

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 34/federal/media /2013



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6. 5. 2013 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, 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 Head of Public Prosecutions has requested- Legal Division in its letter No. (60/general/2013) on 25/4/2013 from the FSC the following request: The Traffic Act under the Coalition Provisional Authority (dissolved) No. (86) of 2004 in Section (20/2) gave the authority of a misdemeanor judge to impose the penalties imposed before him and stipulated in paragraph (27) of annex (alif) of that Law and the fourth paragraph of the mentioned law gave the offending driver the right to object to the decision to rule in violation with the committee formed in the competent traffic department, which consists of (an officer in internal affairs, a representative of the Advisory Council and a representative of the community) after he pays 5,000 dinars. In referring to the provisions of the Iraqi Constitution, article (47) of it referred to the federal authorities, the three authorities (legislative, executive and judicial), exercising their powers and functions on the basis of the principle of separation of powers. Article (87) also indicated that the judiciary is independent and is handled by the courts of all kinds and degrees and issued in accordance with the law. Since the traffic law in force has given

criminal authority to traffic officers as a misdemeanor judge for offences, it is contrary to the principles of the Iraqi Constitution in accordance with the principle of separation of powers referred to in article (47) of it, which is assignment the practice of judicial work exclusively with the judiciary, and the granting of traffic officers to that jurisdiction is violate to the mentioned constitutional text. Giving the driver the right to challenge the decision to impose the fine is violating to the constitutional text mentioned because the challenge is either a committee of administrative staff who were not judges and belong to the judiciary was unconstitutional. The FSC ruled in the case No. (15/federal/2011) on 22/2/2011, by interrupting the text of Article (237/2nd/alif) of the Customs Act by virtue of Article (37/1st/beh) of the Constitution of The Republic of Iraq and its ruling on the case (30/federal/2012) on 2/5/2012 to interrupting the text of Article (11) of the Law on the Maintenance of Irrigation and raine Networks No. (12) of 1995. This presidency has full knowledge of the law of your esteemed court that it is not permissible for the administrative officer to continue to exercise the judiciary other than the rulings issued by the FSC, and that the general rulings in the Constitution of the Republic of Iraq have given the judiciary the task of the judiciary exclusively and on the basis of the above, please indicate the legitimacy of section (20/2) of the Traffic Law No. (86) of 2004.

The Decision:

After scrutiny and deliberation by the FSC found that the paragraph (beh/1st) of article (37) of Republic of Iraq for 2005 it's stipulated (no one can be arrested or interrogated except by a judicial decision) and FSC found that the article (20/2) of the Traffic Law No. (86) of 2004 issued on 20/5/2004 which stipulated that (for traffic officers as defined in section 1 paragraph 9 fifteen of this law the authority of a misdemeanour judge to impose penalties for violations that fall before him and stipulated in paragraph (27) of annex (1) of this law, the rest of the violations of the law, which are punishable by imprisonment, will be considered by a

competent court and not by the appeal committee.) and from this text the FSC found that the article (20/2) of the Traffic Law No. (86) of 2004 has given the authority of a misdemeanor judge has been given to traffic officers, who are not judges of the judiciary and therefore cannot issue a judicial decision, but at the same time the court finds that the authority of the misdemeanor judge granted to traffic officers under article (20/2) of the Traffic Law is limited and limited to the penalties contained in Article (27) of Annex (1) of the Traffic Law, which stipulates (anyone who commits one of the following offences shall be punished with a fine of (30,000) thirty thousand dinars. A- Driver's failure to comply with traffic lights or traffic man signals. B- Driving in the opposite direction of traffic from traffic authorities. C- Driving a vehicle without front lights or background at night. D- Driving a vehicle without a scoreboard. E- Driving a vehicle with carelessness and recklessness. F- Driving at a speed above the legally prescribed speed. G- 30 days after the vehicle's letter and not to review the competent registration department for the purpose of registering it or confirming its position. H- Violation of traffic rules on the highway). From this text, all the violations contained in the article relate to the vehicle's operation and driving, and therefore it is at the heart of the traffic officer's actions. The authority granted to traffic officers under article above does not include imprisonment or detention; even if the convict does not pay the fine as explained in article (20), paragraph (3). (In the event that the fine imposed is not paid during the period stipulated in paragraph (1), the fine will be doubled once). From all of the above, since the authority granted to traffic officers does not include the right to arrest or investigate the violator of article (20/2) of the Traffic Act, the mentioned text does not conflict with the provisions of article (37/beh) of the Constitution of the Republic of Iraq for 2005, and therefore the text of the mentioned article remains valid and the decision was unanimously issued on 6/5/2013.