



The Federal Supreme Court (F S C) has been convened on 5.30.2017 headed by the 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, Mikael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Request

The Governorate of AL-diwanayah – legal department affairs requested according to its letter number (7105) on 5.16.2017 from the FSC the following: (the item (1st/1) of the revolution council leadership (dissolved) decision number (296) for 1990 pointed to grant misters the heads of the administration units (the district and sub district head) the power of imposing a financial fines on every one caused deformation of the squares and roads or obstructing the passing across it by his overcoming on it or on its sidewalks with any manner, as well as it is pointed in item (2nd) to the permissibility of closing the shop that the overcoming and violations caused by, which listed in article (1-4) of item (1st), as for item (3rd), it permitted to detain the vehicle washed in the public or the public roads or its sidewalks till the owner of the vehicle pays the fine stipulated on in item (1st) of the aforementioned decision, and the decision when it granted this power did not point to process an investigation or arrest the people, but it pointed to take procedures in matters that may affect the comfort and health of the people, as well to remove its positive traces from the public fund. We hope to review this letter and clarifying the constitutionality of these clauses of the aforementioned decision, and the practicing of the head of the administrative unit for these powers, in this concern we pointing to that your honorable court previously issued its decision number (34/federal/2013) which it kept according to it the granted power to the

traffic officer to impose a fine against the transcending cars – according to the traffic law number (86 for 2004) with our gratitude for your cooperation as a favor for the public interest... with respect)).

The decision

After scrutiny and deliberation by the FSC, the court found that clause (1st-1) of revolution leadership council (dissolved) number (296) for 1990 included authorizing the mayor of Baghdad, governors, heads of districts and heads of sub districts within their specialty the power of issuing the decision of imposing a fine not more than 100 hundred Iraqi dinars on each of: 1. Caused deforming of squares or public roads or obstructing passing across it by his overcoming on it or on its sidewalks with any manner. 2. Caused a sabotaging or damaging the gardens or public parks or the plants or the trees which exist on the public road sides or in the middle of it. 3- Throwing the building scrapings or the garbage or the remains of vehicles or the factory in inappropriate places. 4. Installing a building without permission or on the contrary of it and that building was prohibited according to the codes, regulations and the valid instructions. 5. Washing the vehicles in the squares or the public roads or on its sidewalks. 6. Throwing the garbage or remains or dirt from the vehicles while it is moving in the public roads or when parking there. 7. Sewerage the dirty and heavy waters from the shops or the houses to the roads or branch roads. 8. Installing a pump or exceeding the drinkable water net with any manner to get water more than his share, even within the borders of the municipalities or the villages, and the pointed to decision permitted in clause second of it to close the shop which caused the listed violations in clauses (1-4) of item (1st-1) of it temporally, a period not more than (30) days, as well as the abovementioned decision permitted in clause (3rd) of it (permission of seizure the vehicles in conditions listed in items (5 & 6) of clause (1st-1) of it, till paying of the fine, and the FSC finds: First: imposing fine on penalties perpetrators which included the abovementioned decision, never forms an infringement to the freedom of the human or his dignity, and never regards a violation for provisions of article (37/1st/1) of the constitution, which included the aforementioned principle, therefore it is still valid. Second: as for the procedures against the disobedient of closing their shops or detaining the vehicle in cases

pointed to in clauses (2nd & 3rd) of the abovementioned decision consecutively. Therefore, these procedures regarded a restriction and limitation for human's freedom, and prohibiting him from work and then from getting his daily earning, especially that this procedure might be valid for a long period, and that regards a clear violation for provisions of article (12/1st) of the constitution which stipulated on (work is a right for all Iraqis in a way that guarantees a dignified life for them). Which requires in such case to follow taking the procedures pointed to in clauses (2nd & 3rd) of the abovementioned decision to the judiciary, whereas that exist in his incumbent specialty. The decision issued decisively according to provisions of article (5/2nd) of the FSC law number (30) for 2005 and article (94) of the constitution.