

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 59/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 16.6.2014 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 Request:

The Investigative court of Beramegron, under its letter No. (14), on 14/1/2014, requested the FSC to decide whether there was a violation of the Constitution with regard to the auditor's consent to take legal procedure against the accused members of the internal security forces or refer them to the court the competent court set out in articles (111 and 112 and 113) of the Criminal Procedure Law, The Internal Security Law No. (17) of 2008 (Not (14), as the law number says in the letter), the request indicated that the violation of the Constitution would be in articles (14), which speak of equality between the parties before Law (88), of which non-interference in the affairs of the judiciary, Note that the subject of the application is that the Court of The first instance court of Hajiawa initiated a criminal case against two police officers for withdrawing the police detachment that protects the court above. And that the judge of the

court decided to bring them in accordance with article (242) of the Penal Law, In light of this, the Ministry of Interior in Kurdistan was approached for the purpose of informing them in vain despite the fact that nearly a year and four months have passed since that... The application was put under scrutiny and debated by the court and reached the following decision.

The Decision:

After scrutiny and deliberation by the FSC found that the Investigative court of Beramegroun challenges the unconstitutionality of the articles (111, 112, 113) the Criminal Procedure Law of the Internal Security Law No. (17) of 2008 on the grounds that it conflicts with the provisions of articles (14 and 88) of the Constitution, when referring to the impugned articles, it was found that it was not permissible to report the police man, to the police or to be assigned to appear or to be arrested, followed by the minister's consent or who authorizes him if the act was committed in the performance of his duty, as well as the minister's decision not to approve the referral of the police man to the civil criminal courts if it appears that the crime arises from fulfilling his official duties. Referring to article (14) of the Constitution, it was found that it dealt with the issue of equality between Iraqis before the law without discrimination on the basis of sex, race, nationality, origin, color, sect, religion, belief, or opinion or economic or social situation. Article (88) of the Constitution stipulates that "judges are independent and have no jurisdiction over them other than the law and no authority may interfere in the judiciary or in matters of justice." Since one of the obligations of the law's unconstitutional legislation is to have a fair investigation or simulation of the police officer in relation to crimes in the course of his official duties while providing the necessary legal guarantees. In light of these facts, the legislator intervened in the development and drafting of the impugned articles that were unconstitutional. Accordingly, the FSC does not find a conflict between

these texts in consideration of the specificity of the functions and duties of the members of the internal security forces and the provisions of articles (14 and 88) of the Constitution. If it is found that there is a delay or lack of response to the requirements of the investigation, such as approval of recruitment or other references of members of the internal security forces, this is not due to the deficiencies in the law challenged by the unconstitutionality of some of its articles, but because of the failure of the references in the performance of their duty. The legislator did not lose sight of this aspect by putting in place guarantees for the proper implementation of the court decisions, including paragraph 3 of the dissolved Decision of the Revolutionary Command Council No. (669) on 22/8/1987, which stipulates that (The judge who is investigating the incident and the court hearing the civil or criminal case imposed a fine of not less than fifty dinars on each public servant who delayed the resolution of the case because he did not pay for reporting or not responding to court requests or clarifying it.), in addition to the articles stipulated in the penal laws, when submitted, he decided to reject the request submitted by the Investigative court of Beramegron and the decision was issued unanimously in 16/6/2014.