



The Federal Supreme Court (F.S.C.) has been convened on 25.4.2021 headed by the Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali whom are authorized to judge in the name of the people, they made the following decision:

The Request:

The first Court of Internal Security Forces of sector five requested in its letter no.(ha/2265) on 30.3.2020 attached to the lawsuit no. (930/2019) of the accused (Ra. Ain. Hasan Abd Alzahraa Taha), and according to the decision of the mentioned court in the minute of the session dated on 29.3.2020 to state the constitutionality of the dissolved revolutionary command Council decision no.(39) on 1994 (amended), the minute of the session included the following:

- 1- The First Court of Internal Security Forces issued it decision no.(930/2019) on 8.12.2019 which included the conviction of the mentioned accused under article (50/1) of the pharmacy practicing law no. (40) for 1970 amended, after replacing the referral article from the dissolved revolutionary command Council decision no.

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- (39) on 1994 amended to the mentioned conviction article.
- 2- The lawsuit was sent to the Court of Cassation of the Internal Security Forces for the subject of constitutional appeal, it was returned to the court after revoking the decision for the purpose of convicting the accused under the provisions of the mentioned decision above.
- 3- The first Court of Internal Security Forces sees that the decision no.(39) of 1994 (amended) is unconstitutional for the following reasons:
- a) As the mentioned decision of the dissolved Revolutionary Command Council contains in its penal provisions death penalty, which is considered as prevention for the court from allowing to bailment the accused, which contradicts the text of article (37/1st/a) of the Constitution which stated that (The liberty and dignity of man shall be protected) and also contradicts with the provisions of article (2/c) of the Constitution which stated that (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), and also contradicts with the provision of article (19/5th) of the Constitution which states that (the accused is innocent until proven guilty in a fair legal trial), the

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accused in this lawsuit remain in custody in case he was accused according to the mentioned decision, the lawsuit is postponed under article (4) of the F.S.C. bylaw until deciding the request, the F.S.C. has already decided in its decision no.(10/federal) in 26.2.2019 that paragraph (2) of the dissolved revolutionary command Council decision no.(76) of 1994 is unconstitutional.

- b) The crime that was organized by the mentioned dissolved revolutionary command Council decision are crimes that was listed in the valid penalty laws such as the penalty law no.(111) of 1969 amended, and the pharmacy practicing law no.(40) of 1970 amended, Customs law no.(23) for 1984 amended. all the crimes subject of consideration in these laws was described according to its dangerous and severe to be misdemeanors, the law under challenge has excess in the penalties listed in it that it could be count as unjust provision or illegal which contradicts the general criminal policy of the State especially that it was enacted in circumstances during the period of economic blockade that was ended after 2003.
- c) As implementing the decision and ruling on the accused person according to it will leads to expel the

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convicted according to the provision of article (38/1st/Jim) of the Penalty Law of the of Internal Security Forces no. (14) of 2008, considering that the decision under challenge stated the acts listing in it as offences against a person's honor which contradicts with the text of article (19/6th) of the Constitution which stated that (every person shall have the right to be treated with justice in judicial and administrative proceedings), therefore he requested to rule that the decision of the dissolved revolutionary command Council no.(39) of 1994 is unconstitutional. The set has been set under scrutiny and deliberation by the F.S.C. and it decided the following:

The decision:

During scrutiny and deliberation by the F.S.C., it found that on 28.5.2019 the police station of Al-Shalamche submitted report to the judge of Shatt al-Arab Investigation court which included that the directorate of Al-Shalamche port/ operation and plans under it letter no.(1895) on 27.5.2019 it referred the accused (Hasan Abd Alzahraa Taha) to the mention station, who was seized in possession of a quantity of pills whose quantity and type are indicated according to the seizure minute dated on 28.5.2019. The statements of the aforementioned

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accused were recorded, he stated that he travels from time to time to the Islamic Republic of Iran, and that he brought the aforementioned pills from the Iranian city al-Hamra, he was arrested by the Al-Shalamjah Customs detachment, and that he is affiliated with the Ministry of Interior, and he was arrested according to the provisions of the dissolved Revolution Command Council's amended decision no.(39) of 1994, on 3.10.2019 the aforementioned accused was referred to the Basra Criminal Court / the second region to conduct his trial in a non-brief case in accordance with the provisions of the above decision, and because of the public prosecutor's lack of conviction he challenged it appealingly, as a result of that challenge the mentioned court issued its decision no.(369/teh. Jim./2019) on 10.10.2019 which included (the accused Hasan Abd Alzahraa Taha is an affiliate with the Ministry of Interior/ south oil police directorate therefore it was supposed to refer the lawsuit to south oil police directorate/ legal affairs in order to organize the referral order by them to the court of internal security forces of fifth region according to the jurisdiction under the provision of article (25/1st/alif) of the law of procedures for trials of the Internal Security Forces for not arranging a personal right for others), after referring the accused to the court of internal security forces of fifth region under the referral order no.(79) on 14.11.2019, the court issued it decision no.(ha.mim./930 /2019) on 8.12.2019 which

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included the conviction of the accused (Hasan Abd Alzahraa Taha) under the provision of article (50/1) of the pharmacy practicing law no. (40) for 1970 and decided its penalty, and rule against him with simple confinement for (six months) according to the mentioned article, and remove him from service and disqualify him from the job during the term of his sentence in implementing of articles (39 and 40/2nd) of the penalty law of the internal security forces no.(14) of 2008, the decision was repealed by the decision of the cassation court of internal security forces no.(139/2020) on 26.2.2020, the last decision included that the accused act is in accordance with the provision of decision no.(39) of 1994, after returning the dossier of the mentioned accused to the court of internal security forces of fifth region it requested to present the subject on the F.S.C. to decide it request of challenging with unconstitutionality of the decision no.(39) of 1994 amended,. the F.S.C. finds that the direction of the first court of internal security forces of fifth region of postponing the lawsuit under article (4) of the F.S.C. bylaw no. (1) of 2005 until deciding the challenge submitted by it to the final court while the accused is arrested is direction with no substantiation of law, and is not in accordance with rules of justice and human rights, and that leads to elongating the arresting period of the accused, the postponing is limited by what stipulated in article (4) of the bylaw, as for article (3) of the bylaw it doesn't required

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postponing. For the aforementioned the F.S.C. finds that the articles of the amended decision no.(39) of 1994 (1, 2, 3, and 4) didn't includes what considers as violation for the constitutional text, and doesn't contradicts the text of articles (2/c , 19/5th, 37/1st/a) of the constitution of 2005, the need for the mentioned legal text of the decision is still exist to fight the crimes that fit to the mentioned describe in articles (1, 2) of the decision, the adaptation of the accused act who committed these according to the mentioned articles of the decision doesn't contradicts with the freedom and dignity of human, and doesn't contradicts with basic rights and freedoms listed in the Constitution. on the other side the court finds that what included in article (5) of the decision no. (39) of 1994 amended which stated that (the accused in the crime stipulated in paragraph (1) of this decision shall be referred to privet court in the internal Ministry by a decision from the competent investigation judge), the mentioned text contradicts with the text of article (95) of the Constitution which stipulates that (the establishment of special or extraordinary courts is prohibited), this contradiction is binding to rule the unconstitutionality of that article, as the constitutional provisions has the superiority in the implementation. Accordingly, the F.S.C. decided to dismiss the challenge of unconstitutionality of articles (1, 2, 3, 4) of decision no.(39) of 1994 amended, and to rule that article (5) of the same decision is unconstitutional. This decision has been

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Republic of Iraq
Federal Supreme Court
Ref. 32/ federal / 2020



Kurdish text

issued unanimously final and binding on all authorities according to the provisions of articles (93/1st, 94) of the Constitution of Iraq of 2005, and article (5/2nd) of the F.S.C. amended law, on 25.4.2021.

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