



The Federal Supreme Court (F S C) has been convened on 26.2.2019 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, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rijab AL-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Challenger: the Judge of customs investigation Court in the Presidency of Al-Basra federal appeal Court.

Challenge office

The Judge of customs investigation Court in the Presidency of Al-Basra federal appeal Court had challenged before the FSC the unconstitutionality of clause (2) of revolutionary leadership Council (dissolved) decision No. (76) For 1994 which amended the article (194/1st/alif) of customs law No. (23) For 1984. His challenge has been received according to a letter from the customs investigation Court by Ref. (8/2019) on (31.1.2019), and as following: best regards, the accused (ha.ain.ain.ha) whose detained according to provisions of article (194) of customs law had presented a request to release him with a guarantor bail bond for the case. This Court decided to reject the presented request because clause (2) of revolutionary leadership Council (dissolved) decision No. (76) For 1994 which amended the article (194/1st) of customs law No. (23) For 1984 had restricted and inhibited the releasing of the accused whom charged with smuggle crime, in investigation and trial. Unless a final decision is issued in the case. We find that this text is contradicts with the provisions of article (37/1st/alif) of the Republic of Iraq Constitution which stipulated (the liberty and dignity of man shall be

protected), as well as clause (jim) of article (2) of the Constitution stipulated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution). Whereas the principle in accusation is the innocence because the accused is innocent until his accusing is approved. Clause (5th) of article (19) of the Constitution stipulated (the accused is innocent until proven guilty in a fair legal trial...). Whereas the FSC and in many occasions had issued more than a decision in this concern, in this meaning the decision No. (57/federal/2017) which annulled the decision of the revolutionary leadership Council (dissolved) No. (120) for 1994. As long as challenged unconstitutional clause representing a clear violation of man's freedom for the crime ascribed to him, some of customs crimes are crimes with a simple financial value, and the duration of investigation takes a long time which keep the accused in the custody for investigation all this long duration. This matter considered a violation to the accused freedom, therefore and according to provisions of article (3) of the FSC's bylaw No. (1) For 2005. The Court decided to review the case before the FSC to try unconstitutionality of clause (2) of the revolutionary leadership Council (dissolved) decision No. (76) For 1994. With respect.

The Decision

The request above-mentioned which related to clause (2) of revolutionary leadership Council (dissolved) decision No. (76) For 1994, and this clause prohibited releasing of the accused whom charged with the crime of smuggling in investigation and trial. Unless a final decision is issued in the case. This was the subject of scrutiny and deliberation by the FSC, and the Court found that the base in accused is innocence until his accusation is proven in fair and legal trial according to provision of article (19/5th) of the Republic of Iraq Constitution for 2005. The freedom of the man and his dignity shall be protected according to provision of article (37/1st/alif) of the Constitution, seizing this freedom shall be regulated by a law and the judiciary has the authority to evaluate the legal attitude of detaining the accused or releasing him with a guarantor bail according to the magnitude of the crime and the post of the accused and his circumstances. All these matters are implementing to provisions of articles (19/1st) and (88) and (47) of the Constitution which adjudged

by judiciary independence in taking its decisions and judgments, and no power over it except the law. As well as the principle of separation between powers in each field of competence, whereas the enactor and according to a law had been issued, which is it the criminal procedure law No. (23) For 1971. This law had been regulated strictly, and took in considerations the public interest and the personal freedom in articles (109) and (110) of it. Whereas the crimes which the accused shouldn't be released with a bail had been determined, and it allowed to release the accused in another crimes. These articles left the subject of releasing to the evaluation of subject judge in the two stages of investigation and trial, because the judge is the body who evaluates how ascribed crime to the accused is dangerous, and how the accused is dangerous or may affect the procedure of investigation and trial if he is released by a guarantor bail. But seizing him definitely as in clause (2) of revolutionary leadership Council (dissolved) decision No. (76) For 1994 is violating constitutional articles listed in this decision. Accordingly, the Court decided to judge by unconstitutionality of clause (2) of revolutionary leadership Council (dissolved) decision No. (76) For 1994. The decision has been issued unanimously and decisively according to provisions of article (5) of the FSC law No. (30) for 2005, and article (94) of the Constitution on 14.2.2019.