

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 61/federal/media/ 2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 18/8/2016 headed by the Judge Madhat Al-Mahmood and the membership of the Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen, Ade Hateef Jabbar and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Request

The International Police Investigation court in Basra requested the F.S.C. by its letter No.(65/2016) on (29/6/2016) to consider the challenge submitted by the deputy prosecutor before the mentioned court about the unconstitutionality of the decision of the dissolved Revolutionary Command Council No.(1572) for 1983, submitted to it by the letter of the deputy prosecutor before the Interpol investigation court No.(41/2016) on (29/6/2016) which included the following:

Greetings.

According to the provisions of article (3) of the F.S.C. Bylaw No.(1) for 2005, we presented to your estimated court the investigation file of the accused (mim. Mim. Mim.) his nationality

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is Bangladeshi to clear the constitutionality of the dissolved Revolutionary Command Council decision No.(1572/feh/1/1st) which granted the director of foreigners' residence a penal authority (misdemeanors judge), as it contradict with the provisions of the article (37, 47, 87) of the Iraqi republic constitution for 2005, and that is what the judicial of the F.S.C. has settled on in many of its decisions, including the decision No.(8/federal /2013) and the decision No(15/federal/2011).

With appreciation.

The request has been set under scrutiny and deliberation by the F.S.C., and issued the following decision.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that article (37/beh/1st) of the Iraqi republic constitution for 2005 stipulated that (no person may be kept in custody or investigated except according to a judicial decision.), paragraph (1) of the dissolved Revolutionary Command Council decision No.(1572) on (1/1/1983)(the decision of granting the director of foreigners' residence the authority of misdemeanors judge), first article of it stated that (the text of paragraph (1) of the "dissolved" Revolutionary Command Council decision No.(1359) on (26/8/1980) shall be amend to be as the following 1- the director of the residence of foreigners shall grant the authority of a misdemeanors Judge for the purpose of imposing an immediate fine not exceeding two hundred dinars on a foreigner who violates the provisions of article Eleven of the amended foreigners Residence Law No.118 for 1978, and also shall be granted the power to impose

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an immediate fine not less than one hundred dinars and not more than five hundred dinars on the foreigner that violated the provisions of article ten of the same law), when referring to article ten and article eleven of the amended law No.(118) for 1978, it was found that it contain regulatory matters related to organizing the residency of foreign in Iraq, including the case before the International Police Investigation court in Basra against the accused (mim. Mim. Mim.) nationality is Bangladeshi, who was arrested for the expiry of his residence in his passport attached to the case file. The F.S.C. found that granting the authorities of misdemeanors judge for the director of foreigners' residence by the aforementioned "dissolved" Revolutionary Command Council decision No.(1572) for 1983, is an exclusive and limited power by the penalties contained in the text of the challenged decision, according to it the director of foreigners' residence can impose an immediate fine not exceeding two hundred dinars on a foreigner who violates the provisions of article Eleven of the amended foreigners Residence Law No.118 for 1978, and also shall be granted the power to impose an immediate fine not less than one hundred dinars and not more than five hundred dinars on the foreigner that violated the provisions of article ten of the same law. All the listed violations of article eleven and ten of the mentioned law are related to organizing the residency of foreign in Iraq, these matters are of the main duties of the director of foreign residency in Iraq. As the granted authorities to the director of foreign residency by the "dissolved" Revolutionary Command Council decision No.(1572) for 1983 does not include imprisonment, arrest and detention, and the granted authorities to him are of his main duties, and require speed in

completing such procedures, so it can not be measured in other cases to facilitate the affairs of foreigners. Therefore the text under challenge to be unconstitutional does not contradict with the provisions of article (37) of the constitution and there is no justification for repeal it. The court decided to reject the challenge and to keep the text valid. The decision has been issued unanimously on 18/8/2016.