



The Federal Supreme Court has been convened on 5.12.2018 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff : representative (Ra,Ta,Mim)- his agent the barrister (Alif,Mim,Ain).

The Defendant : ICR Speaker/being in this capacity- his both legal officials, the manager(Sin,Ta,Yeh) and the assistant counselor (Heh,Mim,Sin).

The Claim :

The Plaintiff agent claimed before the FSC in the case No.(97/federal/2018) that the Defendant issued on (28/5/2018) in extraordinary session a decision to annul the out-of-country elections results and the conditional voting in the camps for the displaced persons by percentage of 10% and to re and annul Kurdistan region and Karkuk governorate results and the possibility to re the manual counting and sorting for the results in all governorates in case of presence of 25% percentage of violations in the results. This decision violated the constitution and bylaw of ICR for the following reasons :

1- there isn't a legal quorum for this session whereas it is made against the constitution and the bylaw of ICR. The article (59) from the constitution stipulate : first- (The Council of Representatives quorum shall be achieved by an absolute majority of its members.). second – (Decisions in the sessions of the Council of Representatives shall be made by a simple majority after quorum is achieved, unless otherwise stipulated.). the article (24) from the Bylaw of ICR stipulated (The session shall not be started except by a quorum of attendance that is stipulated in Article 23 of this Law. If the quorum is not completed the Speaker shall postponed the session started for a period of not less than half an hour, the President shall declare the adjournment of the

session and appoint another date for its convening this session the hour 4.00 p.m. has been determined for its meeting and after the quorum is not achieved, the session has been met on 6.30 pm which mean the session meeting is not legal and unconstitutional and what issued from it is incorrect.

2- the article (61) from the constitution determined the competences of the ICR which is laws legislation and monitoring on the executive power and electing the president of the republic and other tasks which is stipulated in this constitutional article. The validity and competence of issued a parliament decision from ICR need to constitutional text included mention to that , because the listed ICR competences in the constitution hasn't any validity for ICR to issue or impulsing in a matter of the public matters, in addition to that the text is obliged it that the decision is to be obliged applying by the executive power or commissions or citizens if it need that unless these decisions which the ICR issues are unconstitutional power or commissions or citizens if it need that unless these decisions which the ICR issues are unconstitutional.

3- this decision violated the text of article (31) from the bylaw of ICR which according to it, the legislative competences of the council is determined, which none between it ,the issuance of decisions like this, also the article (32) from the Bylaw determined the council oversight competences on the executive and there is no mention for decision issue validity.

4- the amended law of the higher independent commission for elections No.(11) for 2010 determined the process which deals with mistakes and violations which happen during the elections and the arranged results on that, this is what listed in the article (8) from the mentioned law which stipulated :

First : The Council shall have exclusive authority with regard to the civil implementation of its statutes and regulations. The Council shall refer any criminal case to the competent authorities if there is evidence of criminal misconduct that related to the integrity of an electoral process.

Second : Unless the law of the Higher Commission states otherwise, the Council has the exclusive authority to resolve disputes arising from the preparation and implementation of national or regional provincial elections. It may delegate the authority of the electoral administration to resolve disputes as soon as they occur.

Third : The Court of Cassation shall set up the judicial body for the elections, consisting of three full-time judges to consider challenges referred to it by the Board of Commissioners or submitted by those affected by the Council's decisions directly to the Judiciary.

Fourth : The final decisions of the Council may only be appealed before the Electoral Judiciary.

Fifth : The decisions of the Commission shall be published in (3) daily newspapers for at least three days in Arabic and Kurdish. The decision shall be appealed within three days from the day following the publication by the political entity concerned. The appeal shall be submitted to the National Office or any Electoral Office of the Commission in the Region and the Governorates.

Sixth : The Electoral Judiciary shall adjudicate the appeal within a period not exceeding ten days from the date of referral of the appeal by the Board of Commissioners.

Seventh : Decisions of the judiciary are final and can't be challenged in any form.

5- the ICR decision to annul the elections results violated the provisions of article (49/3) from the constitution which stipulated (A law shall regulate the requirements for the candidate, the voter, and all that is related to the elections) legislation is law of higher independent commission for elections.

Sixth- the Defendant decided to make the ICR session as open session, this decision violates the constitution where nothing listed in the constitution mention that there is an open extraordinary session, this is what your respected court emphasized in the decision that issued in this matter on 2010. For these reasons and other reasons the Plaintiff agent requested from the FSC the decision of ICR decision unconstitutionality which has been decided in its extraordinary session on 28.5.2018. deepest thanks and appreciation for your court. The Defendant agents answered the case petition by written draft dated on 24.6.2018. as following :

1-the ICR competent by laws legislation and oversight on the activity of executive power according to the provisions of article (61) from the Constitution also ICR can decides what he sees of procedures and issuing the right decision to guaranteed the goodness of executive power performance and the independent commissions especially this matter related to public legislative elections, to guaranteed people will safety in choosing their representatives and a government emanation correctly and transparent . the decision which is challenged didn't violate the constitution as the Plaintiff agent think especially that the ICR issued the third amendment law for ICR elections law NO.(45) for 2013. therefore the aforementioned law being issued to void the decision which is the case subject. The Plaintiff case has nothing to challenge more so the Defendant agents/being in this capacity- requested from the FSC the decision of rejection this case and to burden the Plaintiff all the expenses. The court appointed a date for the argument, the Plaintiff agent didn't attend although the notifying according to the code. The Defendant agents attended according to their private official agency which related to the case file. The public present argument has been started with no absence of the Plaintiff agent.

Federal Supreme Court - Iraq - Baghdad

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The Defendant agents repeat what listed in the answering draft on the case petition and requested the decision to reject the case with burden the Plaintiff the expenses and fees of the advocacy. Based on that and whereas nothing left to say the argument end has been understood and the decision has been understood publicly on 5/12/2018.

#### The Decision :

During scrutiny and deliberation from the FSC the court found the Plaintiff agent challenges in his case petition the decision which issued from the ICR on 28.5.2018 and in the extraordinary session to annul the out-of-country elections results and the conditional voting in the camps for the displaced persons by percentage of 10% and to re and annul Kurdistan region and Karkuk governorate results and the possibility to re the manual counting and sorting for the results in all governorates in case of presence of 25% percentage of violations in the results, because it violation the constitution and the law and he requested from the FSC the decision of ICR decision unconstitutional, which decided in its extraordinary session on 28.5.2018 for the reasons which the Plaintiff agent mentioned it in his case petition. During scrutiny the court found that the ICR in an extraordinary session held on 28.5.2018 issued in it the decisions which the Plaintiff agent requests in his case petition the decision of its unconstitutionality, and the session remained open until the voting on the third amendment law of ICR elections law No.(45) for 2013 on 6.6.2018. the FSC found that the ICR issued the third amendment law for ICR elections law No.(45) on 6.6.2018. after issuing its decision which is decided on 28.5.2018. the session remained open until the issuing of the aforementioned amendment on 6.6.2018 and the FSC has already decided in all challenges in the federal case No.(99/federal/2018 and unified with, 104/federal/2018 and 106/federal/2018) according to its decision which issued in it on 21.6.2108. the challenges mentioned in this case are unproductive anymore because there are some decisions issues in this concern previously from FSC and the issued decision in that case became decisively and obliged for all powers according to the article (94) from Iraq republic constitution for 2005. Therefore the case must be rejected for the aforementioned reasons so the FSC decided to reject the case and to burden the Plaintiff all expenses and fees of the advocacy of Defendant agents amount of thousand Iraqi dinar . the decision issued decisively, unanimously and has been understood publicly on 5.12.2018