

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 16/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 21/4/2015 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 Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Request

The criminal court presidency of the judiciary office in Al-Resaffa/ third committee has requested the F.S.C. by its letter No.(3/Jim3/ recovery file/ 2015) dated on (23/2/2015) which stated the following:

**Sub/AL-Riyadh Agreement on Judicial Cooperation
and surrender for 1983
ratified by the law No.110 for 1983**

The presidency of public prosecute/ Miscellaneous branch has sent its letter No.(164/mim.sin/143/2014) on (5/1/2015) to Al-Resaffa criminal court with its attachment the recovery file of the Iraqi

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accused (mim.alif.alif) to consider his surrender as he is required for Emirates judicial authorities, that recovery file was registered for our court by the number (3/Jim 3/ recovery file/ 2015).

The Case Summary:

The accused (mim.alif.alif) has submitted not sufficient fund Cheque while he was in the UAE to the payee (ain.feh.ra.) and he is Iraqi also, drawn on a bank in the Emirate Al-Sharjah and found no balance covering the amount of the Cheque.

The Judicial proceedings:

The Sharjah misdemeanor court issued its decision No.(4266/2009) on (22/4/2009) that included sentencing the defendant (mim.alif.alif) in absentia to one year in prison, according to the provisions of article (401/1) of the federal penal law No.(3) for 1987, and article (643) of the Commercial Transactions law, issued by the federal law No.(18) for 1993 judgment in absentia that can be challenged within seven days from the date of informing, the UAE judicial authorities requested the surrender of the convict.

The Legal bases:

Article (40/Jim) of AL-Riyadh Agreement of 1983 stipulated that (surrender shall be binding to those sentenced in presence or in absentia by the courts of the contracting party requesting a penalty of deprivation of liberty for one year or more severe penalty for acts punishable by the law of the contracting party required to surrender to it), article (21/1st) of the Iraqi republic constitution for 2005 stipulated that (no Iraqi shall be surrendered to foreign entities and

authorities), article (358/4) of the amended criminal procedure law No.23 for 1971 stipulated that (surrender shall not be permitted if the wanted nationality is Iraqi), this court found that article (40/Jim) of AL-Riyadh agreement that is ratified by the law No.(110) for 1983 is contradict with articles (13/2nd and 21/1st) of the Iraqi republic constitution for 2005, and article 358/4 of the criminal procedure law No.23 for 1971, also the constitutional rules is on top of the legal pyramid in the state and it override other legal rules, the principal of the preeminent of the constitution required that the entire judicial regulation of the state is govern by it text, and whereas the valid constitution was issued on a date after the issuance the law of ratifying AL-Riyadh agreement on judicial cooperation No.(110) for 1983, which means that article (40/Jim) has repealed implicitly. For the aforementioned this court request from your estimated court to decide the legitimacy or illegitimacy of the article (40/Jim) of AL-Riyadh Agreement on judicial cooperation and surrender for1983 ratified by the law No.(110) for 1983 according to article (3) of the Bylaw No.(1) for 2005 issued by the F.S.C..

With all respect and appreciation

The request has been set under scrutiny and deliberation by the F.S.C., and issued the following decision.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the criminal court of the judiciary office in Al-Resaffa (third committee) challenged the constitutionality of article (40/Jim) of

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AL-Riyadh Agreement on judicial cooperation and surrender for 1983 ratified by the law No.(110) for 1983, because it became contradict with articles (13/2nd) and (21/1st) of the Iraqi republic constitution for 2005, and article 358/4 of the criminal procedure law No.(23) for 1971 therefore it requested the F.S.C. to decide the legitimacy of the article (40/Jim) of the mentioned AL-Riyadh Agreement that is ratified by the law No.(110) for 1983, by referring to article (40/Jim) of AL-Riyadh Agreement of 1983 it was clear that it stipulated (surrender shall be binding to those sentenced in presence or in absentia by the courts of the contracting party requesting a penalty of deprivation of liberty for one year or more severe penalty for acts punishable by the law of the contracting party required to surrender to it), article (21/1st) of the Iraqi republic constitution for 2005 stipulated that (no Iraqi shall be surrendered to foreign entities and authorities), article (358/4) of the amended criminal procedure law No.23 for 1971 stipulated that (surrender shall not be permitted if the wanted nationality is Iraqi), article (13/2nd) of the constitution stipulated (no law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void), whereas the Sharjah misdemeanor court issued it decision No.(4266/2009) on (22/4/2009) that included sentenced the defendant (mim.alif.alif) in absentia to one year in prison, according to the provisions of article (401/1) of the federal penal law No.(3) for 1987, and article (643) of the Commercial Transactions law issued by the federal law No.(18) for 1993 judgment in absentia that can be challenged within seven days from the date of informing, the UAE judicial authorities requested the surrender of the convict to it

to implement his penalty according to the mentioned decision in Al-Emirates state, as article (21/1st) of the Iraqi republic constitution for 2005 prevented the surrendered of the Iraqi to foreign entities and authorities, and the required by Al- Emirates state to be surrendered (mim.alif.alif) who is convict to one year in prison according to the provisions of article (401/1) of the federal penal law No.(3) for 1987 by the Sharjah misdemeanor court by it decision No.(4266/2009) on (22/4/2009), therefore article (40/Jim) became contradict with articles (21/1st) and (13/2nd) of the Iraqi republic constitution for 2005 which prevent his surrender to the state of United Arab Emirates and consider as suspended for violating article (21/1st) of the Iraqi republic constitution for 2005. Therefore the F.S.C. decided to rule by unconstitutionality of article (40/Jim) of AL-Riyadh Agreement on Judicial Cooperation and surrender for 1983 ratified by the law No.110 for 1983. For the listed reasons the decision has been issued decisively and unanimously on 21/4/2015.