

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 75/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 12/8/2015 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Request

The General Secretariat of the Council of Representatives/ the legal department has requested the F.S.C. by its letter no.(1/13/7975) on (3/8/2015) that stated the following.

Greetings

Article (129) of the Iraqi republic constitution stipulate that ((laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise)), despite the clarity of the text about the effectiveness of the laws effect on the date of their publication in the Official Gazette, however the executive authority or one of it institutions refrains

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from implementing the laws, or sometimes some of its provisions, or postpones its implementation, or to act slowly on that under the claim that it has submitted a challenge before the F.S.C. against the constitutionality of these laws or provisions, although there is no constitutional text allow it do that for whatever reason. Therefore, according to the provisions of article (93/2nd) of the constitution we request an interpretation for article (93/1st and 2nd) of the constitution to state whether the practice of the F.S.C. of overseeing the constitutionality of the federal laws which consider as specification for the text of article (129) in the effectivity of the laws take on the date of their publication in the Official Gazette, which endorse the challenge party to refrains from implementing the laws or to act slowly on that until the court has decided its constitutionality, with reference to that there is no constitutional text the authorize any power of the general power in the state to do so.

With appreciation.

The F.S.C. placed the request under scrutiny and deliberation and reached the following decision:

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the General Secretariat of the Council of Representatives has requested the F.S.C. by its aforementioned letter to interpret article (93/1st and 2nd) of the Iraqi republic constitution for 2005, by referring to article (93/1st) of the constitution it found that it was listed in chapter two of section three in the constitution within the jurisdictions of the F.S.C. and stipulate that ((overseeing the

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constitutionality of laws and regulations in effect)), according to that the constitution authorize the F.S.C. to practice an important overseeing roll upon the constitutionality of the laws and regulations in effect when a challenge is submitted before it against the constitutionality of a law, provision, or provisions in effective law or regulation for violating the provision of the constitution, because the laws remain binding and obliged to be implement by the executive authority even if it was under challenge before the F.S.C. for being unconstitutional, as its binding to be implement according to article (129) of the constitution which stipulate that ((laws shall be published in the Official Gazette and shall take effect on the date of their publication, unless stipulated otherwise)), according to that the law that is under challenge before the F.S.C. remain effective from the date of its publication unless stipulated otherwise or a decision is issued from the F.S.C. to stay of execution, nothing in the Constitution states that the legal provisions subject to challenge are suspended or not to implemented during the challenge before the F.S.C., because its binding to implement from the date of its publication in the Official Gazette or any date scheduled in the legal text, and no party may refrain from implementing laws or some of its provisions or postpone their implementation or act slow in that under the claim that they are subject to challenge before the F.S.C. for its unconstitutionality. As for article (93/2nd) of the constitution, the constitution according to it has authorize the F.S.C. another jurisdiction to interpretation the constitutional text under the request of the competent parties in case of ambiguity of the texts, or in case of contradict between the texts of the constitutional article, or there is disagreement in

understanding the text of the constitution so it would interpret these texts and clarify it and to reveal the will of the constitutional legislator of enacting the constitutional text that is subjected to interpretation and clarity degree of it in order to remove the ambiguity or the contradiction in understanding the constitutional text, and to determine the conflict of the constitutional text interpretation by the interpretation decision issued by the F.S.C. that is decisive and binding for all authorities according to article (94) of the constitution. The decision has been issued unanimously on 12/8/2015.