

In the name of Allah , the most Merciful , the most Gracious

Approving Execution Sentences

We have to refer at the beginning that the Iraqi constitution doesn't have the text that said the president should verify the execution sentences before they are carried out , but the verification comes as a general principle within the authority of the president in paragraph (eight) from the article 73 from the constitution and this is what we are going to clarify .

The article 73 from the constitution discussed the authority of the president that is expressed (presidency council) instead of (republic president) according to the article 138 from the constitution and among these authorities is what paragraph (eight) said from the article 73 and it said ((verification on the execution sentences that are issued by the special courts)) .

According to this text , the republic president has the general identification of verification on the execution sentences from not and he has according to paragraph (first) from the same article the authority to issue the special pardon through instructions from the prime minister except those who committed crimes that are outside the special pardon and they are :

- 1- What is related to the special right .
- 2- Those who are sentenced of committing international crimes .
- 3- Those who are sentenced of committing terrorist crimes .
- 4- Those who are sentenced of committing financial and administrative corruption crimes .

The republic president has no authority to issue the special pardon towards those who committed the mentioned crimes above and three of these crimes - except the international crimes – the republic president is obligated to verify the execution sentences against the perpetrators of these crimes , in other words his specialization in these three crimes is similar to the protocol specialization just like his specialization in the verification on the conventions and international treaties that is said in the same constitutional article .

But if the republic president is obligated to verify on these sentences , so he has the right to give the date of that verification , so the beginning date of taking the procedures to carry out the execution sentence is up to the approval of the republic president because these procedures can not be started before issuing the verification .

...but in the international crimes and they are genocide crimes and crimes against humanity and war crimes stated in the Iraqi High Tribunal (IHT) statute in the articles 11 , 12 , 13 so the republic president , despite he dose not have the right to issue the

special pardon for those who are sentenced according to these articles (paragraph (first) from the article 73 from the constitution) , he dose not have the right to mitigate the punishments issued against the perpetrators (paragraph (second) from the article 27 from the court statute) as well as he dose not have the right to specify the starting date of carrying out the execution sentences that are issued against the perpetrator of these crimes in accordance to (paragraph (second) from the article 27 of the court statute) .

So the execution sentences that are issued against the perpetrators of these crimes are not included with the provisions (paragraph (eight) from the article 73 from the constitution) meaning that its implementation does not require to be verified by the republic president and the implementation procedures had been started in accordance to a legal text since the date of gaining the sentence the conclusive degree .

In reference to the articles 285 – 293 from the criminal trials procedures law , they referred to the procedures that have to be followed during the implementation of the execution sentences that are issued from the criminal courts that belong to the supreme court council and that are verified by Iraq appellate court , moreover , the article (286) said frankly ((If the appellate court had verified the issued sentence of execution ...))

So the execution sentences that are not issued from these courts and not verified from the Iraq appellate court are not included with the provisions of these articles but it is included with the laws and the special rules of that courts , but the mentioned principles in the criminal trials procedures law are general principles can be relied on if there is no special text in the laws and rules of that courts .

This is what article (16) from the court statute said and it said the validity of the criminal trials procedures law on the procedures that are followed by the court if the provisions of this law do not contradict the law and the court rules because the latter is the one to be applied because it is special text that restrained the general text and this is a legal principle that requires no legislation .

The IHT statute had treated in chapter nine the subject of sentences implementation and the article (27) from this chapter had mentioned new sentences that are not stated by the criminal trials procedures law , so the provisions of this article is the one to be applied and the duration that is specified by this article to carry out the punishment which is thirty days is obligatory duration and can not be surpassed in any way because we can not add to the text .

(Signed by)

Judge
Ali Hussein Al Taei
Member of the Appellate Chamber