



---

The Federal Supreme Court (F.S.C.) has been convened on 2.5.2021 headed by the Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali who is authorized to judge in the name of the people, they made the following decision:

Who submitted the challenge:

The Deputy general prosecutor before Al-Nasria investigation court.

**The party of the challenge**

The Deputy general prosecutor of Al-Nasria investigation court challenged before the F.S.C. the unconstitutionality of article (36/1<sup>st</sup>) of the Drugs and Psychotropic Substances Law no.(50) of 2017 by the letter issued from the presidency of Dhi Qar Federal Court of Appeal no.(16/1/office/2019 on 3.7.2019) which included sending certified copy of the investigation papers of the accused (Ali Mazeed Abd Alrazaq) according to the provision of article (28) of the Drugs and Psychotropic Substances Law no.(50) of 2017 according to the challenge presented by the judge/ Deputy general prosecutor of Al-Nasria investigation court, the presented challenge included that (the

---

Athraa



reason for the continued detention of the accused Ali Mazed Abd Alrazaq according to the provision of article (28) of the Drugs and Psychotropic Substances Law no.(50) of 2017, and the not to release him on bail is what stated in article (36/1<sup>st</sup>) of the Drugs and Psychotropic Substances Law no.(50) of 2017 which stated that (those accused of the crimes stipulated in the articles (28, 29, 31) of this law may not be released on bail until the case is decided upon), and according to the provision of articles (3, 4) of the bylaw of the F.S.C. no(1) for 2005 which authorized the court to challenge the constitutionality of laws in the lawsuit presented before it, as the general prosecutor body is an non separated part of the court, and according to the provision of article (5/11) of the general prosecution law authorized the general prosecution body the right to challenge the constitutionality of laws and regulations and instructions. The text of article (36/1<sup>st</sup>) of the Drugs and Psychotropic Substances Law no.(50) of 2017 violates the provisions of articles (19, 37/1<sup>st</sup>, 88, 97) of the Iraqi Constitution of 2005, and consider clear interference by the legislator in a job of the judiciary authority in contrary to the principle of separation of power, this court has issued many of decisions that confirm this direction including (10/ federal/ media /2019 on 26.2.2019) which included ruling that the decision of the dissolved revolutionary command Council no.(76) of 1994 is unconstitutional, also ruling the unconstitutionality of the

Athraa



dissolved revolutionary command Council decision no.(120) of 1994, and the decision no.(33/federal/2019 on 3.4.2019) which included ruling the unconstitutionality of last part of article (2/1<sup>st</sup>) of the law of smuggling oil and its derivatives no.(41) of 2008, therefore, he requested to rule the unconstitutionality of article (36/1<sup>st</sup>) of the Drugs and Psychotropic Substances Law no.(50) of 2017.

**The decision:**

The mentioned challenge was under scrutiny and deliberation by the F.S.C., it included the request to rule the unconstitutionality of article (36/1<sup>st</sup>) of the Drugs and Psychotropic Substances Law No. (50) of 2017 which prevent releasing those accused of the crimes stipulated in the articles (28, 29, 31) of the mentioned law on bail until the case is decided upon, and it resulted in the following:

1. The mentioned penalties listed in law No. (50) of 2017 was specified according to the seriousness of the committed act and its implications, article (27) of it included the death sentence of lifetime prison on whoever imports, brings, or exports narcotic substances or produces or manufactures narcotic substances or plants a plant that produces narcotic drugs or psychotropic substances intending to trade in them, in other than the cases permitted by law. Article (28) of the law, the legislator founded the penalty of prison if lifetime or temporal with

Athraa



financial fine not less than (10.000.000) millions dinar and not more than (30.000.000) million for anyone who acquires, possesses, buys, sells, or obtains narcotic drugs or psychotropic substances or provides them for abuse or shares or encourages their abuse, in addition to what was listed in paragraphs (3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>) of the same article, the penalties included an aggravating circumstance which is what stated in article (29) of the law of committing the crime for more than once, or if who committed it is an employee or assigned for public service of combating the illicit trafficking or use of narcotic drugs and psychotropic substances or controlling their circulation or possession, or if the perpetrator participated in a gang or his act was connected with a crime that violated the external or internal security of the state, or if the perpetrator used violence or weapons to commit the crime.

2. Article (30) of the law specified the penalty of the assault on the employee or who is assigned for public service, who implemented the law or resist them with force, violence, or weapon during performing his duties or because of it. Article (31) which included a penalty for the doctor who gave a medical prescription for drugs and psychotropic substances for a purpose other than medical treatment with his knowledge, article (32) stipulated the penalty for abuse and personal use of narcotic drugs, psychotropic substances, or chemical precursors.

---

Athraa



- 
3. The obligation reasons of enacting the law of Drugs and Psychotropic Substances No. (50) of 2017 stated the reasons of enacting the mentioned lawfully including the article under challenge for unconstitutionality which is, Confronting the spread of illicit trafficking in narcotics and psychotropic substances in Iraq, and to suppress criminal gangs that work to mislead some groups of the people and encourage them to abuse those substances that represent a threat to human health and well-being and harms the economic, social, cultural and moral foundations of society, and to adopt scientific rules in the treatment of drug addicts and psychotropic substances, and to consolidate Arab and international cooperation in this regard, as Iraq republic has approved and the accession to international treaties related to drugs and psychotropic substances, for that the mentioned law was enacted.
  4. The direction of the legislator in laws intended the inability to release the defendants on bail during the investigation stage, aware of the seriousness of the crime and its negative impact on society and to limit its spread, this does not make these texts in violation of the constitution, but rather is an actual translation of the requirements of the constitutional texts related to the proper construction of society, the family and the individual, as it is part of the tasks of all authorities including the legislative authority, article (29/1<sup>st</sup>/a) of the Constitution stated (the family is the foundation of society; the State shall

---

Athraa



preserve it and its religious, moral, and national values) and that enacting laws that contribute in limiting crimes spread in all its forms helps in building the community in correct way which doesn't violates the provision of article (2/1<sup>st</sup>/c) of the Constitution which stated that (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), also doesn't violates article (19/5<sup>th</sup>) of the Constitution which states that (the accused is innocent until proven guilty in a fair legal trial), and doesn't contradicts article (88) of it which stated that (judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice.).

5. Claiming that the legal texts that don't authorize releasing the accused on bail are a violation of the Constitution, that doesn't go with the authentic criminal policy that was set by the Criminal Procedures Law No. (23) of 1971 amended, according to what stated in article (109/a, b, c) which specified when the competent investigation judge is allowed to use his authorization in releasing the accused on bail, also stated the crimes in which the accused cannot be released on bail according to what stated in paragraph (b) of the article that stated (the arrestee must be detained if he is accused of a crime punishable by death..).

---

Athraa



6. With what was mentioned above that there are crimes that require the interest of the individual, family, and society to release the accused on bail when those crimes are of little severity and their negative effects are weak or non-existent, which are described according to their gravity as crimes of violations, therefore, article (110/b) of the Criminal Procedures Law stated that (if the arrested person is accused of a violation, he may not be detained unless he does not have a specific place of residence), as not arresting the accused in these crimes is following article (15) of the Constitution which stated that (every individual has the right to enjoy life, security, and liberty. Deprivation or restriction of these rights is prohibited except following the law and based on a decision issued by a competent judicial authority). accordingly, for the aforementioned the Federal Supreme Court finds that what listed in the article (36/1<sup>st</sup>) of the law of Drugs and Psychotropic Substances no. (50) of 2017 does not violate the Constitution, therefore it decided to dismiss the challenge, this decision has been issued final and binding on all authorities, it was issued according to the provision of articles (2/1<sup>st</sup>/c), (15), (19/1<sup>st</sup>), (29/1<sup>st</sup>/a), (47), and (93/1<sup>st</sup>) of the Iraqi Constitution of 2005, and articles (4/1<sup>st</sup>) and (5/2<sup>nd</sup>) of the F.S.C. amended law no. (30) for 2005, and issued unanimously and publicly on 2.5.2021 that is (20. Ramadhan. 1442 Hegira).

Athraa