

Republic of Iraq
Federal Supreme Court
Ref. 9/ federal /media/ 2014



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 21.1.2014 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:

Almhnawya investigation court requested the F.S.C. by it letter No.(28) dated on (8.1.2014) the following:

We represent to your court the lawsuit No.(951/investigation/2013) which is submitted before this court between the complainant the police officer (kaf.ha.ha) and the complaint against him the police officer (kha.ain.sad), its facts summarized that the claimer house in the Salahiaa sub-district has been robbed on (9.5.2013) the stolen object was one sheep, among the accusers in this incident was the police officer who the complaint is against, the act was adopted according to article 443/2 of the amended Penal Code No.(111) of 1969, which means that the crime is regular not carry any military nature, also the accused if he was proofed to commit this crime, it is regular crime not with military nature and doesn't related to his job, accordingly we see that the regular courts is competent constitutionally to consider such crime according to article (99) of



the constitution of 2005 which stated that (a law shall regulate the military judiciary and shall specify the jurisdiction of military courts, which are limited to crimes of a military nature committed by members of the armed forces and security forces, and within the limits established by law.) that means the constitutional provision specified the jurisdictions of the military courts exclusively to the crimes with military nature, this limitation is to protect the police officer, and carry out professional aspect for the military control, but the Criminal Procedure Law of the Internal Security Forces NO.(17) of 2008 came in clear violation for this constitutional article as article (25/1st) stipulated that (the Internal Security Forces' court is competent to consider the following crimes:

- a) The crimes stipulated in the penalty law of the internal security forces or the penalty law No(111) for 1969 or other penalty laws if it was committed by a police officer and it did not entail a personal right to others.
- b) the crime committed by a policeman against another policeman, whether related to the job or not).

which means, it expanded the jurisdiction of the courts of the Internal Security Forces when it stipulated its competence to consider the crimes mentioned in the amended Penal Code No.(111) for 1969, and other penalty laws, more than that, make these courts competent to consider any crime committed by the policeman against another policeman, even if they are outside his military position, and make them also competent in every crime attributed to



the policeman even if he commits it outside his job as long as there is no civil party in it, and according to this article, this court must refer this case to the courts of the Internal Security Forces, which is a contradiction in the constitutional text of article (99), it was misplaced expansion by giving military courts the power to adjudicate criminal crimes, contrary to the constitution that defined the jurisdiction of these courts for crimes of a military nature in article (99) of it, and contradicts article (47) of the constitution which stipulates the principal of power separation, and article (37/b) of it (no person may be kept in custody or investigated except according to a judicial decision), the policeman outside his job is an ordinary citizen who has the same rights as others, and has duties as well as others, and he must be equated with them according to article (14) of the constitution which stipulates that (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status) therefore he must submit to regular courts not the military one. For these reasons and according to article (3) of the F.S.C. bylaw No.(1) for 2005, we request to scrutinize the text of article (25/1st/A and B) of the criminal procedures law of the internal security forces to clarify its constitutionality, and the contradiction to articles (14, 37, 47, 99) of the constitution.

The request has been set under scrutiny and deliberation by the F.S.C. and it reaches the following decision:

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The decision:

During scrutiny and deliberation by the F.S.C. the court found that the judge of Almhnawya investigation court challenged the constitutionality of the article (25/1st A and B) of the criminal procedures law of the internal security forces No.(17) for 2008 for contradicting articles (14, 37, 47, 99) of the constitution, when reviewed article (25/1st) of the mentioned law we found that it stipulate ((the Internal Security Forces' court is competent to consider the following crimes: a)the crimes stipulated in the penalty law of the internal security forces or the penalty law No(111) for 1969 or other penalty laws if it was committed by a police officer and it did not entail a personal right to others. b) the crime committed by a policeman against another policeman, whether related to the job or not)), article (99) of the constitution stipulated that (a law shall regulate the military judiciary and shall specify the jurisdiction of military courts, which are limited to crimes of a military nature committed by members of the armed forces and security forces, and within the limits established by law.), as one of the obligations of legislating the law challenging the unconstitutionality is to achieve a fair trial for the police man while providing legal guarantees for him, to achieve this the legislator has addressed (the subject of the appeal) when legislating the law and that in the clause (2nd) of the same article (25) of the law No.(17)

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2008 by granting the investigator or the investigative council with the approval of the referral order to refer the case of investigating to civil penal courts if the crime was not related to the job, or because of it, or related to civil parties), as clause (2nd) of article 25 of the mentioned law is complementary part for article (25/1st) of the law No.(17) of 2008, If the crime was not related to the job, or because of it, or related to civil by that there is no contradicting between article (25/1st a and b) of the law No.(17) of 2008 with articles (14, 37, 47 and 99) of the Iraqi constitution of 2005, also that article is in accordance with article (99) and (14) of the constitution, as it was set to ensure the rights of the police man when implementing the law (17) for 2008, as the judge of Almhnawya investigation court when challenged the constitutionality of the article (25/1st A and B) of the law No.(17) for 2008 didn't noticed that therefore his challenged is rejected for this reason. The court decided to reject it, the decision has been issued unanimously on 21.1.2014.