

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.31/federal/media/2019



Kurdish text

The Federal Supreme Court has been convened on 3/4/2019 headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Akram Taha Mohammed ,Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman and Mohammed Qasim AL-Janbi who authorized in the name of the people to judge and they made the following decision :

the Challenger : first judge, Baghdad AL-Jadida court of investigation

The Challenge Body :

The judge of Baghdad AL-Jadida in the cassation court presidency of Baghdad- Risafa challenged at the FSC by the unconstitutionality of the revolutionary leadership council (dissolved) decision No.(157) for 1996 according to the listed letter to this court from the cassation court presidency Baghdad/ AL-Risafa Federal/office of the cassation president/No.(805/office/2019) on (19/3/2019) , the challenge text is : good greeting : Mim/ challenged the decision of the revolutionary leadership council (dissolved) No.(157) for 1996 by its unconstitutionality for the following reasons :

1. the text of the above decision (The accused shall not be released for the offence of possessing or concealing the use of a vehicle derived from a felony or disposing of it in any way with his knowledge of that, whether the accused is in the investigation or trial role until a decisive judgment issued for this case) the court found the aforementioned decision text violates the articles (15,37/1st/Alif and Beh) of the constitution of Iraq republic for 2005, whereas the articles (15) stipulated (Every individual has the right to enjoy

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life, security and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority.) , the article (37/1st/Alif and Beh) stipulated (The liberty and dignity of man shall be protected.) (No person may be kept in custody or investigated except according to a judicial decision.) whereas the liberty of the human is one of the principles that confirmed by the international pacts and all the national Constitutions one of them is the Constitution of Iraq republic for 2005. The continued arrest of the accused and unreleased him on bail for the listed crimes in the aforementioned decisions is unfair decision, inequitable and against the human rights to have procedures and fair trial, whereas the honorable court in many decisions decided the unconstitutionality of the decisions that included accused unreleased on bail in the investigation or trial, last of them is the decision No.(10/federal/2019) based on this and due to the availability of reasons to bring the case to your honorable court, relying on the provisions of the article (4/1st) of the FSC law No.(30) for 2005, and the article (3) from the bylaw, workflow procedures in the FSC No.(1) for 2005, because the case related to the arrested accused (Ha.Jim.Kaf) and (Alif.Jim.Kaf) who arrested according to the provisions of the article (461) of the penal, the court refused to released them on bail relying on the challenged decision by its unconstitutionality. For the above the court requests from your honorable court the decision of the unconstitutionality of the decision of revolutionary leadership council (dissolved) No.(157) for 1996 for its violation for the text of the articles (15 and 37) of the Iraq republic Constitution for 2005. Worthy to mention the definition of vehicle includes the motorcycle according to the first section/1/Sin of the traffic management law for 2004, Highly appreciated for your court.

The Decision :

During the scrutiny and deliberation by the FSC the court found that the challenger challenges the unconstitutionality of the article (1) of the revolutionary leadership council (dissolved) decision No.(157) for 1996

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which prohibited to release of the accused by crime of possessing or concealing the use of a vehicle derived from a felony or disposing of it in any way with his knowledge of that, whether the accused is in the investigation or trial role until a decisive judgment issued for this case. The FSC found that The accused is innocent until proven guilty in a fair legal trial according to the article (19/fifth) of the Iraq republic Constitution for 2005, and The liberty and dignity of man shall be protected according to the article (37/1st/Alif) of the Constitution, and deprivation of this free should be organized by a law which let the judiciary to decide the legal position to arrest the accused or released him on guaranteed bail according to the seriousness of the offence, accused status and his conditions as applying of the provisions of the articles (19/1st), (88) and (47) of the Constitution, which decided that The judiciary is independent and no power is above the judiciary except the

law. And the principle of separation between the governmental powers each one works in its competence, whereas the criminal procedure law No.(23) for 1971 as amended when it was issued it organized this subject (the subject of the challenge) in accurate way, considering the public interest and the personal freedom in the articles (109) and (110) of it, whereas it determined the offences which accused released on bail is unlawful and it is permissible in other offences, left the consideration of it to the subject judge in the investigation and trial, he is the one who consider extent of crime dangerous which directed to the accused and the extent of the accused dangerous or his effect on the proceeding of the investigation and the trial if he was released on bail granter and guaranteed. Restriction the judge absolutely as it in the article (1) of the decision of the revolutionary leadership council (dissolved) No.(157) for 1996 is contrary to the aforementioned constitutional articles. Based on this the FSC decided the unconstitutionality of the article (1) of) of the decision of the revolutionary leadership council (dissolved) No.(157) for 1996 . the decision was issued unanimously, decisively according to the provision of the article (5/2nd) of the FSC law No.(30) for 2005 and the article (94) of the constitution on 3/4/2019.

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