

Republic of Iraq
Federal Supreme Court
Ref. 14/ federal /media/ ٢٠١٣



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 12.3.2014 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 whom are authorized in the name of the people to judge, and it issued the following decision:

The Request:

The Arab and International Police Cases Investigation Court in Basra requested the Federal Supreme Court according to its letter No. (11/2013) dated (01/21/2013) the following: In implementation of the decision of the Judge of the Arab and International Police Cases Investigation Court in Basra dated 20/20 1/2013 based on “the provisions of Article (3) of the bylaw of the work procedures of the Federal Supreme Court No. (1) for the year 2005, we present to your esteemed court the investigative papers of the accused person (Ain. Alif. Ain. Ain. Alif.) to demonstrate the constitutionality of the dissolved Revolution Command Council’s decision No. 1983 and Paragraph (VIII) of Resolution No. (42) for the year 1995 because the two aforementioned decisions contradict the provisions of Articles



(37, 47, 87) of the Constitution of the Republic of Iraq for the year 2005 and what the Federal Supreme Court has settled on in many of its decisions, including the decision No. (30/Federal/2012) and Resolution No. (15 / Federal / 2011) dated 02/22/2011 with appreciation.

The request was put under deliberation and the court issued its follow decision:

The decision:

During scrutiny and deliberation by the F.S.C., it found that Article (47) of the constitution stipulates the federal authorities, which are legislative, executive, and judicial. They exercise their competencies and tasks on the basis of the principle of separation of powers.

Article (87) of it stipulates that (the judicial authority is independent, and it is exercised by the courts of different types and degrees, and their decisions are issued in accordance with the law).

Paragraph (First / B) of Article (37) thereof stipulated (No one may be arrested or investigated except by virtue of a judicial decision).

Whereas, Clause (VIII) of the dissolved Revolutionary Command Council Resolution No. 42 of 4/24/1995 stipulated (The assistant director of the intelligence service in Baghdad and the directors

Republic of Iraq
Federal Supreme Court
Ref. 14/ federal /media/ ٢٠١٣



Kurdish text

of the intelligence service in other governorates shall be competent to adjudicate the cases arising from the crimes stipulated in the dissolved Revolution Command Council decision No. (1246) on 11/19/1983.

And in clause (ninth) thereof stipulated that (those mentioned in clauses (first) to (eighth) of this decision shall acquire a judicial authority to exercise the competencies entrusted to them and follow the conditions and procedures established in the Civil Procedure Law No. (83) of 1969 and the Code of Principles The criminal trials No. (23) for the year 1971, each within its scope of effect when exercising the tasks stipulated in this resolution).

And in clause (twelve) of the aforementioned decision stipulated that (decisions and judgments issued under Clause (VIII) of this decision may be appealed before a permanent appeals committee to be formed by a decision by the director of the intelligence service and whose decisions are final).

Paragraph (3) of the dissolved Revolutionary Command Council Resolution (1246) of 11/19/1983 states: (Violating the provisions of paragraphs (1) and (2) of this decision shall be punished with imprisonment for a period not exceeding three years and a fine not exceeding Five hundred dinars, or either of these two penalties).

Republic of Iraq
Federal Supreme Court
Ref. 14/ federal /media/ ٢٠١٣



Kurdish text

Whereas clauses (eighth, ninth and twelfth) of the dissolved Revolutionary Command Council Resolution No. (42) for the year 1995 amending the dissolved Revolution Command Council Resolution No. (1246) for the year 1983 have given criminal authority to impose a fine and imprisonment for the assistant director of the intelligence service in Baghdad and The directors of the intelligence service in other governorates decide on the cases arising from the crimes stipulated in the dissolved Revolutionary Command Council Resolution No. (1246) of 1983, and it gave the right to appeal the decision before an appeals committee formed by the director of the intelligence service, and its decisions are final

Whereas those who are entrusted with a criminal authority to rule are not among the judges affiliated with the judicial authority who are practicing purely judicial work and competencies, and as the investigation with persons, their arrest or the conduct of their trial is exclusively vested in the courts, and it is not permissible to exercise these powers by non-judges other than what was in the order before issuance And the entry into force of the constitution in 2005, as laws allowed the granting of penal powers to administrative employees and intelligence officers, as is the case in Clause (VIII) of the (dissolved) Revolutionary Command Council Resolution No. 24 of



1995 amending the dissolved Revolution Command Council Resolution No. 1246 of 1983, as there is no Judicial courts in the administrative formations to the fullest, but at the present time the courts have covered all the administrative formations (district, sup-district, and provincial centers).

Violations can be raised to it to be resolved quickly and in accordance with the law, so the text of Clause (VIII, Nine, and Twelfth) of the dissolved Revolutionary Command Council Resolution No. (42) for the year 1995 amending the dissolved Revolution Command Council Resolution No. (1246) for the year 1983 is considered suspended according to Article (87) of the Constitution which states (The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.).

And this is what the judiciary of this court has settled in its judiciary, including its decision No. (15 / Federal / 2011) of 01/22/2011, considering the text of Article (237 / Second / A) of Customs Law No. (23) of 1984 as a "suspended" decision Which was giving the authority to arrest the accused to the Director General of Customs or whoever authorized him.

And because the texts of the constitution are supreme in application and accordingly, the text of Clause (eight, ninth, and twelfth) of the dissolved Revolutionary Command Council Resolution (No. 42 of year 1995) amending the dissolved Revolutionary Command Council Resolution No. (1246 of year

Republic of Iraq
Federal Supreme Court
Ref. 14/ federal /media/ ٢٠١٣



Kurdish text

1983) is suspended for violating the constitution based on Articles (37, 47 and 87) of the Constitution of the Republic of Iraq for the year 2005.

It is not permissible for anyone other than judges to exercise judicial duties because these tasks have become exclusively within the competence of judges belonging to the judicial authority according to Article 87 of the Constitution.

The decision has been issued by agreement on 12/3/2013.