

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.26 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 15/5/2016, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Request:

The presidency of the federal appeal court of Misan/ administration affairs section, it requested from the FSC according to its letter No.(1/1/2147) on (29/3/2016) to decide on the Constitutionality of the article (6/5) from the law of implementation No.(45) for 1980 (amended) that was listed to the court by a letter from Ali AL-Gharbi court of first instant No.(1065) on (27/3/2016) with the executively dossier No.(45/Teh/2016) of Ali AL-Gharbi implementation directorate that related to the implementation requester (the Lender) (Waw.Jim.Shin) and the debtor (Shin.Ha.Beh) it included the challenge of the first judge of Ali AL-Gharbi court of the first instance that dated on (27/3/2016) what its text is: it was noticed during the scrutiny of the court for the texts of the provisions of the implementation law No.(45 for 1980) and its amendments, that the text of the article (6) the fifth clause of it which stipulated (the first judge of the first instance shall be considered as the justice executive if it has no executive. The minister of justice may place any judge to act as the justice executive.) it violated the provisions and the texts of Iraq Constiution for 2005 in the article (47) from it which stipulated (The federal powers shall consist of the legislative, executive, and

judicial powers and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.) also, violated what the article (98/1st) from the constitution stipulated (A judge or public prosecutor is prohibited from the following: First: Combining a judicial position with legislative and executive positions and any other employment.) and what the article (89) from the Constitution stipulated (The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Appeal, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law.) it is noticed from the text of the aforementioned article that the judicial power formations have listed exclusively whereas the work of judiciary differs in terms of competences, tasks, and functional dependency from works, competences, and functional dependency of the justice executive. the acting of the judge as the justice executive is considered as a combination of the judicial and executive jobs at the same time, so the court requests to annul the text of the article (6/ the clause (5)) from the law of implementation No.(45) for 1980 and its amendments and to decided the unconstitutionality of the aforementioned article because it clearly violated the provisions and texts of Iraq Constitution, according to the authorities of your respected court which were stipulated in the article (93/1st) from the Constitution of Iraq for 2005. Please accept our thanks, respect, and appreciation. The request had been placed and scrutiny and deliberation by the FSC and it reached the following decision:

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the first judge of Ali AL-Gharbi court of the first instance challenges the article (6/5th) from the law of implementation No.(45) for 1980 (amended) by its unconstitutionality which stipulated that (the first judge of the first instance shall be considered as the justice executive if it has no executive. The minister of justice may place any judge to act as the justice executive.) because it violates the articles (47, 98/1st, 89) from the Constitution of the Republic of Iraq for 2005. The FSC found that the first judge of the court of the first instance when he practices his work as a justice executive according to the

article(6/5th) from the law of the implementation No.(45) for 1980 (amended) he practices judicial works that are complementary for his judicial works in the courts such as implementation of the judicial provisions that were issued from the competent courts like imprisonment of the debtor that refrains from showing a settlement. Also, the judge takes the judicial procedures to settle the debts of the executive dossiers, and he decides the imposing of a settlement against the debtor. All of that is considered as a judicial work and it is not considered a combination of executive and judicial jobs, it is considered as one job and it is a judicial job. From another side, it was noticed that the challenger didn't take into consideration what was listed in the provision of the section (7) from the note of the temporary union power No.(12 for 2004 (administration of independent judicial system) which decided to (explain the signs that were listed in Iraqi law to the ministry of justice where that was necessary and suitable in the light of the order No.(35) that was issued from the temporary union power or the law of Iraq state administration during the transitional period, or explain where that was necessary and suitable in another method to keep the independence of the judiciary. It mentioned to the council of judiciary or its president ... Etc). so and according to the above, the judge when practices his executive work is considered as practicing for his judicial work and has no oversight on him from another power. So there is no contradiction in his work or violation for the principle of the separation between the powers that were stipulated in the article (47) from the Constitution of the Republic of Iraq for 2005. So the article (6/5th) from the law of the implementation No.(45) for 1980 (amended) which shall be read in the light of the provision of the section (7) from the order No.(12) for 2004, it doesn't contrary to the provisions of the Constitution and the presented challenge has no more reliance on any basis of law or Constitution which is required to be rejected. So it was decided to be rejected unanimously on 15/5/2016.