



The Federal Supreme Court (F S C) has been convened on 27.11.2013 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 Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (Feh.Mim.Teh.) – His agents the barristers (Alif.Mim.Ain) and (Lam.Ain.Lam.).

The Defendants: the Head of the Independent High Electoral Commission being in this capacity- his agent the official jurist (Alif.Ha.Ain).

The Claim

The plaintiff before the FSC in the numbered case (97/Federal/2013) claimed that his client won the governorates councils / Anbar governorate Council and the commission approved the results and that he filled his seat and practiced his rudimentary work and was surprised by the decision of the FSC to transfer paragraph (Heh) From the system of distribution of seats No. (12) for 2013 issued by the High Electoral Commission and that the Commission applied this decision as a binding consideration to it and amended the system and amended the results and changed the results by another candidate from the same list, so he initiated the appeal of the decision within the legal period requesting its rejecting for the following reasons: 1. The governorates councils have been formed and the elections of governors and the formation of committees and executive positions and that the replacement of the names of candidates in this way is contrary to the provisions of law No. (36) Of 2008 amended system of amendment of seats No. (12) for 2013 and thus leads to distrust of the electoral body and waste of the public interest and imposes the meaning of the approval of the

judiciary of its content. 2. The decision of the FSC does not apply retroactively and does not affect the results of the elections in the governorate, especially since the judiciary has approved the results and what the judiciary has settled in the FSC on previous occasions supported this opinion, where it issued the decision (67) for the year (2012) clearly indicated that it does not affect the results of the previous elections and added to many other points. Therefore, when the reasons were given, the FSC was asked to judge by rejecting the decision of the Commission Council no. (2) Of the minutes (118) and to maintain the status quo and the decision of the FSC referred to did not apply to the results of the previous elections, but it took effect on the next elections, with burdening the defendant the expenses and fees. After registering the case at this Court according to the paragraph (3rd) of article (2) of article (2) of the FSC Bylaw No. 1 of 2005, and after the Court has completed required procedures according to the clause (2nd) of article (2) of the FSC Bylaw above-mentioned. A court date was set for the argument and his agents the Barristers (Alif.Mim.Ain.) and (Lam.Ain.Lam.) were present according to the power of attorney which attached the case's file, and the defendant was presented by the official jurist (Alif.Ha.Ain.) under the official power of attorney attached to the case's file. The public in presence argument proceeded. The plaintiff's agent reiterated the claim and requested to judge according to it, with burdening the defendant the case expenses and the advocacy fees. The court has reviewed the answering darft dated (9/10/2013) submitted by the Chairman of the Board of Commissioners, where he requested the rejecting of the case because the Commission made its decision based on Implementation of the Decision of the FSC No. (36/Federal/2013) and amended the system of distribution of seats No. (12) For 2013 after it formed a competent committee and made its recommendations to amend the aforementioned system and that the plaintiff has already filed a challenge for the same reason before the Electoral Judicial Commission. The aforementioned committee had rejected the challenge, and both parties repeated their previous sayings and requests, they requested to judge according to it. Whereas nothing left to be said, the end of the argument and the decision has been made clear.

The decision

During scrutiny and deliberation by the FSC found that the plaintiff's agents in his petition requested the FSC to judge by rejecting the decision of the Council of The Commission No. (2) Of the minutes (118) and to maintain the status quo and not to apply the decision of the FSC No. (36/Federal/2013) On (26/8/2013) on the results of the last elections but to be applied on the next elections and since the Bylaw of the FSC are specified in article (93) of the Constitution of the Republic of Iraq of 2005 and article (4) of the Law of the FSC No. (30) For 2005, not among these jurisdictions is trying the request of the plaintiff to judge by rejecting the decision of the commissioners' Council in the Independent High Electoral Commission which related to the seats distribution between the winners from nominees of the governorates' Councils elections, this matter is a jurisdiction of the Independent High Electoral Commission and its decision is subjected to be challenged before the cassation committee which formed in the Federal Cassation Court. The decisions issued by the FSC are final and binding for all authorities according to the provisions of article (94) of the Constitution, and it takes effect from the date of its issuance on the results of the elections, its effect shall not be postponed unless this was mentioned in the preface of the decision. For the aforementioned reasons, the case of the plaintiff is out the jurisdictions of the FSC which requires to reject it for incompetence. Therefore, the FSC decided to reject the case for incompetence, and to burden him all the case expenses and the advocacy fees for the agent of the defendant the official jurist (Alif.Ha.Ain.) amount of one-hundred thousand Iraqi dinar. The decision has been issued by unanimously, in presence, and final according to the provisions of article (94) of the Constitution, and has been made clear on 27.11.2013.