts and between who enjoys (a privileges of an undersecretary) and it is a big difference between them. 3. The legislative will directed to grant privileges an undersecretary to the members of the high independent electoral commission, so, there is no constitutional violation in this matter. 4. The ICR did not gather between two tasks which is it a nominating of the commissioners' members and then voting on their nomination, as the plaintiffs claimed, and this presentation has not a substantiation in the constitution and the law whereas article (60/2nd)

lists that the proposed laws Proposed laws shall be presented by ten members of the ICR or by one of its specialized committees, and the proposed laws shown on the ICR to voting on it and approve as an enactment, accordingly the agents of the defendant requested to reject the case, and after collecting the legal fee of the case and completing the required procedures according to clause (2nd) of article (2) of the FSC bylaw No. (1) For 2005, the day 11.7.2017 was assigned as a date of the pleading. On that day the court was convened, the barrister plaintiff (dhad.sin) & the barrister plaintiff PhD. (ain.ra) attended, as well as the agents of the defendant the Speaker of the ICR/ being in this capacity, the public in presence pleading proceeded. The both plaintiffs repeated what listed in the petition of the case and requested to judge according to it with retroactive includes the traces which done after initiating the case. The agents of the defendant answered and said we repeat what listed in the petition of the case and requesting to reject the case for the reasons listed in, and both parties repeated their sayings. Whereas the court completed its investigations and nothing left to be said, the end of the pleading ended and the decision recited publicly in the session.

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiffs had based their case by challenging unconstitutionality of article (3/2nd) of the third chapter form the high independent electoral commission No. (11) for 2007 and they requested to cancel it, which stipulates on ((the council of commissioners consist of nine members, two of them at least from the attorneys chosen by the ICR with majority, after nominating them by a (committee from the ICR) and they must be from those who has experience and witnessed to them with efficiency, and integrity)). As this matter related to the committee which carrying out nominating of the ICR members and showing this nomination on the ICR. The challenge was built on unconstitutionality of (the ICR committee) carrying out the nominating the commissioners' council members, pretending that this matter forms a violation for the rules and provisions of the Iraqi constitution for 2005, which is not among the specialties of the ICR stipulated on in article (61) of the constitution to forms a committee from its members carrying out nominating of the commissioners' council members, where the nomination should be from

the cabinet and approved by the ICR as the two plaintiffs went to, in pretence that the members of the commissioners' council in a title of undersecretary, and the undersecretary is a state senior officials which the cabinet is specialized in nominating them and sending this nomination to the ICR to approval, and among them the members of the commissioners' council according to provisions of article (61/5th/beh) of the constitution. The FSC finds by returning to the petition of the case and its substantiations and to the defends of the defendant/ being in this capacity and the texts of the high independent electoral commission, that the formed committee in the ICR which carried out nominating of commissioners' council members had stipulated on in article (9/2nd) of the aforementioned law and its carrying out nominating them was a fulfill to it commitments which stipulated on in the aforementioned article and this nomination never intersects with provisions of article (61/5th/beh) of the constitution because they are not state senior officials or the undersecretaries, but they enjoys (privileges of undersecretary) and the specialty of the cabinet stipulated on in article (80/5th) restricts in recommendation to the ICR to approve appointing the undersecretaries, ambassadors, state senior officials and the other mentioned titles in this article, and not among these titles the members of the commissioners' council and the privacy of this specialty to the cabinet does not meaning to deprive the judicial and legislative powers form carrying it out according to its specialty according to provisions of article (47) of the constitution in addition to that and assuming they are state senior officials, there are another bodies not the cabinet carrying out nominating the deputies of the federal cassation court, the public prosecution head's deputy and the heads of federal appeal courts, and sending the nomination to the Presidency of the Republic to approve them and issues the Republic decrees about it, and all of them are state senior officials. Based on that, the case will be not based on a reason of the constitution obliges to judge with unconstitutionality of the text (challenge subject), so, the court decided to reject it and to burden the two plaintiffs the fees and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision issued decisively and unanimously according to provisions of article (5) of FSC law No. (30) For 2005 and article (94) of the constitution and made clear on 11.7.2017.