

In the name of God most Gracious most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 14/federal/2022



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 15. 3 .2022 headed by Judge Jasem Mohammad Abod 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 Appellant: Yasser Muayyad Adham/Deputy Public Prosecutor before the Al-Khidr Investigation Court of the Public Prosecutor's Department in Muthanna.

The Appealed Article: Article (14/3rd) of the Integrity and Illicit Gain Commission Law No. (30) of 2011, as amended.

The Objection Summary:

Through scrutiny, it became clear that the Deputy Public Prosecutor (Yasser Muayyad Adham / Deputy Public Prosecutor assigned to work before the Al-Khidr Investigation Court within the Public Prosecution Office in Al-Khader, affiliated to the Public Prosecution Department in Muthanna), and in accordance with its regulation No. (1) dated 16/1/2022 , received to this court according to the letter of the presidency of the Muthanna Federal Appeal Court / Judiciary House in Al-Khader No. (68) on 18/1/2022, an appeal before this court of the constitutionality of

Article (14/3rd) of the Integrity and Illicit Gain Commission Law No. (30) For the amended year 2011, which stipulated that (the investigative judge shall deposit any corruption case that the authority chooses to complete the investigation in to one of the investigators of the investigation department of the authority or one of its office investigators, and the authority has the right to appeal by way of cassation by the investigative judge's decision rejecting its request for any reason). For violating the provisions of the Constitution of the Republic of Iraq for the year 2005 with articles (87, 88, and 89) thereof for the reasons referred to in detail in the regulation, the summary of which lies in the fact that: (on 25/2/2020, the judge of the Al-Khidr Investigation Court decided, in the case of the complainant Jassem Thamer Saleh and the accused, Razak Hammoud Beladi, in accordance with Article (331) of the Penal Code, to notify the Integrity Commission to express its opinion on choosing to complete the investigation of the case or not, under the provisions of Article (14/3rd) of the Law of the Integrity Commission has expressed its opinion not to choose to complete the investigation, according to its letter No. (teh.1/6137) on 10/8/2010. The text of the aforementioned article contradicts the provisions of the Constitution for the following reasons: **1.** The judicial authority is independent in the performance of its duties in accordance with the explicit provision of Article (87) of the Constitution (the judicial authority is independent and it is assumed by the courts of all kinds and levels, and they issue their rulings in accordance with the law), and since the independence of the judiciary is based on the non-interference of the rest of the state authorities in judicial matters and the confinement of the judicial function In addition to the fact that the principle of judicial independence is closely related to the principle of separation of powers, and since the Integrity Commission is not one of the components of the judiciary according to the text of Article (89) of the Constitution, which stipulates that (the federal judicial authority is composed of a council The Supreme Judiciary, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Service, the

Judicial Oversight Authority and other federal courts, which are organized in accordance with the law), while Article (2) of the aforementioned Integrity Commission Law stipulates (the Integrity Commission is an independent body, subject to the oversight of the Council of Representatives, and has a moral personality and financial and administrative independence, and is represented by its president or whomever he authorizes). **2.** Article (88) of the Constitution stipulates that “judges are independent, and there is no authority over them in their judiciary except the law, and no authority may interfere in the judiciary or in the affairs of justice), and where this requires that the organization and management of judges’ affairs proceed in accordance with the principle of judicial independence and that the courts exercise its jurisdiction in accordance with the law and on the basis of facts without any restrictions, Since the courts specialized in integrity issues have qualitative jurisdiction to consider the corruption cases mentioned in Article (1) of the Commission’s Law and according to the general rules of jurisdiction, except that what was stated in the text of the article whose constitutionality is required to be challenged may include a restriction on the jurisdiction of the court in hearing internal cases Within its competence, is it (the opinion of the Integrity Commission) which cannot be accepted, it is not a smooth legal logic that the opinion of a body that is not one of the components of the judiciary and according to its choice is binding on the work of the court and specific to its specific jurisdiction if it is taken into account that specific jurisdiction is from the public order in addition to the fact that the text required to challenge its constitutionality raises a problem in practical application in the event that the body She has given her opinion on her unwillingness to complete the investigation of the case. Is this opinion obligating the competent court (criminal court or misdemeanors court) after being referred from the ordinary investigative courts, which leads to the division of the criminal case and violates the principle of independence of the judicial authority), and on the basis of the foregoing, it asks Judging the unconstitutionality of Item (3rd) of

Article (14) of the Amended Integrity and Illicit Gain Commission Law No. (30) of 2011.

The Decision:

After scrutiny and deliberation by the FSC, it became clear that the Deputy Public Prosecutor assigned to work before the Al-Khidr Investigation Court within the Public Prosecution Office in Al-Khader affiliated to the Public Prosecution Department in Muthanna, challenged before the FSC the constitutionality of Article (14/3rd) of the Federal Integrity and Illicit Gain Law No. (30). For the amended year 2011, which provided that (the investigative judge shall deposit any corruption case that the commission chooses to complete the investigation in to one of the investigators of the commission's investigation department or one of its office's investigators, and the commission has the right to appeal by way of cassation by the decision of the investigating judge to reject its request for any reason), for violating the provisions of the Constitution of the Republic of Iraq for the year 2005 by Articles (87, 88, and 89) thereof for the reasons indicated in detail in its regulations, the FSC finds that the Federal Integrity Commission is one of the independent bodies and is subject to the oversight of the House of Representatives, and its work is regulated by law based on the provisions of Article (102) of the Constitution of the Republic of Iraq for the year 2005 and on the basis of the foregoing, the issuance of the Federal Integrity and Illicit Gain Law No. 30 of 2011 The amendment was in response to the provisions of Article (102) of the aforementioned Constitution, and upon checking the text of Article (14/3rd) of the aforementioned Federal Integrity and Illicit Gain Law, it is clear that it has given the investigative judge wide discretionary authority to file any corruption case that the Integrity Commission requests to complete the investigation to one of the investigators of the Investigations Department of the Commission or one of its office investigators based on the rules of specific jurisdiction and in

accordance with the authority of the Commission to conduct investigations into the crimes stipulated in its aforementioned law. The mention is made under the supervision and follow-up of the competent investigative judge. The investigative judge may reject the authority's request, and the authority has the right to appeal by way of cassation of the investigative judge's decision rejecting its request for any reason. On the basis of the foregoing, the aforementioned text did not require the investigative judge to adhere to the opinion or request of the Integrity Commission. The opinion of the Integrity Commission for any reason may be appealed by way of discrimination by the Integrity Commission itself in accordance with the provisions of Article (14/3rd) of the aforementioned Federal Integrity and Illicit Gain Law. Thus, when legislating the provisions of Article (14/3rd) of the aforementioned Integrity and Illicit Gain Law, the legislator achieved balance and harmony based on cooperation between the concept of the organic and functional independence of the judicial institution and its judges and the independence of the Integrity Commission and its conduct of investigations into the crimes stipulated in its law relating to financial and administrative corruption under the supervision and follow-up of the competent investigative judge. Therefore, there is no conflict between the text of Article (14/3rd) of the Federal Integrity and Illicit Gain Law No. (30) of 2011, as amended, and the provisions of Articles (87, 88, and 89) of the Constitution of the Republic of Iraq for the year 2005, related to the independence of the judiciary, judges and components of authority. The federal judiciary, and for the absence of a constitutional violation, which requires the rejection of the appeal and for the foregoing, the FSC decided to reject the appeal for the absence of a constitutional violation, and the decision was issued by agreement conclusive and binding on all authorities based on the provisions of Articles (93/1st and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4) /1st and 5/2nd) of the FSC Law No. (30) for the year 2005 amended by Law

No. (25) for the year 2021, and issued in the session dated 11/Shab'an/1443 coinciding with 15/March/2022.

Signature of

The president

Jasem Mohammad Abod