

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 4/federal/media/2016



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18.2.2016 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed AL-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu AL-Temman and Sulaiman Abdullah Abd al-Samad who authorized in the name of the people to judge and they made the following decision:

The Request:

The Presidency of the Maysan Federal Appellated / Administrative affairs Section , requested from the FSC under its letter No. (1/1/653) on 28/1/2016 to judge on the request of the judge of the Investigation Court of Ali Al-Gharbi Mr. (mim. sad. mim.) contained his challenged of unconstitutionality the provisions of article (10) of the Wildlife Protection Law No. (17) of 2010 received from the Investigation Court Ali al – Gharbi No. (333) on 25/1/2016 after viewing on the subject of the challenged it shows that it included : greetings and appreciation submitted to you by the request of the judge of the Investigation Court Ali al – Gharbi to judge on the constitutionality of the text of article (10) of the Wildlife Protection Law No. (17) of 2010, in the light of the complaint brought before it by issue (25/monitoring/2016) on 20/1/2016 contained in the scrutiny of investigative papers and the fact that the legal accommodation of the crime assigned to the accused is vested in the Court of Investigation and that this court has adapted the act of the accused in accordance with the provisions of the Wildlife Protection Law No. (17) of 2010. Through the court's scrutiny

of the states of the law, the court finds that the text of article (10) of the above-mentioned law which stipulates on (grants authority of the district and district manager authority of the criminal judge to impose penalties... etc.). The court finds that the above-mentioned text violates the provisions and terms of the 2005 Constitution of Iraq in article (2/1/jim), which stipulates (No law that contravenes the fundamental rights and freedoms contained in this Constitution is allowed to be enacted) and also the article state (19/1 & 3 & 6) from the same Constitution (feh1) on (The judiciary is independent and has no authority other than the law) and (feh3) (Litigation inviolable right and guaranteed for all) and (feh6) (Everyone has the right to be treated fairly in judicial and administrative proceedings) the article (85) from the same Constitution state on (Judges are independent and are not empowered to do so without the law and no authority may intervene in the judiciary or in matters of justice). As the court finds from the above-mentioned texts and provisions that it violates the text of article (10) of the Wildlife Protection Law with the provisions of the Constitution of Iraq valid, it also violates a principle established by the Constitution of Iraq, which is the principle of (separation of powers). The text of article (10) of the Wildlife Protection Law may entrusting to the executive officer a judicial authority and thus the text has been combined between the executive and judicial branches simultaneously and on the basis of the text of article (3) of the bylaw of the FSC No. (1) of 2005, this Court requests that the text of article (10) be annulled of the Wildlife Protection Law No. (17) of 2010 the judging on its unconstitutionality in violation of the provisions of the Constitution of Iraq valid for the year 2005 and the possibility for this court to take advantage of this opportunity to give thanks and appreciation to the President and members of the FSC .. with thanks and appreciation the request has been placed under scrutiny and deliberation by the FSC and made the following decision:

The Decision :

For scrutiny and deliberated by FSC found that the article (47) of the Constitution state on the federal authority, which is the legislature, the executive and the judiciary, and exercises its powers and functions on the basis of the principle of separation of powers, article (87) of it stated that (The Judicial authority is independent and is handled by the courts of different types and degrees and issued in accordance with the law) . the article (37/1st/beh) of it stated that (No one should be arrested or investigated except in accordance with a judicial decision). Whereas article (10) from Wildlife Protection Law No. (17) of 2010 has stated for (grants authority of the district administrate and district manager authority of the criminal judge to impose penalties stated for in this law) so the aforementioned article of the above mentioned law has given to the district and the district manager a criminal authority by imposing the penalties prescribed in the above-mentioned law, which are civil servants and not judges who are members of the Federal judicial Authority, they may not, in constitutional terms, exercise purely judicial functions and powers. Since the investigation with arrest or prosecution for their trial and the imposition of penalties on them is vested exclusively in the courts, these powers may not be exercised by non-judges, so the text of article (10) Wildlife Protection Law is deactivated for its unconstitutionality and violated to the Constitution, according to article (87) of the Constitution, because the texts of the Constitution are top of the application and the decision was issued by unanimously decisively on 18/2/2016