

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 62/federal/media/ 2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 28/8/2016 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Request

The Investigation court that is competent to consider the integrity cases in Basra, has requested the F.S.C. by its letter No.(1355) on (20/6/2016) to take a decision about the challenge submitted by the deputy prosecutor before it by his letter No.(35/2016) on (16/6/2016) to clear the constitutionality of the article (113/1st) text of the Criminal Procedure law for internal security forces No.(17) for 2008, which stipulate the following:

Greetings.

According to the provisions of article (3) of the F.S.C. Bylaw No.(1) for 2005, we presented to your estimated court the investigation file of the bail accuser (ha.sin.nun.) and (sin.kha.jim.), to clear the constitutionality of the article (113/1st) text of the

Federal Supreme Court - Iraq - Baghdad
Tel – 009647706770419
E-mail: federalcourt_iraq@yahoo.com
Mailbox- 55566

Atchraa

Criminal Procedure law for internal security forces No.(17) for 2008, as it contradict with the provisions of article (47) of the Iraqi republic constitution for 2005, because it affect the principal of (separation of powers) by preventing the referral of the accused police officers to the competent courts for reason related to exercising their jobs, except with the permission of the competent minister, which limit the jurisdictions of the judicial in trialing the accused in case of committing crime while practicing his job, and that is what the judicial of the F.S.C. has settled on in many of its decisions, the last one is the decision No.(32/federal/media/2016) dated on (7/6/2016).

With appreciation.

The request has been set under scrutiny and deliberation by the F.S.C., and issued the following decision.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the deputy prosecutor has challenged before the investigation court that is competent to consider the integrity cases in Basra, on the property of the investigation case of the bail accuser (ha.sin.nun.) and (sin.kha.jim.) of the unconstitutionality of the article (113/1st) of the Criminal Procedure law for internal security forces No.(17) for 2008, as it contradict with the provisions of article (47) of the Iraqi republic constitution for 2005, which stipulate the following (the Minister could refuse to approve the referral of the police officer to the civil criminal courts for reasoned decision, if it appears that the crime resulted from the performance of his duties or because of it, on the recommendation of a board of inquiry formed for this

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purpose). The F.S.C. found that it has already issued the decision No.(33/federal/2013) on (6/5/2013) decided in it that article (113) of the Criminal Procedure law for internal security forces No.(17) for 2008 dose not contradict with article (88) of the constitution, and also issued the decision No.(59/federal/2014) on (16/6/2014) in this subject. Because this texts was stated in law as a consideration to the privacy of the duties and functions of the members of the internal security forces, and for other reasons listed in it. For the aforementioned reasons considering this challenge is irrelevant and require to review the decisions of the F.S.C. that is binding to all authorities according to the provisions of article (94) of the constitution. with note that these decisions are published on the federal judicial authorities web site. Accordingly the F.S.C. decided to reject the challenge, the decision has been issued unanimously on 28/8/2016.