



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-Janabi who authorized in the name of the people to judge and they made the following decision :

The challenger: Deputy prosecutor before AL-Nasiriya investigation court.

Challenge body:

The deputy prosecutor challenged before AL-Nasiriya investigation court in the Dhi-Qar federal cassation court presidency before the FSC by the unconstitutionality of the article (2/1st) of the combating the smuggling of oil and petroleum products law No.(41) for 2008 which listed to this court according to the letter of presidency of Dhi-Qar federal cassation court/office of cassation head No.1/1/office/2019/1197) dated on (13/3/2019) the challenge text is:

Through access to the investigation papers of the arrested accused (Ghain.Mim.Waw) according to the provision of the third article of the smuggling of oil and petroleum products law No.(41) for 2008 and relying on the provisions of the articles (3 and 4) of the FSC bylaw No.(1) for 2005 which allowed to the court to challenge by the unconstitutionality of the laws in the tried cases before the court, whereas the public prosecutors are inseparable part of the court according to the provisions of the article (5/Feh11) of the public prosecutors law which gave the public prosecutors the right to challenge the laws, regulations, and instructions by its

unconstitutionality. Continuing of the accused arrest and unreleased him on bail is what listed in the article (2/1st) of the above law which stipulated (The driver of the vehicle, the boat, the captain of the ship or other means of transport and the persons involved in the commission of the crime who have been found guilty according to the provisions of this Law shall be referred to The Court of Customs and shall not be released at the investigation and trial stages until after a decisive decision has been issued in the case.). the last part of this item violates the Constitution provisions especially the articles (19,37/1st,88 and 17) of it, it considered as interfere by the legislator in the judiciary power acts, whereas your respected court take similar decisions in many cases of this type the last one was its decision (10/federal/2019) on (26/2/2019) included the decision of unconstitutionality of the clause (2) of the revolutionary leadership council (dissolved) decision No.(76) for 1994, and the decision of the unconstitutionality of the revolutionary leadership council (dissolved) decision No.(120) for 1994 for the same reasons and justifications we request the decision to annul the last part of the article (2) of the item /1st/ of the smuggling of oil and petroleum products law No.(41) for 2008, most thanks and appreciation for you .

The Decision:

During the scrutiny and deliberation by the FSC the court found that the challenger challenges the unconstitutionality of the last part of the article (2/1st) of the Law No.(41) for 2008 ((the smuggling of oil and petroleum products law, which prohibited to release The driver of the vehicle, the boat, the captain of the ship or other means of transport and the persons involved in the commission of the crime who have been found guilty according to the provisions of the aforementioned Law at the investigation and trial stages until after a decisive decision has been issued in the case.)). By checking the case and the challenge the FSC found that the principle of the Accused is the innocence until proven guilty in a legal justice trial according to the article (19/5th) of Iraq republic Constitution for 2005 and the liberty and dignity of the human shall be protected according to the

provisions of the article (37/1st/Alif) of the Constitution, prohibition of this liberty shall be organized by law leaves to the judiciary to consider the legal position in the accused arrest or to released him on guaranteed bail according to the offence seriousness and the accused position and his conditions, applying for the provisions of the article (19/1st,88 and 47) of the Constitution which decided the judiciary independence in taking his provisions and decisions and there is no power over the judiciary but the law, and by the principle of separation between the powers each of them in its competence field, whereas the criminal procedures law No.(23) for 1971 (amended) organized the subject of this challenge in accurate form seeking the public interest and the personal liberty in the articles (109) and (110) of it, whereas the articles determined the offenses which accused released on bail is unlawful and allowed it in other offenses, left the consideration of it to the subject judge in the investigation and trial, he is the one who considers 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. Absolute restriction of the judge as in the last part of the clause (1st) of the article (2) of the challenged subject law it is contrary for the aforementioned constitutional articles, based on this the FSC decided the unconstitutionality of the last part of the clause (1st) of the article (2) of the law (41) for 2008, (the smuggling of oil and petroleum products law). The decisions were issued unanimously, decisive according to the provisions of the article (5/2nd) of the FSC law No.(3) for 2005 and the article (4) of the Constitution on 3/4/2019.