

Republic of Iraq  
Federal Supreme Court  
Ref. 119 /federal/2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 16/12/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they issued the following decision:

Summary justice requesters: the attorneys Safaa Allamy, Emad Altememy, Amar AlSaedy and Amer Alrubaiey.

Summary justice against:

1. The Prime Minister/ being in this post - his agent the legal adviser Haider Alsoffi.
2. Minister of Communications/ being in this post -his agent the legal official Nisren Hatam Halozy.

**The claim:**

The Summary justice requesters claimed before the F.S.C. in their request No.(119/federal/2019) that the Summary justice against has already violated the Iraqi constitution in force of 2005 and its articles, by cutting off the internet service and blocking some social media sites in Iraq areas except Kurdistan region from the date 1/10/2019 first day of starting the peaceful demonstrations of

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various categories of Iraqi society in Baghdad and some governorates to demand their constitutionally guaranteed rights, the defendants decision was issued without judicial order according to what stipulated in the constitution, or maximal security necessity resulting from declaration of state of emergency, and they continued with that constitutional violation throw official announcements that they declare throw all types of the local medias which is a violation to the constitution in force in articles (25, 26, 37, 38/1/2/3, 40, 46) of it, which affected the Iraqi state with all its institutions, public and private companies and individuals with complete paralysis, which led to the disruption of most of the state's public interests and private interests, the confiscation of rights and freedoms to express an opinion, isolating the country from the outside world, and stopping financial and monetary transactions inside and abroad, which caused great economic damage to all categories of the people, and this act is inconsistent with the principles of democracy on which the system is based and contrary to international agreements and covenants which Iraq is still a party of it. For the aforementioned reasons the Summary justice requesters requested the F.S.C. to (to call upon who the non-contentious jurisdiction is requested against for arguments and to rule to issue an urgent custodian order to oblige whom the Summary justice is against them to remove the blocking and to return the service completely immediately and urgently). The agent of the first to be Summary

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justice the prime minister being in this post has responded with the answering draft dated on 4/11/2019 requesting to reject the request for not basing on constitutional or legal substantiation, also the F.S.C. is not competent to consider it as its jurisdictions are stipulated in article (93/3<sup>rd</sup>) of the constitution which is to oversee the constitutionality of the Laws and regulations in force, and the procedure of his client is a regular executive procedure that he made for the security necessities according to his constitutional jurisdictions listed in articles (78 and 80/1<sup>st</sup>,80/3<sup>rd</sup>) of the constitution in order to implement the Laws, also it is not permissible to interfere with his jurisdictions according to the principle of separation of powers stipulated in article (47) of the constitution, in addition the request procedures of (the summary justice requesters) lack the substantiation required by the Civil Procedures Law in article (153/2) of it, that the complaint shall be filed according to the original lawsuit, which was not provided in their request. The second to be under the custodian order the minister of communications/ being in this post has responded with the answering draft dated on 30/10/2019 stating that the ministry didn't cut-off the internet service of the plaintiff but some social networking has been blocked because of poor security conditions in order to maintain public order and social peace under the directives of the national security adviser, as directed by the Prime Minister, as the direct executive official of the state's public policy according

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to the provision of article (78) of the constitution, some cut-off might happened due to the digging works, sabotage, or because of the citizen's need for capacity that exceed the available which leads to extreme weakness in the service, the Ministry care for the freedom of communication, correspondence and expression in a commitment to the constitution, for the mentioned reasons he requested to reject the request for lacking the legal substantiation. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 16/12/2019 was scheduled for the argument, the court convened, the agent of first to be under Summary justice the Prime Minister the legal adviser Haider Alsoffi has attended, the Summary justice requesters didn't attend despite the informing by the law, the court decided to continue with the argument with their absence. The court scrutinized and found that the case is completed for reasons of judgment, the argument is closed and the decision is issued publicly.

### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the Summary justice requesters claimed in their case petition that whom requested to be under Summary justice has cut-off the (internet) service and blocked some of the social network medias in Iraq except Kurdistan region from the date (1/10/2019) without judicial order, and they requested to issue urgent custodian order that oblige whom requested to be under Summary justice to remove

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the blocks and return the electronic service. The F.S.C. found that considering the request is out of its jurisdictions stipulated in article (93) of the constitution and article (4) of the F.S.C. Law No. (30) for 2005, as article (141) of the Civil Procedures Law has specified the competent court to issue the submitted Summary justice decisions regardless from the claim of the right subject. Accordingly the court decided to reject the request from the point of jurisdictions and to burden the Summary justice requesters the expenses and advocacy fees for the agents of whom requested to be under Summary justice amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to article (5) of the F.S.C.'s law No.(30) for 2005 and issued publicly on 16/12/2019.