



The Federal Supreme Court (F.S.C.) has been convened on 8.6.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff:

Ahmed Hasan Abed - his agent the attorney Tahseen Hasan Al-Kaaby.

The Defendant:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official director Saman Muhsen Ebraheem.

The Claim:

The agent of the plaintiff claimed that the defendant has enacted the law of Independent High Electoral Committee Elections No. (31) of 2019, by reviewing the articles, clauses, and paragraphs of that law it found that article (25/4th) and article (27) violated the constitution in some of its articles and paragraphs as the following:

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1. The constitutional violation to article (25/4th) of the law as it stated (the assistant directors general in the current commission shall be transferred with the degree and financial allocation to state institutions or to refer those who wish to retire as an exception of the amended Unified Pension Law No.(9) of 2014, the current department heads and division managers are relieved of their positions), he clear that that this text is proposal presented by the legal committee and was not exist in the original text sent by the Council of Ministers which means that the I.C.R. has conduct fundamental change in the law before approving it without the executive authority gives its opinion in these suggestions which violates the stipulated path to enact laws from the constitutional aspect, as the head of the Council of Ministers is the direct executive official for the general policy of the state under the provision of article (78) of the Constitution, he practices his constitutional competences in planning and executing the policy and general plans, supervising the work of ministries and bodies that are not organized in a Ministry according to article (80/1st) of the Constitution, accordingly, this clause violated the formality set by the Constitution which adopted the principle of separation of powers in article (47) of it, and stated in article (60) of it two paths for presenting the laws bill, these paths are exclusively for the executive authority which is (the

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president of the republic, and the Council of Ministers), if it was presented by others then it represents constitutional violation for the text of article (60/1st) of the Constitution. clause (2nd) of the mentioned article of the Constitution authorizes the I.C.R. to submit laws proposals by ten of the Council members or one of its formed committees, the proposed law draft doesn't mean law bill because the proposed law draft is an idea and the idea is not a bill, the draft must go through one of the mentioned two paths for preparing the law bill according to what is stipulated by laws and valid legislations if that was in accordance with the policy of the executive authority stipulated by the I.C.R. The transfer of the general directors' assistants and the dismissal of department heads and division directors working in the Independent High Electoral Commission is a collective punishment that has no basis in the law, there is no violation or act criminalized by law, such a punishment must be imposed on these employees, especially since they are those who possess competence and integrity in the performance of their work, and no failure has been proven to them in performing the tasks assigned to them, especially since most of them were chosen by the United Nations and since the establishment of the Commission in 2004, and huge sums have been spent on training them until they have the expertise that enables them to conduct any electoral process,

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and that taking such measures is an unfair and arbitrary measure against them and in violation of the text article (19) of the constitution, which states (there is no crime or punishment except by law...etc.), Also, those referred to in the aforementioned clause are employees of the permanent personnel and are governed by the laws of the public service, such as the amended civil service law No. (24) of 1960, and the amended state and public sector employee discipline law No. (14) of 1991, and others. All of these laws are enforceable by the executive authority, and the Council of Representatives does not have the authority to take such measures, which is a clear violation of the principle of separation of powers stipulated in Article (47) of the Constitution, also article (25/4th) has violated the text of article (80/1st) of the Constitution, which stipulates the powers that are practiced by the Council of Ministers and it is planning and implementing the general policy of the state and general plans and supervising the work of ministries and agencies not associated with a Ministry, therefore exempting, transferring or punishing employees is one of the exclusive competences of the executive authority, and the powers of the Council of Representatives stated in the text of Article (61) of the Constitution do not authorize the Council to take such a measure, which is another violation of the Constitution. as referring directors' assistants to retirement is

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an exception to the amended retirement law No.(9) of 2014, it has financial implications on the budget, as this text gave them the right to retire regardless of their job service and the legal age of retirement.

2. The constitutional violation for article (27) of the challenged law, as this article stated (according to this law, directors-general are appointed in the commission from outside the personnel of the current commission), this text prevents all commission' employees from the opportunity to compete for the position of managing their departments, given the job experience they have that qualifies them to take over responsibility in those departments, which is a violation of Article (16) of the Constitution, which stipulates the principle of equal opportunities for all Iraqis, in addition, that this text was added on the law bill presented by the council of Ministers in violation for the text of articles (60, 61, 80) of the Constitution.

accordingly, he requested to rule the unconstitutionality of article (25/4th) and article (27) of the Independent High Electoral Committee No. (31) of 2019 according to the provision of the article (1/3rd) of the F.S.C. bylaw No. (1) of 2005. After registering the lawsuit before this court and informing the defendant in addition to his post with the case petition in accordance with the provision of the article (2/1st) of the mentioned bylaw, his agent responded with the draft presented to

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the court on 15.1.2020 stating that the plaintiff lawsuit is binding to be rejected for the following reasons:

1. The plaintiff claim that the text being challenged was added to the presented draft by the council of Ministers is a fundamental change in the law, as this has no basis in the law, given that the Council of Representatives has constitutional jurisdiction according to its authority in Article (61/1st) in enacting federal laws that do not entail financial burdens or conflict with the ministerial curriculum or affect the functions of the judicial authority, the text under challenge is a legislative option.
2. The agent of the plaintiff stated that the text under challenge came as a collective punishment, and that this had no basis in the law, and that the text did not indicate from near or far that the matter was a punishment for the group concerned with this text and that this does not make the text contrary to the constitution or what the plaintiff's attorney refers to for violating the text of the Civil Service Law No. (24) of 1960 and the Law of Discipline of State Employees and others, this is outside the jurisdiction of the Federal Supreme Court because the conflict between laws does not fall within its jurisdiction.
3. The agent of the plaintiff clear that the stipulation of appointing general directors of the committee from outside the personnel of the committee contradicts article (16) of the Constitution of equal opportunities, we couldn't find any constitutional violation, the text came as legislative choice and it is within the

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authorities of the Council of Ministers mentioned by the plaintiff agent.

For these reasons, the defendant's agent requested to rule to dismiss the plaintiff's lawsuit and to burden him with the legal expenses. The Federal Supreme Court reviewed the mentioned attachments including the letter No. (Kha/19/1061) on 3.11.2019 issued from the board of commissioners and the administrative order No. (1373) on 7.4.2019 issued by the administrative department of the electoral management. After completing the stipulated procedures in the article (2/1st) of the F.S.C. bylaw a date was appointed for the arguments, the parties were informed by that according to what was stipulated in paragraph (2nd) of the mentioned article, on that date the court convened, the plaintiff and his attorney has attended by the power of attorney issued from the notary of Karada by the No. (69) on 2.1.2020, the agent of the defendant has attended by the power of attorney issued by the general secretariat of the Council of Ministers by the No. (521) on 30.7.2019, on the public in presence session, the plaintiff' agent repeated the case petition requesting to rule according to it, the defendant agent in addition to his post repeated the draft presented by him requesting to dismiss the lawsuit and burden the plaintiff the judicial expenses after both parties repeated their requests and statements. The court decided to close the argument, the following decision was issued publicly.

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The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff agent requested to rule the unconstitutionality of article (25/4th) and article (27) of the Independent High Electoral Committee No. (31) of 2019 for the reasons listed in the case petition, the F.S.C. put the case petition of the plaintiff and the drafts of the parties and the lawsuit documents under scrutiny and deliberation and finds the following:

1. Free and fair elections are a key to democracy and have a major role in creating the institutions that govern the country. Democracy does not mean that the voter goes to the polls only, but rather means that the legitimate results of the electoral process are achieved and the voter is convinced of those results. The electoral process in Iraq is based on the provisions of Article (102) of the Constitution of 2005 is administered by the Independent High Electoral Commission, which is an independent body subject to the oversight of the Council of Representatives. Article (1) of the Independent High Electoral Commission Law No. (31) of 2019 stipulates that (a body called the Independent Electoral Commission is established under this law, which is an independent and impartial body enjoying a legal personality and financial and administrative independence and is subject to the oversight of the Council of Representatives), it lays down the regulations and

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instructions approved in the federal, regional and local elections and referendums in all parts of Iraq to ensure their fair and impartial implementation. It also declares, organizes, and implements all types of federal and local elections and referendums in governorates that are not organized in a region and oversee it under the provisions of the Constitution in all parts of Iraq, and the District Elections Commission works to manage and organize the federal elections for the region under the supervision of the Independent High Commissioner for Elections in cooperation and coordination with the National Office. The electoral district offices and the region's offices are linked to the electoral administration based on the provisions of the article (17/2nd) of the aforementioned law, in accordance with what is stated in article (2) of the same law, the commission is composed of the Board of Commissioners and the electoral administration.

2. In Iraq, after the formation of the Commission, several parliamentary elections and provincial councils took place since 2003 and until 2018. The last elections of 2018 witnessed a significant decline in terms of public participation or in terms of some difficulties that the Iraqi voter faced while heading to the polls. The Independent High Electoral Commission faced accusations that coincided with the announcement of the results, and as a result of

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questioning the integrity of the electoral process, and to clarify the truth and correct the electoral process, the Iraqi legislator approved the third amendment law to the Parliament Elections Law No. (45) of 2013, which came in the reasons for its legislation to achieve transparency in the election results, to preserve the democratic system in Iraq, and to protect the electoral process in a way that strengthens confidence in the integrity of the elections. it was proven that the electronic results acceleration device was incorrect and caused the results not to appear in real terms and for the manual counting and sorting. The amendment granted the Supreme Judicial Council the assignment of nine judges to manage the Board of the Independent High Electoral Commission, who assume the authority of the Board of Commissioners instead of the previous Board of Commissioners. The tasks of the assigned judges end upon the approval of the election results by the Federal Supreme Court, and their powers are limited to the performance of work and the exercise of the powers of the Board of Commissioners to re-counting and manual sorting and to abolish the work of the electronic results acceleration device.

3. On 23.12.2019 the law No.(31) of 2019 (the Independent High Electoral Committee' Law), according to the provision of article (3) of it the board of commissioners is formed of nine judges, seven of them are of first class selected by the

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High Judicial Council according to the mechanism stipulated in the mentioned article, and two of the State Council members of the advisors exclusively selected by the High Judicial Council by the same mechanism with wide change in the structure of the Independent High Electoral Commission, these changes included referring the previous Board of Commissioners to retirement, like their peers from the former commissioners, as an exception from the provisions of the amended Unified Pension Law No.(9) of 2014, or their regularization in state institutions in line with their duties and other job grades, according to what stated in clause (2nd) of article (25) of the law No.(31) of 2019, with transferring the current general managers (regularized and assigned) with their rank and financial allocation as a (general manager) outside the commission's staff to state institutions, those who wish to retire of them are referred to retirement as an exception to the provisions of the retirement law in accordance with what was stated in the clause (3rd) of the same article, fourth paragraph of the article (25) required the transfer of their associates general managers of the current commission with the degree and financial allocation to state institutions or the referral of whomever wishes to retire is an exception from the amended Unified Retirement Law No.(9) of 2014, and the current department heads and divisional managers are exempted from their positions.

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4. In order to ensure the integrity of the electoral process, the legislator was empowered under Article (10) of the Independent High Electoral Commission Law with many powers, including what was stated in the clause (8th) of the aforementioned article, where it stated that (the regulations and instructions that preserved the integrity of the electoral process), as well as what was stated in the clause (9th) (ratifying the structure of the Independent Electoral Commission For the elections and appointments in all senior positions in it), as well as what was stated in the clause (10th) (drawing up the financial policy of the Commission), especially since Article (22) of the law specified the High Commission with an independent annual budget that is prepared in accordance with the financial principles and rules and is proposed by the electoral administration and approved by the Board of Commissioners and submitted by the Council of Ministers within the state's federal general budget and is subject to the oversight of the Federal Board of Financial Oversight. Therefore, the legislator fortified the electoral work with two types of oversight: the Parliament's oversight for the administrative and electoral work and all electoral procedures, and the oversight of the Federal Board of Financial Oversight to audit the financial policy of the Commission.

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5. The reasons for legislating the law of the Independent High Electoral Commission No. (31) of 2019 are to hold free and fair elections that reassure the voter of their results and to ensure greater transparency and in line with the reform directives demanded by the people, and that this represents implementing of what is stipulated in the article (5) of the Constitution of 2005, given that the people are the source of powers and its legitimacy, exercised by direct public secret election and through its constitutional institutions, also holding free and fair elections is the mainstay for achieving the principle of peaceful transfer of power in accordance with what is stated in Article (6) of the Constitution, it is not permissible to violate the aforementioned texts, as the means of assigning power may not be replaced by another means other than national elections. It also achieves the principle of equal opportunities in accordance with what was stated in the article (16) of the Constitution, and in the interest of the legislator not to repeat mistakes in the electoral institution, whether they occurred in the electoral event, before or after it. to ensure the participation of all men and women in public affairs and the exercise of their political rights, including the right to vote, to vote, and to run for office, the Independent High Electoral Commission law No. (31) of 2019 was enacted.

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6. The integrity of the electoral process and the prevention of the use of illegal methods to influence the voter's will is everyone's responsibility, and here highlights the role of the federal authorities in maintaining the integrity of the electoral process and providing constitutional and legal guarantees for it, including adherence to the deadlines set for holding national elections, and that this represents the main pillar for achieving voter confidence in the electoral process, in addition to the great role that falls on the shoulders of the Independent High Electoral Commission by doing what it possesses of independence and impartiality through its cooperation with the federal authorities to increase electoral awareness and call for everyone's participation in the elections and consider this a national duty for every citizen in order to exercise his political rights in accordance with what stated in the article (5) of the constitution and in order to reform the political process in Iraq and increase the voter's confidence in the electoral process and to hold accountable all those who try to challenge it, using all means that would prevent the use of political money in illegal ways in the electoral process and prevent tampering with the voter register or the election results and preventing fraud in order to ensure high credibility and clear integrity of the electoral process for all of this the law of Independent High Electoral Commission law No.(31) of 2019 was enacted. The articles

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contested for their unconstitutionality (25/4th) and (27) of the aforementioned law came in the general context of the purpose for which the law was legislated and therefore cannot be separated from the law as a whole, and that the Council of Representatives is competent to legislate the law based on what is required by the higher interest of the country in accordance with the constitutional frameworks drawn for it under the constitution. Therefore, the mentioned articles do not conflict with the provisions of the articles (60, 61, 80) of the Constitution.

accordingly, for all the foregoing, the court decided the following:

1. dismiss the plaintiff Ahmed Hasan Abed' lawsuit.
2. burden the plaintiff the expenses and fees for the defendant agents amount of (one hundred thousand) IQ.D distributed equally.

This decision has been issued according to articles (93) and (94) of the Constitution, and articles (4, 5) of the F.S.C. amended law no. (30) for 2005, amended by law No. (25) of 2021, unanimously, final, and binding on all authorities, issued publicly on (8.6.2021) A.D., (13.Shawal .1442) A.H.

Signature of

The president
***Jasem Mohammad
Abbood***

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Signature of

The member
***Sameer Abbas
Mohammed***

Signature of

The member
Ghaleb Amer Shnain

Republic of Iraq
Federal Supreme Court
Ref. 7/ federal / 2020



Kurdish text

Signature of

The member
Haidar Jaber Abed

Signature of

The member
Haider Ali Noory

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The member
*Abdul Rahman
Suleiman Ali*

Signature of

The member
*Diyar Muhammad
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