



The Federal Supreme Court (F.S.C.) has been convened on 25.2.2013 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 Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

The Request:

The Arab and International Police Cases Investigation Court in Basra requested the F.S.C. in its letter no.(5) dated on (28.1.2013) the following:

In implementation to the decision of the judge of Arab and International Police Cases Investigation Court in Basra dated on (20.1.2013), under the provisions of article (3) of the bylaw of the F.S.C. no. (1) of 2005, we present before your court the investigation paper of the accused who had been bail out (Alwa Abd Allah Hussain) his nationality is Sudanese, to demonstrate the constitutionality of the dissolved Revolutionary Command Council's decision no.(1246) of 1983 and paragraph (8th) of decision no.(42) of 1995, as these two decisions contradicts the provisions of articles (37, 47, 87) of the Constitution of 2005, and what the judgments of the F.S.C. in its decisions (30/federal



/2012), (15/federal/2011) dated on 22.2.2011. with Respect and Appreciation.

The request has been scrutinized and deliberated by the F.S.C. and it decided the following:

The decision:

During scrutiny and deliberation by the F.S.C., it found that article (47) of the Constitution stated that (the federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers), article (87) of it stated that (the judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.), paragraph (1st/b) of article (37) of it stated that (no person may be kept in custody or investigated except according to a judicial decision). As clause (8th) of the (dissolved) Revolutionary Command Council's decision no.(42) on 24.4.1995 stated (the assistant director of the intelligence service in Baghdad and the directors of the intelligence service in other governorates are competent to adjudicate cases arising from the crimes stipulated in the dissolved Revolutionary Command Council decision no.(1246) on 19.11.1983), in clause (9th) stated (those mentioned in the clauses (1st to 8th) of this decision acquire judicial authority to



exercise the competencies entrusted to them and follow the conditions and procedures established in the Civil Procedure Law no.(83) of 1969, and the law of Criminal Procedures no. (23) of 1971, each within its scope of application when exercising the tasks stipulated in this decision), it stated in clause (12th) of it that (it is permissible to challenge the decisions and judgments issued under the clause (8th) of this decision before a permanent appeals committee formed by a decision by the director of the intelligence service, whose decisions are final), the paragraph (3) of the dissolved Revolutionary Command Council's decision no.(1246) on 19.11.1983 states that (who violates the provisions of the two paragraphs (1, 2) of this decision shall be punished with imprisonment for a period not exceeding three years with a fine not exceeding five hundred dinars, or one of those two penalties). As clauses (8th), (9th) and (12th) of the (dissolved) Revolutionary Command Council's decision no.(42) on 1995 which is amendment for the dissolved Revolutionary Command Council's decision no.(1246) on 1983 gives a penal authority to impose a fine and imprisonment for the assistant director of the intelligence service in Baghdad and the directors of the intelligence service in other governorates to adjudicate cases arising from the crimes stipulated in the dissolved Revolution Command Council's decision no.(1246) for 1983, it gave the right



to challenge the decision before an appellate committee formed by the director of the intelligence service whose decisions are final. Whereas those who are entrusted with a penal authority to rule are not judges who are subordinate to the judicial authority and exercise purely judicial functions and powers, and as the investigation, arrest or conduct of their trial is exclusively trusted to the courts, and it is not permissible to exercise these powers by non-judges other than what was the case before the 2005 constitution was issued and enforced, as laws used to allow granting penal powers to administrative employees and intelligence officers, as is the case in the clause (8th) of the (dissolved) Revolutionary Command Council's decision no.(42) on 1995 which is amendment for the dissolved Revolutionary Command Council's decision no.(1246) on 1983, because there were no judicial courts in the administrative formations to the fullest, but at the present time the courts has covered all the administrative formations (sub-districts, districts, and centers of governorates) the violations can be raised to them to be resolved quickly according to the law. Therefore, the text of clauses (8th), (9th) and (12th) of the (dissolved) Revolutionary Command Council's decision no.(42) of 1995 which is amendment for the dissolved Revolutionary Command Council's decision no.(1246) of 1983 is considered nulled and void according to article (87) of



the Constitution that stated (the judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.), and that is what the judgment of this court has decided in the decision (15/federal/2011) dated on 22.2.2011 of considering the text of article (237/2nd/alif) of the Customs Law no. (23) of 1984 that used to grant the authority to arrest the accused to the Director General of Customs or whoever he authorizes to be suspended, and because the provisions of the constitution have supremacy in implementation, therefore the texts of clauses (8th), (9th) and (12th) of the (dissolved) Revolutionary Command Council's decision no.(42) of 1995 which is amendment for the dissolved Revolutionary Command Council's decision no.(1246) of 1983 is considered nulled and void, for violating the Constitution according to articles (37), (47), and (87) of the Constitution of 2005, it is not permissible for anyone but judges to exercise judicial duties because these tasks have become exclusively within the competence of judges belonging to the judicial authority according to article (87) of the Constitution. The decision was issued unanimously on 25.2.2013.