



The Federal Supreme Court (F.S.C.) was convened on 27.7.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, Monther Ebraheem Husain, and Adel Abed Al-Razaq who are authorized to judge in the name of the people, they made the following decision:

The party requesting the interpretation:

Judge Haider Mansour Halwas - Head of the consideration Committee in the requests of the families of the martyrs / Baghdad.

The Request:

This court received the letter of the Martyrs Foundation /Department of Administration of the Affairs of the Consideration Committees and the Appeal Committee and Management No. (Iam. Nun. Ghain./937) on 29.6.2021, accompanied with the list submitted by the head of the Committee for Consideration of the Requests of the Martyrs' Families / Baghdad, Judge Haider Mansour Halwas, which summary includes a request for interpretation of Article (115) of the Constitution of the Republic of Iraq for the year 2005, which states that (whatever is not stipulated in the exclusive powers of the federal authorities, is the powers of the regions and governorates that are not organized in a region, the other powers shared between the

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federal government and regions, the priority in it shall be given to the law of regions and governorates that are not organized in a region, in the event of a dispute between them), for the reasons referred to in the draft which stated that (a group of martyrs' families who live in the Kurdistan region of Iraq and the governorates (Mosul, Diyala, Kirkuk) has registered their martyrs' relatives in the Ministry of Martyrs and Anfal' Affairs in the Kurdistan region, and then they registered them in the Martyrs Foundation, Baghdad, which led to the emergence of the phenomenon of the so-called (double decisions) resulted in the martyrs' families receiving financial rights and other privileges from both sides, from the Ministry of Martyrs and Anfal Affairs and from the Martyrs Foundation, the Committee to consider the requests of the families of the martyrs has withdrawn and canceled the decisions issued by it, which proved that their owners had previously registered their martyrs in the Ministry of Martyrs and Anfal Affairs in the region. In this time another group of the same category submitting requests to consideration committee in Baghdad in order to be included by the Martyrs Foundation law No.(2) of 2016, most of them bring a letter issued by the Ministry of Martyrs and Anfal Affairs in the region entitled (ending a relation) that includes ending their relationship with the Ministry of Martyrs and Anfal Affairs at their request in order to re-register him in the Martyrs Foundation in Baghdad to obtain financial rights and other privileges granted by the Law of the Martyrs Foundation, which are more than the rights and privileges granted in the Rights and

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Privileges of the Families of Martyrs and Anfal Law No. (9) of 2007, in which the Ministry of Martyrs and Anfal Affairs works by in the Kurdistan Region, others submit direct requests to the Committee to consider requests for families of martyrs in order to be included in the Martyrs Foundation law. since the committee of consideration the requests of the families of the martyrs is the competent authority to issue a decision of including by the Martyrs Foundation law according to the Article (5) of it, determine the qualitative, spatial and personal jurisdiction of the Martyrs Foundation Law No. (2) of 2016 and the Law of Rights and Privileges of the Families of Martyrs and Anfal of the Kurdistan Region of Iraq No. (9) of 2007 and Law of the Ministry of Martyrs and Anfal Affairs of the Kurdistan Region of Iraq No. (8) of the year 2006. through its attempt to interpret and apply the provision of Article (115) of the Constitution of the Republic of Iraq for the year 2005, which states that (whatever is not stipulated in the exclusive powers of the federal authorities, is the powers of the regions and governorates that are not organized in a region, the other powers shared between the federal government and regions, the priority in it shall be given to the law of regions and governorates that are not organized in a region, in the event of a dispute between them), the difficulty of interpretation and application arose through the great discrepancy between the two laws, Law of the Martyrs Foundation No. (2) of 2016 and the Law of the Rights and Privileges of the Families of Martyrs and Anfal of the Kurdistan Region of Iraq No. (9) for the year 2007, where it is noted that the

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concept of the martyr contained in the Martyrs Foundation Law No. (2) of 2016 came in the text of Article (1 /1st/alif) (the Iraqi citizen or any other person residing in Iraq who sacrificed his life or lost it directly as a result of committing of the extinct party of the Baath, any of its crimes, including execution, imprisonment, torture or their result, genocide, chemical weapons, crimes against humanity, physical liquidations, forced displacement, absent or found in mass graves, or a deserter from military service because of his opposition to the regime in opinion, belief, political affiliation, sympathy with his opponents or aiding them), while the definition of the martyr came in the Law of the Rights and Privileges of the Families of Martyrs and Anfal for the Kurdistan Region No.(9) of 2007 in Article (5) (each person lost his life in the trench of the armed struggle or the political struggle in defense of the Kurdish liberation movement against the successive oppressive regimes or as a result of the crimes of genocide or aggressive war actions against the people of Kurdistan). Through the two definitions, it appears that the difference between the two laws is clear, as the Law of the Martyrs Foundation made the martyr is the one who lost his life as a result of the Baath Party committing its crimes, while the Law of the Rights and Privileges of the Families of Martyrs and Anfal made the martyr is the one who lost his life (in defense of the Kurdish liberation movement against successive repressive regimes or as a result of genocide crimes or hostile acts against the people of Kurdistan). This difference leads to another fundamental difference on the one aspect

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of the application of the two laws in terms of time and as stated in the text of Article (4) of the Law of the Martyrs Foundation, as it mentioned the cases of martyrdom and specified the periods which are from 8.2.1963 to 18.11.1963 and the period from 17.7.1968 to 8.4.2003. As for the Law of the Rights and Privileges of the Families of Martyrs and Anfal, the period for its application was open, the beginning and the end, which was mentioned in the formula (successive repressive regimes), adding to that many other differences between the two laws in terms of the type of crimes committed against the citizens who lost their lives, the persons whom these crimes were committed against, the persons targeted for the care of the families of the martyrs, the financial rights and other granted privileges, the mechanism for issuing the inclusion decision, the authority that issues it, and the ways to appeal against it. The Consideration Committee of the families of the martyrs / Baghdad requests this court to interpret the text of Article (115) of the constitution and how to apply it on the two cases of conflict between the two laws that led to a difference between the Martyrs Foundation and the Ministry of Martyrs and Anfal Affairs in the Kurdistan Region of Iraq, note that this difference did not reach the level of judicial dispute, as the letter of (ending the relationship) sent by the Ministry of Martyrs and Anfal Affairs in the region are based on the desire of the families of the martyrs, knowing that the text of Article (110) of the constitution did not make matters related to the martyrs an exclusive competence for the federal authority, and the acceptance

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of the committee of consideration the requests of the families of the martyrs / Baghdad, the transfer the files or the requests of the citizens referred to above, makes the committee obligated to accept requests that may reach tens of thousands because the Ministry of Martyrs and Anfal has recorded about seventy-eight thousand martyrs, whose families may wish to transfer their files to Baghdad and therefore the Martyrs Foundation holds the granting of financial and non-financial rights and privileges to their families. As for the opinion of the committee that works under the provisions of the Martyrs Foundation Law No. (2) of 2016, it sees that (it is not competent to accept requests for transfer or inclusion for the families of the martyrs who registered their martyrs in the Ministry of Martyrs and Anfal Affairs in the region according to Law No. (9) of 2007, as it is a special law that applies to the category of martyrs and their families targeted by it in terms of place and time, and they are obliged to accept its provisions and they are not entitled to move between the laws according to their personal interest. due to the existence of ambiguity and disagreement in understanding the constitutional text in a manner that ensures the proper and correct application of the Constitution as it is the supreme law in the state. Therefore, the Chairman of the Committee to Consider the Requests of the Martyrs' Families/ Baghdad requested this court to interpret the text of Article (115) of the Constitution based on the text of Article (93/2nd) of the Constitution and Article (4/2nd) of the amended Federal Supreme Court Law No. (30) of 2005.

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The decision:

during scrutiny and deliberation by the F.S.C., it found that the request submitted by the Chairman of the Committee to Consider the Requests of the Martyrs' Families / Baghdad, Judge Haider Mansour Halwas, included in his summary a request for the interpretation of Article (115) of the Constitution of the Republic of Iraq for the year 2005, which stipulated that (whatever is not stipulated in the exclusive powers of the federal authorities, is the powers of the regions and governorates that are not organized in a region, the other powers shared between the federal government and regions, the priority in it shall be given to the law of regions and governorates that are not organized in a region, in the event of a dispute between them), for the reasons indicated in detail in the draft. To determine the qualitative, spatial, and personal jurisdiction of the Martyrs Foundation Law No. (2) of 2016 and the Law of the Rights and Privileges of the Families of Martyrs and Anfal of the Kurdistan Region of Iraq No. (9) of 2007 and the Law of the Ministry of Martyrs and Anfal Affairs of the Kurdistan Region of Iraq No. (8) of 2006. this court finds that Article (110) of the constitution defines the exclusive competencies of the federal authorities, and Article (114) of it defines the common competencies between the federal authorities and the authorities of the regions, and Article (120) stipulates that (the region shall draw up a constitution for it, specifying the structure of the region's authorities and powers, and the mechanisms for exercising those powers, provided that they do

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not conflict with this constitution). as for article (121) of it (First: The powers of the regions have the right to exercise legislative, executive and judicial powers, following the provisions of this Constitution, except the exclusive powers mentioned in it, Second: The region's authority has the right to amend the application of the federal law in the region, in the event of a contradiction or conflict between the federal law and the region's law, regarding a matter that does not fall within the exclusive powers of the federal authorities), as Article (132) of it stipulates that (First: the state guarantees care for the families of the martyrs, political prisoners, and those affected by the abusive practices of the former dictatorial regime. Second: The state guarantees compensation to the families of the martyrs and those injured as a result of terrorist acts. Third: what is stated in items (1st) and (2nd) of this article to be regulated by law). Whereas the regulation of the rights and privileges of martyrs and their families following the laws issued by the federal legislative authority or the legislative authority in the region represented by (Martyrs Foundation Law No. (2) of 2016 and the Law of the Rights and Privileges of the Families of Martyrs and Anfal of the Kurdistan Region of Iraq No. (9) of 2007 and the Law of the Ministry of Martyrs and Anfal Affairs for the Kurdistan Region of Iraq No. (8) for the year 2006) was issued based on the provisions of Article (132/3rd) of the constitution and in implementation of its provisions, to ensure the state represented by the Federal Republic of Iraq with all its powers to care for the families of martyrs, political prisoners,

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and those affected by the abusive practices of the former dictatorial regime, following the provisions of Article (61) thereof, which stipulates that: (the Council of Representatives is competent with the following: First: legislation of federal laws) and in the light of Article (121/1st) thereof, which stipulates that (First: the authorities of the regions have the right to exercise legislative, executive and judicial powers, following the provisions of this Constitution). Based on the foregoing, the application of the laws that regulate the rights and privileges of martyrs and their families according to the laws issued by the federal legislative authority or the legislative authority in the region represented by (Martyrs Foundation Law No. (2) for the year 2016 and the Law of the Rights and Privileges of the Families of Martyrs and Anfal of the Kurdistan Region of Iraq No. (9) of 2007 and the Law of the Ministry of Martyrs and Anfal Affairs for the Kurdistan Region of Iraq No. (8) for the year 2006), are subject to the controls of qualitative, spatial and personal jurisdiction for the categories covered by its provisions according to the character enjoyed by the martyr and the competent authority to determine his privileges and his relatives and the place in which he was martyred and the law covered by its provisions if it is a federal law or the law of the region, and therefore determining the rights and privileges of the families of martyrs who are covered by the provisions of the laws in force federal or in the region are not related to the exclusive or joint competencies of the federal authorities and the authorities of the region or governorates stipulated in Article (115) of the Constitution,

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as long as the laws that came regulating the rights and privileges of the families of martyrs were issued based on the provisions of Article (132) thereof, which stipulated that (First: The state guarantees, the care for the families of the martyrs, the political prisoners, and those affected by the arbitrary practices of the former dictatorial regime. Second - The state guarantees compensation to the families of the martyrs and those injured as a result of terrorist acts. Third - What is stated in items (First) and (Second) of this article shall be regulated by law), thus there is no conflict between the laws that regulate the rights and privileges of the families of martyrs issued by the federal authority and those issued by the region to restrict the scope of application of each of them within specific spatial and temporal limits. And with the conditions set by each of them for those covered by its provisions. this court also finds that Article (116) of the Constitution stipulates (the federal system in the Republic of Iraq shall be formed of the capital, regions, decentralization governorates, and local administrations) as Article (117/1st) of the Constitution stipulates (this constitution, upon its entry into force, recognizes the Kurdistan Region and its existing authorities, as a federal region) and that what was mentioned in the two articles above was consistent with what was stated in Article (141) of the Constitution, which states: (The laws that have been enacted in the Kurdistan Region since 1992 shall remain in force, and the decisions taken by the Kurdistan Regional Government - including court decisions and contracts - are considered effective, unless they are amended or

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repealed according to the laws of the Kurdistan Region, by the competent authority therein, and unless it is in violation of this Constitution) and for the foregoing, the Martyrs Foundation Law No.(2) of 2016 has a different scope of application than the scope of application of the Rights and Privileges of the Families of Martyrs and Anfal Law of the Kurdistan Region of Iraq No. (9) of 2007, due to the different categories covered by both laws. Therefore, those covered by the provisions of the Martyrs Foundation Law No. (2) of 2016 concerning their financial rights stipulated in the law are among the allocations of the general budget of the federal government. As for the financial rights of those covered by the provisions of the law of the rights and privileges of the families of the martyrs and Anfal for the Kurdistan region of Iraq No. (9) for the year 2007 and the Law of the Ministry of Martyrs and Anfal Affairs for the Kurdistan Region of Iraq No. (8) for the year 2006, it is within the allocations of the budget of the region, so the beneficiaries of the laws related to the martyrs within the region, cannot benefit from the laws relating to martyrs within the federal government. As for the interpretation of Article (115) of the Constitution, it has nothing to do with the issue of the rights of the martyrs. The decision was issued in agreement, final and binding on all authorities based on the provisions of Articles (93 /2nd and 94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5 /2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and

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issued publicly on (16 / Dhu al-Qa'dah / 1442) corresponding to (27.7.2021).

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	Monther Ebraheem Husain	Adel Abed Al-Razaq

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