



The Federal Supreme Court (F.S.C.) has been convened on 5.5.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

The Request:

The Presidency of the Nineveh Criminal Court - Third Authority in its cassation capacity requested from the F.S.C. by its letter no.(95/teh.heh.3/2014) dated on 3.3.2014 what follows: An indication of the criminal case of the accused arrested (ain.ra.heh.shin.) referred by the Mosul Misdemeanor Court to conduct his trial in accordance with Article (459) of the Penal Code according to the referral decision no.(92) on 17.2.2014 and what was mentioned in the review of the Deputy Prosecutor General no. (14/2014) on 23.2.2014 requesting in it to intervene appealingly with the above decision of referring and revoking it and returning the investigative papers to the Investigation Court in order to refer them to the legal department in the Nineveh Police Directorate according to the functional competence, as adjudicate them is within the jurisdiction of the Internal Security Forces Court in the city of Mosul because the defendant and the complainant in the case are affiliated in the



police, according to article (25/1st) which defined the crimes that the internal security forces court is competent to consider, clause (b) of it stated ((the crime committed by a policeman against another policeman, whether it is related to the job or not)). On 27.2.2014 the Nineveh Criminal Court - Third Authority in its cassation capacity issued the decision No.(95/teh.heh 3/2014) to delay considering the request to intervene appealingly submitted by the Deputy Prosecutor General until the F.S.C. decide the legitimacy of the provision that he based his request on, also the legal articles by which the Internal Security Forces Courts was formed. As this court found that article (25) that stated the jurisdictions of the Internal Security Forces Courts, also article (28) under which these courts was formed, and article (77) which by it the Internal Security Forces cassation Court was formed, that monitor the decision of the Internal Security Forces Courts. It violated the constitution of 2005 for the following reasons:

First: article (99) of the constitution stated that (a law shall regulate the military judiciary and shall specify the jurisdiction of military courts, which are limited to crimes of a military nature committed by members of the armed forces and security forces, and within the limits established by law), so the competent of the military courts and Internal Security Forces Courts limited to the crimes of a military nature, the crimes related to the function, as stated in the Internal Security Forces Penalty Code no.(14) for 2008 or the



Criminal Procedures Law for the Internal Security Forces, (alif) and (beh) made the jurisdiction of the Internal Security Forces courts considering crimes of a military nature or the crimes related to the function as long as the crime committed by the police man didn't effects personal right of other as stated in clause (a) of first paragraph of the mentioned article, or the crime is committed by a police man against another police man whether it was related to the function or to other according to what stated in clause (b) of first paragraph of the same article, that is clear violation to the provision of article (99) of the constitution.

Second: the Internal Security Forces courts was established under article (28) of the Criminal Procedures Law for the Internal Security Forces, the Cassation Court of the Internal Security Forces that was established according to article (77) of it, shall practice monitoring the decisions of the Internal Security Forces Courts which was linked administratively to the Minister of internal affairs under article (116) of the same law. The court finds that forming the Internal Security Forces Courts violated the constitution, as article (99) of the constitution mentioned the military judiciary and it was listed in chapter three of the constitution that manages the judiciary authority, accordingly the Military courts and the Internal Security Forces Courts should have associated with the judicial authority, or at least the judicial authority should has



the right to monitor its decisions otherwise it becomes private courts which was prohibited under article (95) of the constitution, that is considered a violation of the principle of judicial independence stated in article (19/1) and (87) of the constitution, which grants that re-considering the judicial decisions is competent of the judiciary authority and that judicial custody is complete and full.

For the aforementioned we request your court to consider the legitimacy of articles (28, 77, 25/1st) of the Criminal Procedures Law according to article (4/2nd) of the F.S.C. law no.(30) for 2005 and article (3) of the F.S.C. bylaw no.(1) for 2005.

The request has been scrutinized and deliberated by the F.S.C. and it decided the following:

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the Presidency of the Nineveh Criminal Court - Third Authority in its cassation capacity challenged the constitutionality of articles (28, 77, 25/1st) of the Criminal Procedures Law of the Internal Security Forces no.(17) for 2008 under the claim of violating the provisions of articles (19/1st, 87, 99) of the constitution. When referring to article (25/1st) of the mentioned law we found that it stated in paragraph (1st) that ((first: the Internal Security Forces Court shall have jurisdiction over the following crimes, (a) the crimes stipulated in the Penal Code of the Internal Security Forces Penal Code



no.(111) for 1969, or other penal laws, if they are committed by a policeman and do not result in a personal right for others. (b) the crime committed by a policeman against another policeman, whether it is related to the job or not)). When referring to the text of article (99) of the constitution of 2005 which stated ((a law shall regulate the military judiciary and shall specify the jurisdiction of military courts, which are limited to crimes of a military nature committed by members of the armed forces and security forces, and within the limits established by law)). The obligation of enacting the law being challenged for unconstitutionality is to achieve fair trial for the policeman with providing the legal guarantees for him. In order to achieve that the legislator when enacted the law treated the subject of challenge by stating in paragraph (2nd) of article (25) of the law no.(17) for 2008 that (the person in charge of the investigation or the investigative council, with the approval of who ordered the referral, may refer the investigative case to the civil penal courts if the crime is not related to the job or because of it, or it involves civil parties), as this clause is completing part for the text of article (25/1st/a, b) of the Criminal Procedures Law exclude the crimes that is not within function tasks of the internal security forces members, also the crimes involves civil party of this law provisions. Accordingly the F.S.C. don't finds contradiction between the provision being challenged for unconstitutionality and between the provision of articles (19/1st, 87, 99) of the constitution, but it is in accordance with its provisions as it considered the duties and tasks

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of the internal security forces members the same as other groups with specific function like judges. For the aforementioned, the court decided to dismiss the request. This decision has been issued unanimously on 5.5.2014 .