



The Federal Supreme Court (F S C) has been convened on 27.6.2016 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, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Request

The Presidency of Maysan federal appeal Court/ department of administrative affairs had requested from the FSC according to its letter No. (1/1/1674) on (8.3.2016) to take a decision in the constitutional challenge presented by the judge (deputy of the public prosecutor) (sin.alif.mim). This request sent to the Presidency from the public prosecutor office in Maysan by the letter No. (1/3/202) on (29.6.2016) in addition to the challenge presented to it from the above-mentioned judge according to the letter of the public prosecution before Al-Majr Al-Kbeer investigation Court No. (13) On (25.2.2016) in the investigation case No. (647) for 2015. This case is tried by Al-Majr Al-Kbeer investigation Court, and it includes the following: best regards... according to the provisions of articles (13, 19, 37, 47, 87, 93/1st and 3rd) of the Republic of Iraq Constitution for 2005, and article (4/2nd) of the FSC's law No. (30) For 2005 and article (1/5th) of the public prosecution law No. (159) for 1979 (amended) and article (3) of the FSC's bylaw No. (1) For 2005. According to the investigation case No. (647) for 2015, which tried by Al-Majr Al-Kbeer investigation Court, it's summarized by the following: the accused (jim.shin.kha) had been arrested on (30.4.2015), he denied the charge of owning or possessing the car (Toyota Cresta) model (1990) white color, chasses No. (GX95-552747) which hasn't a registration plates. The accused sayings were noted initially and judicially, and he denied the charge. The sayings of the patrol members

whom arrested the accused were recorded as well, they confirmed that the car was parked on the roadside. The car had been seized according to a proper seizing minutes on (3.5.2015), the letter of traffic directorate of Maysan governorate No. (11903) on (4.5.2015) had been attached. This letter includes that the vehicle is not registered legally, as well as the letter of the southern region customs No. (22739) dated on (22.9.2015) which includes impossibility of providing the Court by the legitimacy of aforementioned car entry, and on (1.9.2015) the investigation judge ordered to annul the accusation and to release the aforementioned accused in addition to annul the bail cheque which token from him. The judge relied on insufficiency of evidence according to provisions of article (130/beh) of criminal procedure law No. (23 for 1971 amended). On (30.9.2015) the specialized investigation judge decided to refer the seized car to the southern region customs directorate to treat it according to the provisions of article (195) of the customs law No. (23) For 1984 (amended). On (22.2.2016). The investigation papers had been reviewed by the specialized investigation judge, and he issued a decision. The decision had been reviewed by us, and footnoted on (22.2.2016). On (25.2.2016) the judge issued his decision of rejecting the presented request by us according to the constitutional draft, he clarified: first/ article (195) of the customs law No. (23) For 1984 (amended) is imposing the seizing of goods (subject of smuggling crime) by the customs directorate employees, they are determined by the general director because they are employees of the executive power. Whereas the seizing is issued by a specialized judge or Court that belongs to the federal judicial power, not by employees and the constitutionality of the aforementioned article or suspending it according to the permanent Constitution. Second/ article (196) of the customs law No. (23) For 1984 (amended), the general director or whom he authorizes to seizing smuggled or confiscated goods in addition to the conveyance in case of the smugglers fled, or had been found. The general director regarded an employee belongs to the executive power, whereas the seizing issued by a judge or specialized Court belongs to the federal judicial power and the constitutionality of the aforementioned article or suspending it according to the permanent Constitution. Third/ article (234) of customs law No. (23) For 1984 (amended). The goods shall be seized by a decision from the general director or whom he authorizes, any method of challenge is unacceptable because the general director is an employee belongs to the

executive power. Whereas the seizing issued by a judge or specialized Court belongs to the federal judicial power, and article (234) is violating article (100) of the Constitution and the constitutionality of the aforementioned article according to the permanent Constitution. (Fourth) article (253) of the customs law No. (23) For 1984 (amended) elided prescription of the customs case or the penalty/ first ((ten years for smuggling crimes, or what considered a crime starting from the time of crime occurrence)). Whereas the case subject is a car without existence of accused, it's included by elided prescription of the case. The car seizing is one of the federal judicial power works. (Fifth) the order of the coalition provisional authority (dissolved) No. (25) For 2003 in chapter (1), the seized properties are allowed to be confiscated by the investigation judge and in the chapter (6) the discretion of criminal properties, as amending for the coalition provisional authority (dissolved) No. (35) For 2003 chapter (6) the independence of the Higher Judicial Council. Whereas the investigation judge belongs to the appeal Court, and this Court belongs to this Council doesn't yield to any power, control or overseeing by the Ministry of Justice. The validity of Iraqi law item shall be suspended, as well as the order of the coalition provisional authority (dissolved) No. (12) For 2004 chapter (7). The indications of the Ministry of justice which listed in the Iraqi law to maintain the independence of the judiciary are interpreted as indications to the Higher Judicial Council and its Head. The Courts are the only office that has the power to take decisions of disputes in this concern). The legitimacy of the order No. (25) For 2005 because it hadn't been annulled or amended according to the article (130) of the permanent Constitution. Sixth/ the order of coalition provisional authority (dissolved) No. (86) For 2004 (amended) chapter (12), unregistered vehicle shall not be steered and the traffic officer has the power to seizing the vehicle in case of traffic violation, until the registration process completed. The owner shall burden all the expenses of the aforementioned process, if the owner wasn't able to prove the date of vehicle entry to Iraq, the vehicle shall be delivered to the customs directorate for disposal according to the law. Whereas violating the chapter (12) for the Constitution in articles (19/1st & 2nd, 12th, 13th, 47, 87) the judiciary is independent and no power over the judiciary except the law. No individual shall be detained or interrogated but with a judicial decision, the investigation papers shall be reviewed by a specialized judge within a period not more than twenty-four hours from the date of arresting. This

period mustn't be extended only for one time and for the same period. Detention is prohibited, the investigation papers must be reviewed by the specialized investigation judge issue a judicial decision to confiscate the seized cars because the traffic officer is assigned for a public service, as well as he's considered a member of police officers and belong to the executive power. The annex mentioned (alif) of traffic regulations clause (27/thaa) the authority to impose a fine of (30000) dinars when the vehicle hasn't registration plates because it regarded a violation. Moreover, the constitutionality of the aforementioned chapter and suspending the seizing listed in it, because it violates the valid Constitution. (Seventh) the law of seized vehicles, discharged or disposal No. (8) For (1987) seizing vehicles which violates the provisions of traffic law, regulations and instructions. Whereas the law is violating the Constitution in articles (19/1st, 2nd, 12th, 13th, 47, 87) the judiciary is independent and no power over the judiciary except the law. No individual shall be detained or interrogated but with a judicial decision, the investigation papers must be reviewed by the specialized investigation judge within a period not more than twenty-four hours from the date of arresting the accused and the period shall not be extended but for one time and for the same period. Detention is prohibited, the investigation papers must be reviewed by the specialized investigation judge issue a judicial decision to confiscate the seized cars because the traffic officer is assigned for a public service, as well as he's considered a member of police officers and belong to the executive power and the constitutionality of the aforementioned law. He requested to deactivate the seizing above-mentioned because it's violate the Constitution. (Eighth) the law of seizure the smuggled funds which are prohibited from being exchanged in the local markets No. (18) For 2008 article (2/2nd/dal) confiscating the funds that prepared for smuggling and which are prohibited from being exchanged in the local markets, not more than (2.000.000) two millions Iraqi dinars. The smuggler shall be referred to the customs Court, the referral shouldn't be from the committee to the customs Court because the referral decision is organized by investigation judge according to article (131) of the criminal procedure law No. (23) For 1971(amended). Whereas the law is violating the Constitution in articles (19/1st, 2nd and 12th, 13th, 47, 87, 114), the judiciary is independent and no power above it except the law. No individual shall be arrested or being investigated but with a judicial decision, the investigation papers should be reviewed by a specialized judge

within time not more than twenty-four hours from the date of arresting the accused, and it mustn't be extended just for one time and for the same period. The detention is prohibited, the papers should be reviewed by the specialized investigation judge to issue a judicial decision of confiscating smuggled funds which are prohibited from being exchanged in the local markets. The committee is confiscating the smuggled funds which are prohibited from being exchanged in the local markets, and belong to the executive power. It's also violates the law of selling and leasing the state's properties and the private sector No. (21) For 2013 for the Minister of the Head of office not associated to a Ministry, and suspending the seizing because it violates the valid Constitution which considered a specialty of the Federal Judicial power and the Courts carry out this process despite of its types and levels. These Courts issues its judgments according to the law, in the present time the Court had covered all the administrative formations (district, sub-district, centers of the governorates). The felonies, misdemeanors and crimes could be referred to these Courts to take a decision about it according to the law, no one except the judges can exercise the judicial tasks. These tasks became a specialty of the judges who belongs to the judicial power exclusively. (Ninth) the order of the coalition provisional authority (dissolved) No. (25) For 2003 in the part (5) confiscating the criminal properties, the right of challenging the decision of the investigation judge within (30) days before the criminal Court within the venue jurisdiction, and to notify the specialized Presidency appeal Court by the criminal properties according to the part (6) and notifying the Higher Judicial Council to dispose it according to the law of selling and leasing the state's properties No. (21) For 2013 in articles (29-34) and for the reasons listed, as well as another reasons may your honorable Court may see. The order is yours, please to review the claim and to take required decision. Pleas, accept our gratitude with all respect. The request set for scrutiny and deliberation by the FSC, and the Court reached the following decision:-

The decision

During scrutiny and deliberation by the FSC, the court found that the deputy of the public prosecutor before the investigation Court of Al-Majr Al-Kbeer requested from the aforementioned Court in his request dated on (22.2.2016) in the investigative case No. (647) for 2015 which tried by this Court to accommodate the tried case in the investigative papers above-

mentioned according to the law No. (8) For 1987. He claimed that the aforementioned law is the most accordance from the customs law No. (23) For 1984 (amended), and the order of coalition provisional authority (dissolved) No. (25) For 2003. Moreover, to confiscate the vehicle and to notify the Presidency of Maysan Federal appeal Court with this process to take what required according to the law No. (21) For 2008 (amended). The investigation judge of Al-Majr Al-Kbeer decided according to his decision dated on (25.2.2016) to reject the request of the public prosecutor's deputy, and he decided to accommodate the case tried before him according to article (195) of customs law No. (23) For 1984 (amended) and its amendments because it's more accommodation. The public prosecutor's deputy challenge the decision appealingly before the customs Court of the southern region – as cassation Court – in the Presidency of federal appeal Court of Basra. He challenged the decision before this Court for the unconstitutionality of article (195) of customs law No. (23) For 1984 (amended) with the other articles above-mentioned. The Presidency of customs Court of the southern region – as cassation Court – and according to its cassation decision No. (44/cassation/2016) on (20.4.2016) had decided to veto the decision of the investigation judge dated on (25.2.2016), and decided to accommodate the case according to article (194) of the customs law, also to replace the case to its Court to complete the legal procedures and to refer the case to the specialized Court. Whereas the challenger is challenging according to his challenge presented to the FSC the unconstitutionality of article (195) of customs law No. (23) For 1984 (amended). The tried case before the investigation Court of Al-Majr Al-Kbeer is according to article (194) of the law according to the law according to the decision issued by the specialized Court above-mentioned. Therefore, the aforementioned challenge is futile because the challenged unconstitutional article became irrelevant to the case's subject, also the other article which challenged by the challenger for unconstitutionality and mentioned in the preamble of the decision, the Court found it irrelevant to the case's subject as well. It's not permissible to list challenges of unconstitutionality before the FSC if they weren't relevant to the case's subject, and in this case it must be rejected. For the aforementioned reasons, the Court decided to reject the challenges presented by the challenger because they're not legal. The decision has been issued unanimously on 27.6.2016.