



The Federal Supreme Court (F S C) has been convened on 6.21.2018 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, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. (mim.ain.ha)/ Head of commissioners' Council of the higher independent electoral commission/ being in this capacity – his agents the jurist officials (alif.ha.ain) and (ra.nun.ain).
2. The President of Republic of Iraq/ being in this capacity – his agent the legal consultant (fa.jim).
3. Democratic Kurdish party – his agent the barrister (alif.sin.mim).

The Defendant: the Speaker of the ICR / being in this capacity – his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

The Decision

After scrutiny and deliberation by the FSC, the Court found by reading challenges which presented in aforementioned cases above against the third amendment of the ICR's elections number (45) for 2013 whereas it were distributed on two sides, the first which includes a procedural challenges against the formality of its issuance and determined date of its validity. The second side is about challenges related to unconstitutionality of some articles objectively. As for challenges which related to the procedures of the law issuance and its

validity, they are concentrated on unconstitutionality of the session dated on 6.6.2018 which the law issued during it, and the sessions before. Whereas the challenges clarified that the law issued in an (exceptional) session, its subject was (discussing the violations which may occurred during the electoral process), and it wasn't determined for the purposes to enact the law (challenge subject). This matter violates provisions of article (58/1st) of the Constitution, as the challenges goes to. By returning to the postulates and to the defends of the defendant Speaker of the ICR/ being in this capacity, the FSC finds that the challenge subject had been issued in a session the Speaker of the Council called upon for it. After the exceptional session was rise which precede the law issuance session by four days, and the media digested that. Everyone knows that the session dated on 6.6.2018 will be dedicated to enact the law (challenge subject) which convened with a full quorum that correspond with the provisions of article (59) of the Constitution. The voting was done according to this quorum. As for the other procedural challenge, it was related that the law was a (proposal) not a bill presented by the government, and as for this challenge the FSC finds that what allowed in articles (60/1st) and (60/2nd) of the Constitution and the ICR bylaw. Whereas the Council practiced its authority stipulated in aforementioned articles. The other procedural challenge that the law stipulated on its validity starting from the date of voting not from the date of its publishing in the gazette. The FSC finds that this matter is allowed by article (19/9th) of the Constitution and article (129) of it. As for the challenge which says that the law wasn't sent to the Presidency of the Republic to approve it and issuing it, the answer on that if not doing this process immediately doesn't prohibit the law from being a valid law. The Presidency of the Republic constitutionally doesn't have the power of rejecting the law after one later term, because of the Republic of Iraq Constitution for 2005 validity, according to article (138) of the Constitution. As for the other procedural challenge that the law had been issued I a session attended by loser representatives in the elections of 2018, the answer on that is the authority of the ICR and its members which approved by the Constitution still valid until their electoral term is over, which is it the end of the fourth calendar year starting from the date of the first session according to article (56/1st) of the Constitution. Another procedural challenge that the

higher independent electoral commission is the body which owns the right of overseeing the elections' process, and the answer is that this authority was granted to it with a law. The third amendment law which assigned judges to carry out this task is a law issued according to the basis set by the Constitution, and it is applicable. As for the challenge that related to ceasing the commission's work, the amendment law stipulated on this as preventive procedure which timed by the end of investigations procedures that carry out by competent bodies about the facts which concern to the commission, as it submit to the monitory of the ICR according to article (102) of the Constitution. This ceasing doesn't take the form of interrogation which stipulated in article (61/7th) of the Constitution. As for the challenge which concentrate on the ICR when it didn't take approval of the executive power to enact the law, in spite of this law costs financial amounts, so the answer on that is, such challenges is concerning the government not the higher independent electoral commission. Accordingly, and by reviewing presented challenges against unified cases which related by procedural sides in issuing the law (challenge subject) and its validity. The FSC finds it doesn't relies on a text in the Constitution and not violates its provisions. As for challenges that related to the objective side and listed in the third amendment law of the ICR election law, the Court went to study the articles of this law with its final form which received enclosed the letter of the ICR – parliamentary office number (1/9/5600) dated on 6.13.2018. this letter relied on record by audio and video for the session's events which the law enacted during it, its study article by article to decide its correspondence to the Constitution or violating its provisions according to the challenges presented on it, and also the answer of the defendant/ being in this capacity on it as following: article (1) of the law: it took place the article (38) of the ICR elections law, and it adjudged by replacing counting and sorting by electronic results accelerating devices to manual counting and sorting in all electoral centers all over Iraq. The FSC finds that this procedure from the ICR is a regulatory for the general elections, and to restore assurance to voter of the electoral process according to its authority which stipulated in article (60/1st) of the Constitution. This matter doesn't violates the Constitution. Article (2) of the law: this article obliged the commission to make matching for ballot papers with the

report issued by the special electronic verification device (barcode) and taking required procedures according to that. The FSC finds that rule of article (2) of the law also a legislative choice to ensure accuracy in results scrutiny, and it doesn't violates the provisions of the Constitution. Article (3) of the law: which adjudged by cancelling the exterior elections and the elections of the population movement for the governorates of AL-Anbar, Salah AL-Deen, Nineveh and Diyala, and displaced elections in camps. As well as private voting in Kurdistan region. The cancellation of the results in these regions was definite without distinction between votes of voters whom voted in these regions correctly without violations even by results accelerating device or by another mean and the votes which produced a suspicions of violation like falsification with all its forms and the rest of violations which may effects negatively in the election process and confiscates its aims. This cancellation which article (3) (challenge subject) adjudged with, for the correct votes and correspond to the law inside Iraq or outside it will wasting these votes and confiscates the voters' will in these regions. This matter contradicts with the provisions of article (14) and (20) and (38/1st) of the Constitution which guaranteed for the Iraqi citizen his right in equality, and his right to vote, electing, nominating and give opinion in public affairs. Foremost of it is the right of opinion in electing whom represents him in the ICR. As for the results which suspicioned by violations like falsification and else, and complaints were raised to the commission about it according to the provisions of article (8) of the commission's law, or these violation which listed in the official reports and relies on considerable legal evidences. It is possible to postpone announcing the results of these votes until taking a decision about it negatively or positively, and this will help to continue the rest of the electoral process stages, legally and transparently. It also helps to announce the final results and send it the FSC to approve it after verification, and according to its competence stipulated in article (93/7th) of the Constitution. Besides, in the beginning of article (3) of the law except minority votes which included by (quota) of cancellation which listed by aforementioned article, and definite as well. This exception of cancellation without distinguishing the right votes and votes which may be forged is violates provisions of article (14) of the Constitution which stipulates on equality of Iraqis before the law without

distinguishing because of gender, race, nationality, descent, color, religion, faith, opinion, economic or social situation. Therefore, exception the votes of minority which included by (quota) of cancellation even if it was suspicious with violations in all forms, if it occurred inside or outside Iraq. This matter violates the constitutional principle which listed in article (14) of the Constitution. Accordingly, what article (3) listed (challenge subject) of the third amendment is completely violates the provisions of the Constitution. Article (4) of the law: this article adjudged by carrying out (elections judicial committee) which formed in the (federal cassation Court) according to article (8/3rd) of the commission's law by cancelling some of elections' results in electoral centers in case there are violations requires cancellation according to collected evidences. And as a result of investigation in complaints presented or might be presented to the commission, also what unveiled by official reports which presented in this concern. The text of article (4) of the law which commissioned cancellation to a judicial body may has the experience and career to evaluate these evidences if there was a violation and its effectiveness on the freedom of elections. Even if this violation included a falsification which stipulated in article (286) of penal code number (111) for 1969 in the way which article (287) of the same law counted. This matter may change the truth to its opposite and aggrieves public interest or individual. Or any other type of violations. If it was clear for the judicial committee of elections there is an effective violations in the elections process, so it may issues its decisions by cancelling decisions produced because of it. The FSC finds that the rule which listed in article (4) of the law (challenge subject) forms a guarantee for election process safety, and it doesn't violates the provisions of the Constitution. Article (5) of the law: which adjudged by carrying out the higher judicial council to assign (9) judges to take place of current commission's members, and a judge for each office of the commission's office in the governorates. It also adjudged by terminate the mission of those judges after approval of the FSC on final results of elections. The principle of assigning judges to work or performing a specific tasks outside their courts is stipulated in article (49) of judicial regulation law number (160) for 1979, and it also determined the places where the judges can do their tasks and the duration of the assignment, which is it not more than

three years. Not among these places what article (5) of the law (challenge subject) which is it the higher independent electoral commission. This article forms an amendment for article (49) of judicial regulation law by adding a new place which allows the judge to carrying out the tasks which stipulated in article (5) of the law, and the duration which determined for this task. In addition to that, the rule of what article (5) of the law listed, doesn't contradicts with the rules of articles (47) and (98/1st) of the Constitution. Assigned judge shall not combine in the same time between carrying out his judicial tasks and his tasks in the commission or in its offices. This combination between the two tasks which restricted by article (98/1st) of the Constitution, whereas the assigned judge will be completely free for his new tasks till assignment duration is over. As well as for article (47) of the Constitution, because assigned judge will leave his tasks in the judicial power along assignment duration. Therefore, it doesn't violates rule of article (5) (challenge subject) with the provisions of the Constitution. Article (6) of the law: which ruled by making Iraq for (quota) seats of the Christian component as a one office, with a private electoral record for them. The rule listed in it, is a regulatory matter which doesn't violates the Constitution. Article (7) of the law: which stipulated that the third amendment provisions shall not become in effect on the elections of the ICR for 2018, and this matter correspond with the Constitution because elections process for 2018 was not over when the final results of the elections were issued and its force. This process doesn't ending but after approval of the FSC on the final results of the elections according to what article (93/7th) of the Constitution stipulated. Therefore, article (7) of the law (challenge subject) doesn't form a violation to the provisions of the Constitution. Article (8) of the law: which ruled to not enforce any text contradicts with the provisions of the law (challenge subject). Such text the law were cautious to list it in case there was a text may contradicts with the provisions of the law, also it will ignoring the rationales of enacting it. Therefore, rule of article (8) of the law doesn't violates provisions of the Constitution. Article (9) of the law: which ruled that the law becomes in effect from the date of voting on it. And it finds that the rule which listed in this text has a substantiation in articles (19/9th) and (129) of the Constitution, whereas these articles allowed to make the law becomes in effect and

validity from the date of publishing it in the gazette. Therefore, there is no violation for the text of article (9) of the law with the provisions of the Constitution. – Accordingly, when reviewing challenges which presented on third amendment of the ICR elections law, even in what related to procedural sides in issuing the law and validity of its provisions or in what related to challenges presented against articles which listed in the law, and the Court listed its contents and mentioned beside each one of it what violates the Constitution and what correspond to its provisions. Therefore, the Court decided to: first- unconstitutionality of the text of article (3) of the third amendment of the ICR election law number (45) for 2013 (amended), and annulling it for the reasons mentioned beside it. Also for its violation for constitutional articles which they are (14) and (20) and (38/1st) of the Constitution, and notifying the ICR to take what required. Also notifying higher independent electoral commission by its contents which stipulated in article (3) of its law to stand on the reasons of judging by unconstitutionality of article (3) (challenge subject). Taking this matter in consideration when exercising its authorities which stipulated in article (8) of its law when trying the complaints, as well as when trying the violations listed in official reports. Notifying (judicial committee of elections) of what listed in this decision to take it in consideration when exercising its authorities and tasks which stipulated in article (4) of the third amendment of the ICR elections law and article (8/3rd) of the commissions' law, by annulling votes in electoral centers all over Iraq and outside it which may produce suspicion of violations in the official reports from relevant authorities if the violations were approved that the votes collected by falsification or any other violations may affect freedom of elections or disorienting voter's will. This matter shall take place after manual recounting process which stipulated in article (1) of the third amendment of the ICR election law for these votes not else, and not to touch votes of voters which collected legally without any violations, or no complaints against it were received, or it might be mentioned in the official reports from relevant authorities of violations. There will be no need for manual recounting process on these votes, if it were inside Iraq or outside it, implementing to the provisions listed in the Constitution aforementioned, and these articles are (14) and (20) and (38/1st) of the Constitution. This procedure was

token to respect the voters' will and their rights in participating in public affairs, and not to waste their votes which hasn't any violation. In addition to activate the principle of that what was done correctly within a law or a text in a valid law shall be token in consideration, and this what article (130) of the Constitution approved. Second- to reject the other challenges listed against third amendment of the ICR elections law which related to procedural sides of issuing the law or its validity, as well as the challenges listed on its articles for the reasons shown beside each challenge or article because it these challenges hasn't a substantiation in the Constitution. Third- to burden both parties in the three tried cases the expenses and advocacy fees amount of one hundred thousand Iraqi dinars as a percentage for what each one of them lose in these cases according to provisions of article (166) of civil procedure law number (83) for 1969, and article (63) of advocacy law number (173) for 1981. The decision issued decisive, unanimously and obligatory for all authorities according to provisions of article (94) of the Constitution and article (5) of the FSC law number (30) for 2005. The decision was recited publicly in the session dated on 6.21.2018.