

The In the name of god most gracious most merciful

Republic of Iraq  
Federal supreme court  
Ref. 118/federal/media/2015



Kurdish text

---

The Federal Supreme Court (F S C) has been convened on 30/11/2015 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, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Suleiman Abd-Allah Abd-Alsamad who authorized in the name of the people to judge and they made the following decision:

The Request:

The House of Representative/ General Secretariat/Parliamentary Chamber/ Committee Affairs, requested from the FSC under the letter No. (shin.lam/1/9/11597) on (17/11/2015) the text as the following:

Good Greeting

Please explain the article (87) of the Constitution which state on (The judiciary is independent and is handled by courts of all kinds and degrees and issued in accordance with the law) the extent to which the functions of the administrative judiciary and the Fatwa contained in article (101) of the Constitution are counted are manifestations of the judiciary contained in article (87) of the Constitution.

With appreciation.

## The Decision:

When scrutiny and deliberation by FSC found that the House of Representative in its above letter request from the FSC explain the article (87) of the Constitution which state that (The judiciary is independent and is handled by courts of all kinds and degrees and issued in accordance with the law) the extent to which the functions of the administrative judiciary and the Fatwa contained in article (101) of the Constitution are counted are manifestations of the judiciary contained in article (87) of the Constitution. In extrapolating the Constitutional texts on the subject questioned we find that the article (47) of the Constitution state on the principle of the separation of powers it stipulates that "Federal authorities are made up of legislative, executive and judicial authorities who exercise their powers and functions on the basis of the principle of separation of powers" it is clear that the judiciary represents one of the powers of the three states that exercise sits on the basis of the principle of separation of powers, that it derives its privacy and validity from article (87) of the Constitution and its work is regulated by the constitutional provisions contained in the articles (88), (89), (90) and (91) of the Constitution and laws, including the Judicial Regulation Law No. (160) of 1979 it regulates the types and degrees of courts of first instance, appeal, cassation, misdemeanors and criminal, these courts are the original jurisdiction to consider all civil and criminal disputes except administrative disputes, which is excluded by a special law. The judgment of these courts shall be in accordance with certain procedures and in accordance with certain guarantees and leads to the resolution of the dispute or litigation between the parties. The article (101) of the Constitution passed the Law on the Establishment of the Council of State next to the judiciary where it stipulated (It is permissible by law to establish a state council that deals with the functions of administrative justice, infatuation, drafting and representation of the state and other public bodies before the judiciary, except that the law is excluded from it) the Council of State is

administered by the Council of State, which is the courts of administrative justice, and these courts are competent to hear administrative disputes it is the nature of these disputes and administrative relations that required the existence of a special judiciary that applies the law governing these relations within the rules of administrative justice, which is the jurisdiction competent to hear administrative disputes it also contains the rules of procedure and arguments before the said judiciary, which is not part of the federal judiciary, but is part of the executive branch in administrative capacity, and it is the Council of State that initiates administrative justice and imposes judicial control over the work of the executive branch and through it can be subjected to Administration for the rule of law. On this basis, the administrative judiciary is not part of the federal judiciary provided for in the Constitution and in the laws referred to, especially since those who exercise administrative justice are not the judges concerned in accordance with the Judicial Regulation Law, who have been qualified for the functions of judges. The decision was issued unanimous and decisively on 30/11/2015.