



The Federal Supreme Court (F S C) has been convened on 31.3.2014 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 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 Al-Qadisiyah appeal federal Court/the administrative affairs department/ requested from the FSC/ according to its letter No. (zin/10/282) on (6.2.2014) to decide the constitutionality of the article ((111)) of the criminal procedure law for the interior security force No. (17) For 2008 which was received by the court according to the letter of Al-Diwaniya investigation Court No. (873) on (5.2.2014) and (874 on 4.2.2014) with a photocopy of the investigation dossiers of the defendants (alif.ain.sin) and (sin.heh.kaf). The letter of Al-Diwaniyah investigation Court No. (874) on (4.2.2014) had included the following: on (26.1.2014) the complainants each of (dhad.alif.jim) and (ain.alif.jim) had complained the defendants each of the Captain (alif.ain.sin) and the policeman (sin.heh.kaf) by the charge of assaulting the complainants by beating while the defendants were assigned to secure Al-Arouba area after the winning of the Iraqi National team, the complainants acquired medical reports and their sayings approved by the witnesses. The defendants were summoned according to the article (413/1) penalties within the meaning of accomplice articles (47, 48, 49 of it) by the legal department of the directorate of Al-Diwaniyah police. After notifying the defendants by their references because they are personnel of the interior security force, we found that there are contexts that require the approval of the Ministry to notifying the

policeman or arresting him if the crime was during the duty according to the administrative order No. (dal.21178) on (19.11.2013) herewith a photocopy of it. This matter relied on the provisions of the article (111) of the civil procedure law for the interior security force. Whereas the text of the article (111) of the abovementioned law stipulates (except the requests of the interior security force Courts, no policeman should be notified, summon him or arrested but with approval from the Minister or whom he authorizes if the action perpetrated during his duty). The Court finds that the article aforementioned is contradicting the valid Iraqi constitution for 2005 for the following reasons: 1. the article (88) of the Iraqi valid constitution stipulates (Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice). Whereas justice is translated by the address of the independent judiciary, and this principle became a constitutional and consistent right that related to human rights. The only text about this principle is not enough unless it becomes a practical fact by implementing the legislative texts (the laws issued with the constitution). 2. The judiciary has the general domain, and this principle is related to a natural right of individuals, including the right of litigation and authorizing any other body of inhibiting the individuals from practicing their right by recurring to the judiciary with any obstacle that may be hindering them from litigation, and this matter considered a confiscation of this right which considered a conditioned stipulation of the judiciary to trying all litigations, and article (111) of the interior security force procedure law considered an intervention by the executive power in the affair of the judiciary power, especially in the matter of unaccepting the notifying or arresting the policeman by the Minister of interior or his deputy according to what abovementioned article stipulated. 3. Any legislation or order may be depriving the individuals of their right by recurring to the judiciary to demand their rights considered an offense and violating the judiciary independence. It's also considered an obstacle from the executive power in case of not notifying its personnel or arresting them. 4. The Iraqi legislator had annulled the article (136/beh) of the criminal procedure law according to the law (8) for 2011 which didn't allow to refer the accused to the courts in a crime perpetrated during his official duty or because of it, but with permission from the concerned Minister, a fortiori is to take the legal procedures against the accused during his duty and notifying him an addition to annulling the article (111) of the

interior security force procedure law. 5. The constitution is the highest law in Iraq, and it's obliging all over the state without any exception. Any text that contradicts the constitution regarded void, and this is what the text of article (13) of the constitution stipulated. Whereas the text of the article (111) of the interior security force procedure law contradicts the text of an article (88) of the Iraqi constitution. This matter makes the text of article (111) void according to clause (2nd) of article (13) of the constitution. Accordingly, the court is requesting from your honorable court according to the provisions of article (3) of the FSC's bylaw No. (1) For (2005) to decide the legitimacy of the article (111) of the interior security force procedure law No. (17) For 2008 or not. Please review, with respect. The request has been set for scrutiny and deliberation by the FSC, and the court reached the following decision:

The decision

During the scrutiny and deliberation by the FSC, the court found that Al-Diwaniya investigation Court is challenging the constitutionality of the article (111) of the criminal procedure law of the interior security force No. (17) for 2008 which stipulates (except the requests of the interior security force, the policeman shall not be notified to attend or to be arrested, but with approval from the Minister or whom he may authorize if the action had been perpetrated during his duty) under the pretense it contradicts the provisions of the article (88) of the Republic of Iraq constitution for 2005 which stipulates (Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice) and for the other reasons which listed in the letter of Al-Diwaniya investigation Court abovementioned. When scrutinizing the article (112) of the criminal procedure law of the interior security force No. (17) For 2008 which stipulated in (1st) on (the officer could be arrested if he perpetrated a witnessed crime, and to extradites him to the nearest police station or any directorate of the interior security force directorates). It also stipulated in (2nd) on (the policemen, not the officers could be arrested if they perpetrated a crime or felony, and to keep him in custody till the investigation procedures are over. The investigation period shall not exceed (30) days from the day of arrestment. The office of the legal adviser shall be notified in addition to the office of the arrested by the token procedures immediately). The FSC finds that the immunity granted to

the policeman according to the article (111) of the aforementioned law by not taking the judicial procedures mentioned in the article (111) of the abovementioned law for the policeman but with approval from the Minister or whom he authorizes had been bypassed and the immunity had been removed after allowing it in the clause (1st) and (2nd) of the article (112) of the aforementioned law by arresting the policeman with the method listed in the clause (1st) of it for the officer, and the method listed in the clause (2nd) of it for the policeman, not the officers. Moreover, the abstention of the Minister or whom he authorizes by not agree to notify the policeman, or not let him attend or to be arrested if he perpetrated an action during his duty. All these matters are regarded as administrative decisions, and it could be challenged by the public prosecutor or anyone who has an interest if he found that the Minister is abusive in using his legal powers of not approving at the administrative judicial Court. The decision issued by this Court is appealable at the specialized office. Therefore, what is listed in the article (111) of the interior security force law No. (17) for 2008 had been listed for regulatory matters. Accordingly, and for the aforementioned reasons, article (111) of the aforementioned law does not contradict the article (88) of the Republic of Iraq constitution for 2005. The Court decided to reject the case, and the decision has been issued decisively and unanimously according to the provisions of clause (2nd) of the article (5) of the FSC law No. (30) For 2005 on 31.3.2014.