

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 152/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12.8.2018 headed by the Judge Madhat Al-Mahmood and membership of Judges, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman, Mohammed Rajab Al-Kubaisi, Mohammed Qasim Al-Janabi who authorized in the name of the people to judge and they made the following decision:

The Request:

The Presidency of the Court of Appeal Dhi-Qar/ Office the President Appeal of FSC under its latter No. (3212) on 12/6/2018 consider the request submitted by the Judge Mr. (mim. ain. jim.) judge of the Al-Nasiriyah Misdemeanor Court date 6/6/2018 - according to jurisdiction – and when looking at request mentioned above it turns out that the judge of the court of Misdemeanors of Al-Nasiriyah request from FSC under his request on 6/6/2018 by President of the Dhi-Qar Federal Court of Appeal through the case of the accused (heh. mim. ra. ra.) Bangladeshi nationality ((referred to the Misdemeanors of Al-Nasiriyah Court in accordance with the provision of article (42) of the Foreigner's Residence Law No. (76) of 2017)), decide on the legality of the articles (26,45,47) of the law No. (76) of 2017, mentioned above, published in the official gazette No. (4466) date 23/10/2017 where the request contained the following: {on 2/10/2017, the Foreigner's Residence Law was issued No. (76) of 2017 which replaced the Foreigner's Residence Law No. (118) of 1978 which was canceled decision of the Revolutionary Command Council (dissolve) on organizing the residence of Foreigners and Arabs regarding the legality of the above articles of the law, we provide the following: **1.** The article (26) of the above law, which state that (the director general or whoever has the power to expel a

foreigner Who entered the territory of the Republic of Iraq Illegally outside the border) the old law dealt with the issue of removing and alienating foreigners according to the articles (10-11) of the law and that this is by a decision of a competent court and that the exit is directed to the foreigner who enters Iraq illegally While the dimensions of the foreigner who enter Iraq legally, but exceeds the period of residence allowed to him, it means, he did not review the Directorate of Residence to renew, while article (26) gives this authority to the Director General or the authorized and without a judicial ruling and that the text stated in the words (to the Director-General) and not (of the Director-General), that the Director is limited to the Director General and the text is a figurative. 2- Article (45) of the above law, the text of which states: "If the court issues one of the penalties provided for in articles (41 and 42) of this law, it shall control the alienation of the alien from the territory of the Republic of Iraq" while the above article did not address the expulsion or expulsion of foreigner in articles (39 and 40), which are punishable by more severe articles above to address the foreigner who enters Iraq illegally in the sense without an entry attribute, what is the procedure taken by the court when the foreigner is sentenced in accordance with the above articles in case of illegal entry. 3- Article (47) of the above law, the text of which states: " The Director-General or his authorized representative shall have the power of a magistrate in accordance with the provisions of the Code of Criminal Procedure for the purpose of imposing the fine provided for in the articles (38-39-40-41-42-43)" and this text is violate to the Iraqi constitution in addition to the above texts which holed two carry two penalties, most of them were punished with simple imprisonment or fine, how to grant the Director General the power portioning of penalties In other words, it is the norm to impose a fine) Instead of the penalty of imprisonment, leading to the division of the punitive text. It is known according to the constitution that the penalties are only imposed by a competent judicial court and that no person may be arrested or interrogated except by a judicial decision according to article (37/1st - beh) of constitution of Republic of Iraq to the year 2005 Therefore, the FSC is required to consider the above texts. It is an interference in the work of the judiciary and it is not permissible for any authority to do so in

accordance with article (88) of the constitution, thank you and appreciation.} The request has been placed under scrutiny and deliberation of FSC and reached the following resolution:

The Decision

When checking and deliberation by FSC found that the Judge of the Nassiriya Misdemeanor Court challenges his request date 6/6/2018 In front of this court referred to above Judgment of unconstitutionality of articles (26,45&47) of the Foreigners' Residence Law No. (76) of 2017 For the reasons stated in his request mentioned above. The FSC found that the article (26) of the Foreigners' Residence Law No. (76) of 2017 (which are challenges as unconstitutional) which state (The Director General or whoever has the power to expel a foreigner who entered the territory of the Republic of Iraq illegally to the border) Has delegated to the Director-General or whoever has the power to expel a foreigner who illegally entered the territory of the Republic of Iraq beyond the borders and that granting these powers is what is required by the work of foreign residence officials in Iraq and that it does not include (imprisonment, arrest or detention), and therefore does not violate the constitution in article (37/1st - beh) thereof, which requires the rejection of the challenge of unconstitutionality from this side. And for the article (45) of law No. (76) of 2017 (which are challenges as unconstitutional) which state (If the court makes a judgment with one of the penalties provided for in articles (41 and 42) of this Law It must control the alienation of foreigners from the territory of the Republic of Iraq. The FSC finds that the powers referred to in articles 41 and 42 of this law and the failure to grant them in other articles of the same law according to the appeal contained therein is a legislative option Exercised by the Council of Representatives in accordance with its powers provided for in article (61/1st) of the constitution There is no violation of the Constitution in this respect, in the article (88) of it). As for the article (47) of law No. (76) of 2017 (which are challenges as unconstitutional) which state (The Director General or whoever has the power The Director-General or his authorized representative shall have the power of a Misdemeanor Judge in accordance with the provisions of the Code of Criminal Procedure to impose the fine provided for in articles (38), (39), (40), (41), (42), (43) & (44) of this Law)). The FSC finds that it has already decided in the case

(27 Its units 38/federal/2018) ruling on rejecting the challenge against the unconstitutionality of that article, because granting the Director General or whoever is vested with him the power of a Misdemeanor Judge under the article (47) of law is a limited and specific authority to impose the fines stipulated in the articles mentioned therein, which are the powers entrusted to them for the purpose of organizing matters relating to the residence of foreigners in Iraq and enter into the heart of the work of those entrusted with this authority, which includes imprisonment or arrest or detention and grant them required by the work of officials of the Directorate of the residence of foreigners in Iraq to ensure speed in completing those procedures) Thus, the appeal of this body has become (irrelevant) - pre-separation in point – subject of challenge. The FSC decided to reject the challenge and the decision was issued by the agreement binding on all authorities on the basis of article (94) of the constitution of the Republic of Iraq of 2005 and the article (5/2nd) of the FSC law No. (30) of 2005 on 12/8/2018.