



The Federal Supreme Court (F S C) has been convened on 10.24.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Mohammed Rijab AL-kubaisi, Mohammed Qasim AL-Janabi , Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Aboud Salih Al-Temimi, Mohammed Qasim AL-janabi and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Request

The investigation court of Nineveh which specialized in integrity cases requested from the FSC according to its letter No. (1146) on 10.5.2017 to take a decision in the legitimacy of article (113/1) of criminal procedure law for interior security forces No. (17) For 2008, because the aforementioned court investigated with vouched accusers whom associated to the interior security forces (alif.kha.jim) & (nun.alif.dal) & (mim.ra.zin) & (kaf.ain.yeh) & (yeh.ha.yeh) & (nun.mim.ha) which occurs according to the provisions of article (335) of penal law. The procedures of investigation and referral are halted more than four years to get the approval of interior's Minister of this referral according to provision of article (113/1) of criminal procedure law of interior security force No.(17) For 2008. The aforementioned investigation judge clarified that the mentioned conflicts with provision of articles (47) & (19/1st & 6th) of the constitution. And the court requested to decide how legitimate the aforementioned article is similar to the decision of the FSC No. 32/federal/2016 dated on 6.7.2016. The request set for scrutiny and deliberation by the FSC, and the court reached the following decision:

The decision

After scrutiny and deliberation by the FSC in its session convened on 10.24.2017. The court found that the judge of Nineveh investigation

court which specialized in reviewing integrity cases is challenging by the investigation case of the vouched accusers each of (alif.kha.jim) & (nun.alif.dal) & (mim.ra.zin) & (kaf.ain.yeh) & (yeh.ha.yeh) & (nun.mim.ha) whom assigned to the interior security force, and investigation with them is carrying out according to the provisions of article (335) of penal law No. 111 for 1969 with unconstitutionality of article (113/1) of criminal procedure law of interior security force No. (17) For 2008 because of its confliction with the text of article (47) and article (19/1st & 6th) of the Republic of Iraq constitution for 2005. After returning to the text of article (113/1st) of criminal procedure law which stipulates on (the Minister has the right with a caused decision not to approve on referring policemen to the civil penal courts, if the crime arises from doing his official duties or because of it, and based n a recommendation of investigation council forms for this purpose).The FSC finds that this article limiting the competence of the judiciary of suiting the accuser in case he perpetrated a crime if it was related to a civil party when he is doing his job, and conflicts with article (19/1st/3rd/6th) of the Republic of Iraq constitution and article (47) of it, whereas the civil judiciary in its criminal aspect which provides the legal guarantees for the accuser in a fair trial. The legislator headed for the same reasons to cancel clause (beh) of article (136) of criminal procedure law No. (23) For 1971 which was limiting the judiciary competence in suiting the accuser in case he perpetrated a crime during his job. This matter is what the FSC settled on in its decision issued in number 32/federal/2016 dated on 6.7.2016. Based on that, the FSC decided unconstitutionality of article (113/1st) of criminal procedure law of interior security force No. (17) For 2008 because it is violates provisions of articles (47) & (14) & (19/1st/3rd/6th) of the constitution and the decision issued unanimously on 10.24.2017.