

In The Name Of God, Most Gracious, Most Merciful

**Republic of Iraq
Federal Supreme Court
Ref.67 /Federal/Media/2014**



Kurdish text

The Federal Supreme Court has been convened on 13/7/2014, 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-Nagshabndi, Abood Salih AL-Tememi, 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 the first instance in AL-Basra requested from the FSC, based on the letter No.(775/Beh/2014/244), to decide in the legitimacy of the clause's text (2nd/1) from the decision of the leadership of the revolutionary council (dissolved) No.(42) of 1995, and to made clear how does it violate the provisions of the Constitution because there is a case initiated before that court by No.(775/Beh/2014) on (7/5/2014) its require is the ability of applying the above text because this text granted the right of deciding in the cases to the executive powers which violate the principle of separation between the powers and the provisions of the article (47) from the constitution. also, it violates the individuals' rights included by the article (19/3rd) from the Constitution especially that the judiciary of the federal court of cassation settled on in many decision such as No.(1556/civil committee/transferred/2011) considering that kind of cases is out of the judicial power competence and included by the competence of the executive powers because this decision granted the authority to decide in the cases, relates to correcting of the data that included by the birth certificate and death certificates, to the general manager of the governorate 's health. Based on provisions of the article (3) from the bylaw No.(1) of 2005 of the FSC works' procedures, this court pre-

presented before your respected court the subject of the case for making clear how the clause's text (2nd/1) from the decision of the leadership of the revolutionary council (dissolved) No.(42) of 1995, and to made clear how does it violate the provisions of the Constitution. the request put under scrutiny and deliberation by the FSC and it issued the following decision.

The Decision:

During the scrutiny and deliberation by the FSC, it found, that the clause (2nd/1) from the decision of the leadership of the revolutionary council (dissolved) No.(42) of 1995 which requested from the court to made clear how does it violate provisions of the articles (47 and 19/3rd), this clause belongs to the granted authorities to the general manager of the civil defense in the ministry of interior to decide in the cases raised because of the crimes stipulated in the articles from 483 to 419 and from 500 to 503 of the penal code No.(11) of 1969. The subject of the request apply to provisions of the article (2/1) from the decision of the leadership of the revolutionary council (dissolved). Based on this, the court decided to approach the court of the first instance in AL-Basra to clarify the clause and the article wanted to be tried for unconstitutionality. The aforementioned court answered by its letter No.(775/Beh/2014) on (7/7/2014) the wanted by challenging the unconstitutionality- the subject of its letter No.(775/Beh/2014) on (7/7/2014)- is the article (2/1) from the decision of the leadership of the revolutionary council (dissolved) No.(42) for 1995 which stipulated (the general manager of the governorate health in the ministry of health is competent to decide in the case of correcting the data included by birth certificate and death certificate) whereas the birth certificate and death certificate are data issued by the health departments in the governorates (hospitals and other health centers) which are executive and service departments, so giving the general manager of the governorate health the authority to correct the information included in that data is not considering as intervention in judges affairs because those certificates are not sued before the mentioned above bodies, it is requests presented to it for correcting what affects it of mistakes if there. Its pieces of evidence are not as legitimacy as the birth evidence and death evidence issued by the judiciary, The correcting of information includ-

ed by these are done based on cases initiated before the judiciary. From the above, it was made clear to this court the article (2/1) from the decision of the leadership of the revolutionary council (dissolved) No.(42) for 1995 don't contradict with provisions of the articles (19/3rd and 47) from the Constitution of the Republic of Iraq for 2005. So the court decided to reject the request. The decision was issued decisive and unanimously based on the article (94) from the constitution and the article No.(3) from the bylaw of the FSC No.(1) for 2005 on 13/7/2014.