

The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 32/federal/media/2016



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7.6.2016 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-Temman who authorized in the name of the people to judge and they made the following decision:

The Request:

The Court of Investigation of Integrity Cases in Al-basra requested from the FSC under it's letter No. (918) on 28/4/2016 deciding in challenge provided by deputy Attorney General before the Court of Investigation of Integrity Cases, which is contained in the book of the Public Prosecutor's Department in Al-basra (16/2016) on 25/4/2016, is unconstitutional the text of article (176/1st) of the Customs Law No. (23) of 1984 (amended) here's the text: Good greeting... according to the provisions of article (3) of the bylaw for the procedures of the work of FSC No. (1) of 2005, we present to your esteemed court the investigative papers of the accused assigned to (ra. ain. nun.) , (feh. mim. shin.) and (feh. ain. jim.) to show the constitutionality of the text of article (176/1st) of the Customs Law No. (23) of 1984 (amended), because it violates with the provisions of article (47) of the Constitution of the Republic of Iraq of 2005, it is the principle of separation of powers by preventing them from referring the accused employees of customs to the competent courts because of the exercising their functions except with the permission of the competent

Minister. With appreciation, the request was under scrutiny and deliberation by the FSC and has reached the following decision:

The Decision

When scrutiny and deliberation by FSC found that the deputy prosecutor before the Court of Investigation of Integrity Cases in Al-basra is challenging the investigative case of the accused assigned to (ra. ain. nun.) , (feh. mim. shin.) and (feh. ain. jim.) unconstitutionality of the text of article (176/1st) of the Customs Law No. (23) of 1984 (amended), It has been found that it stipulates that the employees of the customs officers for the purposes of this law exercise the power of the members of the legal control within their jurisdiction, and may not be referred to the courts because of the exercise of their functions only with the permission of the Minister) . The FSC found that the article (176/1st) of the Customs Law No. (23) of 1984 (amended) restricts the jurisdiction of the judiciary to try the accused if he committed a crime while performing his duties according to the article (176/1st) of the mentioned law and that's violate with the article (19/1st) of the Republic of Iraq of 2005 which state that (The judiciary is independent because it is not in the law) and with the paragraph (6th) of it which state on (Everyone has the right to be treated fairly in judicial and administrative proceedings.) it is also violate to article (47) of the Constitution, since the judiciary provides guarantees to the accused in a fair trial, so article (176/1st) of the Customs Law No. (23) of 1984 amended is violate to article (19/1st & 6th) and article (47) of the Constitution. This Iraqi legislator has for the same reasons turned to annulled (paragraph (B) of article (136) of the Criminal Procedure Law of No. (23) of 1971, under Law No. (8) of 2011, (the Law on The Amendment of the Criminal Procedure Law), which stipulated in article (1) on (annulled paragraph (B) of article (136) of the Criminal Procedure Law of No. (23) of 1971 amended) it restricts the jurisdiction of the judiciary to try the accused if he committed a crime while performing his duties. So the FSC decided to make article

(176/1st) of the amended customs law suspended for violating the provisions of the Constitution and the decision was issued with unanimously on 7/6/2016.