

Job 23-07698 (Iraq – Act No. 32 of 2016 Banning the Baath Party – fair copy)

Translated from Arabic

[extract from the Official Gazette of Iraq, No. 4420, 17 October 2016]

In the name of the people,

The Presidency of the Republic,

Decree No. 36

Pursuant to its approval by the Council of Representatives and pursuant to article 61 (first section) and article 73 (third section) of the Constitution, the President of the Republic decided on 29 September 2016 to promulgate the following act:

Act No. 32 of 2016 Banning the Baath Party and Racist, Terrorist and Takfirist Parties and Activities

Article 1 - Definitions

1. The Baath Party: the Baath Arab Socialist Party, which seized power on 17 July 1968.
2. Racism: behaviours and beliefs that accord higher status to a given group to entitle it to control another group and deprive that group of all its rights on the grounds of religion or race.
3. Takfirism: the accusing of another Muslim of being a non-believer in order to in effect strip such persons of their human rights and expose them to humiliation, killing or expulsion from society.
4. Terrorism: any criminal act committed by an individual or an organized group that targets an individual, group of individuals, community, or official or unofficial institution and damages public or private property to undermine security, stability or national unity or to cause terror, fear, panic and chaos among people.
5. Sectarian cleansing: the forcible expulsion of unwanted residents from a given area based on religious, ethnic, political or nationalistic discrimination or on strategic or ideological considerations, or a combination thereof.

Article 2

The provisions of the present act shall apply to the (dissolved) Baath Party and to any entity, party, activity or methodology that espouses, incites, glorifies or promotes racism, terrorism, takfirism or sectarian or nationalistic cleansing.

Article 3

The purpose of the present act is to:

1. Prevent the return of the Baath Party – under any name – to power or political life; prevent its leaders and prominent figures from forming a party or engaging in any political activity; and not allow it to be part of political and party-based pluralism in Iraq.

2. Prohibit political entities, parties and organizations that espouse ideas or orientations that contradict the principles of Islam, democracy and the peaceful transfer of power.
3. Prohibit political entities, parties and organizations whose goals or activities contradict the principles of Islam and the Constitution.
4. Establish and govern procedures and penalties for enforcing the prohibition mentioned in this article and for punishing violators of the provisions of the present act.

Article 4

1. The Baath Party is banned from engaging in any political, cultural, intellectual or social activity under any name or through any means of communication or the media.
2. It is forbidden to form any entity or political party that pursues, espouses, incites, glorifies or promotes racism, terrorism, takfirism or sectarian cleansing or espouses ideas or orientations that contradict the principles of democracy and the peaceful transfer of power.
3. It is forbidden to engage in any of the activities mentioned in paragraph 2 of this article.

Article 5

The ban imposed on the Baath Party and its members under the present act shall cover:

1. Membership in the Baath Party under any name.
2. Forcing, threatening or persuading any person to join the Baath Party.
3. Engaging in any political or ideological activity that encourages, promotes or glorifies the ideology of the Baath Party or that encourages membership in the Baath Party.
4. Standing for office in general or local elections, as well as holding special-level positions (director general and higher).
5. Using audio, visual or print media to propagate the ideas and views of the Baath Party.
6. Disseminating the activities, ideas or views of the Baath Party through any media.
7. Participating in any gatherings, protests or demonstrations.

Article 6

The provisions of article 4 of the present act apply to all political parties, entities and organizations that pursue, espouse, incite or glorify racism, terrorism, takfirism or sectarian cleansing or espouse ideas or orientations that contradict the principles of Islam, democracy and the peaceful transfer of power.

Article 7

1. The Political Parties Department of the Independent High Electoral Commission shall observe and monitor political parties, entities and organizations and verify that they do not engage in any of the activities prohibited under the present act.

2. The Political Parties Department shall be empowered to summon persons and conduct administrative investigations in respect of information which it obtains or which is submitted to it by state agencies in connection with the activities prohibited under the present act.
3. The Political Parties Department may request government agencies to provide it with information and documents that it needs to perform its tasks and work.
4. The Political Parties Department may inform the authority responsible for monitoring the activity of political parties as specified in the Political Parties Act of the findings of its administrative investigations so that said authority may take the necessary action under the present act.
5. If the Political Parties Department finds that an activity which it has investigated constitutes a prohibited activity under the present act, it shall refer the documents and findings of the investigation to the competent criminal court for examination under the present act.
6. One or more competent investigation courts shall be formed by judicial order within the Supreme Judicial Council to exercise jurisdiction over the crimes mentioned in the present act.
7. One or more criminal courts shall be formed by judicial order within the Supreme Judicial Council to hear cases referred to it under the present act.

Article 8

1. Upon the entry into force of the present act, any person who belongs to the banned Baath Party, promotes its ideas or views by any means or threatens or persuades any other person to join the aforementioned party shall be punished by imprisonment of up to ten years.
2. A perpetrator who was a member of the Baath Party before its dissolution or was covered by the accountability and justice procedures shall be punished by imprisonment of at least ten years.

Article 9

Any person who participates in or abets the dissemination of the ideas and views of the Baath Party or of racist, terrorist or takfirist activities through the media, including media organization owners, shall be punished by imprisonment of at least six years.

Article 10

Any person who pursues or espouses racism, takfirism or sectarian or nationalistic cleansing, or who incites, glorifies, promotes or abets the espousal of ideas or orientations that contradict the principles of democracy and the peaceful transfer of power shall be punished by imprisonment of up to ten years.

Article 11

Any member of the army or the internal security forces who commits any of the acts specified in articles 8, 9 and 10 of the present act shall be punished with life imprisonment.

Article 12

1. Any employee or person responsible for a public service who denies a citizen's legally established rights or obstructs or delays the completion of an official transaction for a citizen on sectarian, religious or nationalistic grounds shall be punished by imprisonment for up to five years, without prejudice to any administrative penalties as may be stipulated by law.

2. Any employee who punishes another employee or denies another employee employment rights on sectarian, religious or nationalistic grounds shall be punished with imprisonment, without prejudice to any administrative penalties as may be stipulated by law.

3. Any person who files a claim of sectarian, religious or nationalistic discrimination that is judicially proven to be without grounds shall be punished by imprisonment for at least one year.

Article 13

Any person who uses force or intimidation to force – for sectarian, religious or nationalistic reasons – a citizen to leave his or her place of habitual residence shall be punished by imprisonment of at least seven years.

Article 14

If a perpetrator confesses to having committed any act prohibited under the present act to the competent authorities before an investigation of the perpetrator is initiated, the confession shall be considered a mitigating circumstance.

Article 15

An employee shall be punished with the penalty of dismissal. Military, police or security personnel convicted of any of the crimes stipulated in the present act shall be punished with the penalty of dismissal and forfeiture of pension rights.

Article 16

The penalties imposed under the present act shall be without prejudice to any harsher penalty provided for in other legislation.

Article 17

The General Secretariat of the Council of Ministers may, after obtaining the approval of the Prime Minister, issue the necessary instructions to enable the implementation of the present act.

Article 18

The present act shall enter into force on the date of its publication in the Official Gazette.

Fuad Masum
President of the Republic

Rationale for the act

The democratic system in Iraq is founded on political pluralism and the peaceful transition of power, with the Constitution enshrining the principles of justice, equality, freedom and respect for human rights. Article 7 of the Constitution provides for the enactment of a law prohibiting any entity or methodology that espouses, incites, facilitates, glorifies, promotes or justifies racism, terrorism, the labelling of others as non-believers (takfirism) or sectarian cleansing, in particular the Baath Party and its prominent figures, howsoever designated, in order to prevent the return of dictatorship. The present law has thus been enacted.