

Republic of Iraq
Federal Supreme Court
Ref. 71 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 15/6/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Request

The Iraqi Ministry of Foreign Affairs requested from the Federal Supreme Court to indicate the opinion regarding the Iraqi embassy's letter in Washington, Number (9/6/ISIS incrimination/2756) on the submission of a draft law by the legislative authorities in the Kurdistan region to establish a court specialized in genocide, crimes against humanity and war crimes to try ISIS terrorist fighters to the parliament in the region and according to the draft law of the court the power to appoint non-Iraqi judges and prosecutors with authority Imposing the death penalty as well as its mandate on Iraqi and foreign citizens. The ministry also requested a statement of the extent to which the establishment of the court is contrary to the article (95) of the Constitution, and when scrutinized by this court according to the letter of the Iraqi Embassy in Washington by the number 14 on May 10, 2021, which includes (press sources addressed information about the submission of a draft law by the legislative authorities in the Kurdistan region to establish a competent court of genocide, crimes against humanity, and war crimes to sue the fighters of ISIS), according to the draft law, the court has the power to appoint non-Iraqi judges and prosecutors, has the power to impose the death penalty and has

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jurisdiction over Iraqi and foreign citizens. There are some provisions in the draft that allow Iraq and the international community to compensate victims of ISIS crimes, and knowledgeable sources with the draft indicated that the substantive part of it is adapted from articles (6, 7, and 8) of the Rome Statute, which respectively related to the special massacres, crimes against humanity and war crimes, and from the procedural rules of the International Criminal Court and the Supreme Court of Kurdistan will be an appeals court to appeal the rulings of the Special Court. There is conflicting information about the intervention of the head of the United Nations team on ISIS crimes UNITAD (Karim Khan) in this matter and his support for the formation of the court, but other sources indicated that Mr. Karim Khan expressed his displeasure at linking his name to this subject and stressed that as long as he informed many bodies that this subject is the competence of the government in Baghdad specifically and that the mandate of UNITAD covers all areas of Iraq and not the region exclusively, and worthy to mention that the embassy referred in previous speeches to the efforts of several European countries, notably the Netherlands, which do not wish to recover its nationals from ISIS fighters or their families held by the SDF and these countries are actively seeking to form an international tribunal subject to international or hybrid laws in a country outside the European Union to try its nationals and imprison them in other countries as it took place in 2019 which discussed the possibility of establishing it in Iraq and in the northeastern regions of Syria, but there is considerable opposition from a number of countries because the subject has major implications about the jurisdiction of the court and matters related to the execution and imprisonment, and that the Iraqi Embassy in Washington indicates that this issue has major implications for Iraqi sovereignty and the mandate of the federal authorities on the file of minorities (Christians and Yazidis)

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internationally and the embassy proposes to approach the Federal Supreme Court to express an opinion on the extent of the conflict to establish Court with Article (95) of the Iraqi Constitution. Several embassies of the countries concerned have been approached to see their position on it, knowing that the American side is not supportive of the idea of establishing an international tribunal and considers that the best and sustainable solution to the problem of foreign terrorist fighters and their families is to deport them to their countries of origin while ensuring trial, rehabilitation, and integration.

The decision:

The Ministry of foreign affairs and the Embassy of the Republic of Iraq in Washington have been scrutinized and deliberated by this court and have reached the following conclusions:

1. The federal authorities of the Republic of Iraq, based on the provisions of article 47 of the Constitution of the Republic of Iraq 2005, consist of legislative, executive, and judicial authorities and exercise their powers and jurisdictions on the basis of the principle of separation of powers.
2. The judiciary in Iraq, based on article 87 of the constitution, is independent and is administered by courts of all kinds and degrees, and issues its judgments in accordance with the law.
3. It is not permissible, on the basis of the provisions of article (88) of the Constitution, for any authority to interfere in the judiciary or the affairs of justice, and judges are independent in their work and have no authority over them in their case other than the law.
4. The one who manages the affairs of the judicial bodies in Iraq and based on the provisions of article (90) of the Constitution is the

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Supreme Judicial Council and, under article (91/1st) of the Constitution, oversees the federal judiciary and the administration of judicial affairs.

5. Because the Iraqi people suffered from the policies of the previous dictatorial regimes and the establishment of these regimes for the courts, especially as a tool to suppress the Iraqi people and impose sentences contrary to the law and the logic of justice, and the victims of the execution of many of the Iraqi people and taking into account all this, article (95) of the Constitution stipulates (prohibits the establishment of special or exceptional courts), so the formation of any special or exceptional court outside the framework of the Supreme Judicial Council is contrary to the text of the article (95) of the Constitution.
6. The appointment of non-Iraqi judges and prosecutors violates the provisions of Article 90 and 91 of the Constitution of the Republic of Iraq in 2005, which entrusted the Federal Supreme Judicial Council with the task of managing the affairs of judicial bodies and supervising the federal judiciary, which appoints judges and prosecutors, and that the task of administering a particular court to foreign judges is contrary to the provisions of articles (90) and (91) of the Constitution.
7. As stipulated in article (121/1st) of the Constitution, the authorities of the territory have the right to exercise legislative, executive, and judicial powers following the provisions of the Constitution, otherwise, the practice loses its constitutional legitimacy.
8. UN Security Council Resolution 2379/2017 of September 21, 2017, established under the International Investigation Team, affirmed Iraq's national sovereignty in article 14, stating that it "acts as part of a full respect for Iraq's sovereignty and jurisdiction over crimes committed in its territory."

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9. The international investigation team, which extended its mandate in Iraq for one year (until September 18, 2021), based on Article 13 of UN Security Council Resolution 2379 (2017), which stipulated that (the mandate of the investigation team will be reviewed after two years and decided on any extension or at the request of the Government of Iraq or any other government that has asked the team to gather evidence of the actions of the Islamic State (IS) in its territory) has not been established. The court has not seen any legal assistance in gathering evidence to complete the investigation of cases of ISIS suspects from the date of the aforementioned Security Council resolution to date.
10. The failure of the Republic of Iraq to become a member of the International Criminal Court and the Treaty of Rome prevents it from carrying out any international obligation, based on the court's law and the provisions of the treaty referred to in the above-mentioned.
- Accordingly, the Federal Supreme Court decided, as far as the Request of the Legal Department of the Iraqi Ministry of Foreign Affairs, referred to in its numbered letter (9/6/Crimes of ISIS/2756) on 27 May 2021 and attached to the letter of the Embassy of the Republic of Iraq in Washington No. (14) on 10 May 2021, including (The establishment of a court in the Kurdistan region and the appointment of non-Iraqi judges and prosecutors), the establishment of a court in the Kurdistan region, and the appointment of non-Iraqi judges and prosecutors are contrary to the provisions of articles (87, 88, 90, 91, 95 and 112/1st) of the Constitution of the Republic of Iraq in 2005, not due to the Federal Supreme Court in a bill submitted to the Parliament of the Kurdistan Region of Iraq because the decision on the constitutionality of the bills is outside the jurisdiction of this court. The decision has been made decisively and binding for all powers with the majority of 7 members and

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an objection of two members according to the provisions of the article (93/4) From the Constitution of the Republic of Iraq 2005 and articles (5/2nd) of the Federal Supreme Court Law No. (30) of 2005 which amended by Law No. (25) of 2021, and it has been made clear on 2/Dhul Quada/1442/ Hijri, 13/June/2021 AD.

Signature of The president	Signature of The member	Signature of The member
Jasem Mohammad Abbood	Sameer Abbas Mohammed	Haidar Jaber Abed
Signature of The member	Signature of The member	Signature of The member
Haider Ali Noory	Khalaf Ahmad Rajab	Abdul Rahman Suleiman Ali
Signature of The member	Signature of The member	Signature of The member
Diyar Muhammad Ali	Ghalib Amir Shunayen	Ayoob Abbas Salah

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