

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 96/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14.9.2014 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Request:

The Presidency of the Najaf Federal Court of Appeal/ Department of Administrative Affairs requested from FSC under its letter No. (teh/4/2601) on 14/8/2014 ruling on the challenge received by her under the letter of the Najaf Investigating Court which challenges the legitimacy of the instructions and orders issued by the Ministry of Interior contrary to the constitutional principles of the Constitution of the Republic of Iraq in 2005. The appeal of the Judge of the Najaf Court of Inquiry filed with this court by the Presidency of the Najaf Federal Court of Appeal included the following: (The Najaf Investigation Court has decided to assign both the accused, Captain (alif. yeh. ain.), who is accused of protecting the facilities Forensics department, to appear in court in accordance with article (413/1) within the meaning of association articles (47,48,49) based on the complaint of the complainant (ha. ain. mim) for beating him and after sending a letter assigned to attend to the Najaf Police

Directorate refused to execute under her letter (13194) 1/7/2014 (attached) its content is not to send any officer to the investigating authorities and in the event that the investigating judge issues an order to appear before the court of inquiry, his decision is not enforceable, but the decision of the investigating judge must be referred to the General Directorate, which is doing its part. The order was submitted to the Commander-in-Chief of the Armed Forces to issue his appropriate decision and any officer who implements the decision of the investigating judge without following the instructions of the above letter the judicial decisions issued by the investigating courts or the competent courts are blocked and prevents their implementation in violation of the laws in force, especially since article (19/1st) of the Constitution, it stipulates that the judiciary is independent and has no jurisdiction other than the law, as stipulated in article (47) of the Constitution that the legislative, executive and judicial authorities exercise their powers and functions on the basis of the principle of separation of powers. Article (88) of the Constitution also stipulates that independents that have no jurisdiction over them other than the law and no authority may interfere in the judiciary or justice matters.

The Law on The Origins of Criminal Trials 30 of 2007 in article (19/3rd) of it, however, the arrest warrant issued against the military is in force throughout Iraq and is enforceable. The text of the article (13) on the Criminal Procedure Law of the internal security forces authorized the investigative authorities to issue an arrest warrant for the accused police man and the internal security forces in accordance with the Law on the Criminal Procedure Law No. (23) of 1971. The provisions of the mentioned law did not contain any obstacles or measures limiting the execution of the arrest warrant, while the Najaf Investigation Court decided to assign the defendants to appear in accordance with the provisions of article (87) of the Criminal Procedure Law No. (23) of 1971 before issuing the arrest warrant,

the defendants' chambers refrained from bringing them in accordance with the instructions and orders issued by the Ministry of Interior, which should not affect the independence of the judiciary in the fight against corruption or limit its validity. Since Article (4/2nd) of the FSC law No. (30) of 2005 it stipulates its jurisdiction to adjudicate disputes concerning the legitimacy of laws, resolutions, regulations, instructions and orders issued by any entity that has the right to issue them. This is at the request of a court...). Article (3) of the Bylaw to conduct the course of work in FSC No. (1) of 2005 on (If a court requests on its own while considering a case to decide on the legality of a provision in a law or legislative decision or regulations or instructions related to that case, the application is sent to the FSC for decision and this request is not subject to the fee.) Whereas the duty of the courts and the judiciary is to guarantee the rights, freedoms and individuals by exercising jurisdiction without bypassing the legislative and executive powers, the ultimate goal of constitutional control through the FSC. When submitted, we ask your esteemed court to consider the legitimacy of the directives and orders issued by the Ministry of Interior, contrary to the constitutional principles of the Constitution of the Republic of Iraq for 2005, with great appreciation and respect). The above application has been put under scrutiny and deliberation in the court and has reached the following decision.

The Decision:

After scrutiny and deliberation by the FSC found that the Najaf Investigating Court challenges by the Ministry of Interior / Ministry Agency for Police Affairs / Directorate of Legal Affairs No. (33708) on 31/3/2014 referred to above under the pretext of violating the article (19/1st and 47 and 88) from the Constitution of the Republic of Iraq

2005. The FSC finds that the competent minister's abstention or whoever authorizes him to agree to notify the police man, his failure to authorize him to appear before the judiciary or his refusal to agree to arrest him in the event of an act in the course of his duty. It is considered administrative decisions and can be challenged by the attorney general and everyone's in the best interest. If the minister is found to be abusive in the above-mentioned cases and in the administrative court and the ruling issued by the Administrative Court of Justice is discriminatory to the competent authority and for advanced reasons, decided to reject the appeal from this side and the decision was issued by agreement decisively on the basis of the provisions of article (2nd) of article (5) of FSC's Law No. (30) of 2005 and, the decision had made clear public on 14/9/2014.