

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 66/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 the 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 presidency of Wasit federal appeal/ administrative affairs department requested the F.S.C. by its letter No.(2571) on (18/7/2016) to take a decision in the constitutionality of articles (111 and 113/1st) of the Criminal Procedure law for internal security forces No.(17) for 2008, submitted to it by Al-Kut investigation court No.(3243) on (18/7/2016), with copy of the investigative papers of the bail accused (Ain. beh. Nun.) and (teh. Ha. Jim.) according to article (332 qaf. Ain), with the challenge draft of unconstitutionality No.(197) on(3/7/2016) submitted by the deputy prosecutor, sent by the public prosecution presidency/ prosecution department in Wasit by the letter No.(179) on 3/7/2016. The challenge draft has included the following:

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

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((the judge of the Al-Kut Investigation Court has already issued a judicial decision to refer the bail accused in this case (Ain. beh. Nun.) and (teh. Ha. Jim.) according to the referring decision No.(580) on 30/5/2016 to Al-Kut court of Misdemeanors for trial, according to the provision of article (332) of the Penal law by the indication of the involving articles (47,48,49) of it, the criminal prosecution had been returned to it combined with the reversal cassation decision No.(598/teh/2016) issued by Wasit Criminal court/ first committee/ by its cassation capacity on 15/6/2016 which include (the accused defendants referred to it, are police officers who were at the time of the incident charged with an official duty as they are commanders of the people protection force, before the referral, the court of investigation should have obtained the approval of referring or not from their authority according to the provisions of articles (111, 113). As these articles contradict with some principals stipulated in the valid Iraqi constitution for 2005, we initiate a challenge against its constitutionality before your estimated court for the following reasons:

Article (111) of the Criminal Procedure law for internal security forces stipulated that (except the requests of the internal security forces' courts, the police officer may not be notified or assigned to attend or arrest him except on the approval of the Minister or his authorized person, if the act was committed during the performance of duty), article (113/1st) has stipulated that (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 purpose), as

these articles contradict with constitutional principles stipulated in the valid Iraqi constitution, which insure equality among citizens before the law without discrimination, were the implementation of the mentioned articles gives an advantage to the police officer of the Ministry of Interior from the rest of the employee of other ministries without justification and without right, and that contradict with the principle of equality before the law stipulated in article (14) of the constitution (Iraqis are equal before the law without discrimination...etc.), and also article (19/6th) of it which stipulate that (every person shall have the right to be treated with justice in judicial and administrative proceedings). Also the implementation of the mentioned articles include restricting to the power of the judiciary to inform the police officer or to assigned him to attend or arrest him except on the approval of the Minister or his authorized person, if the act was committed during the performance of duty, as well as the Minister could refuse to approve the referral of the police officer to the civil criminal courts, on the recommendation of a board of inquiry formed for this purpose, and the implementation of the mentioned articles contradict with the principle of power separation and the independence of the judiciary stipulated in the constitution 19/1st) of the constitution (the judiciary is independent and no power is above the judiciary except the law) and article (47) of it (the federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.), and article (87) of it (the judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.), and lead to delay in taking

decisions in the investigation cases. As the articles (111, 113/1st) of the Criminal Procedure law for internal security forces contradict with the constitutional principles stipulated in articles (19/1st and 6th, 14, 47, 87) of the valid constitution, and no law may be enacted that contradicts the principles stipulated in it as it is the supreme law in the state. For all the aforementioned we challenge against the unconstitutionality of the mentioned articles before your estimated court as it affect the principles of separation of powers and the equality of the citizens before the law.

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 Al-Kut investigation court that articles (111, 113/1st) of the Criminal Procedure law for Internal Security Forces No.(17) for 2008 are unconstitutional for violating the constitutional articles (19/1st and 6th, 14, 47, 87). The F.S.C. found that it had been issued the decision No.(33/federal/2013) on (6/5/2013) decided in it that the text of 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) decided in it that there is no conflict between the texts of articles (111, 112, 113) of the Criminal Procedure law for Internal Security Forces No.(17) for 2008 with the provisions of articles (14, 88) of the constitution, because these texts was stated in law as a consideration to the privacy of the duties and functions of

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Tel – 009647706770419

E-mail: federalcourt_iraq@yahoo.com

Mailbox- 55566

Athraa

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 according to the provisions of article (5/2nd) of its law No.(30) for 2005 on 28/8/2016.