

Republic of Iraq
Federal Supreme Court
Ref. 156/federal/2021



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 29. 12 .2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: President of the Supreme Judicial Council / being in his capacity as his deputy, the legal employee, Labib Abbas Jaafar.

The Defendant: Speaker of the Iraqi Council of Representatives /being in his capacity his agents are legal advisor Haitham Majed Salem and the jurist Saman Mohsen Ibrahim.

The Claim:

The plaintiff/ being in his capacity claimed through his attorney that the defendant/ being in his capacity, had enacted Judicial Supervision Authority Law No. (26) of the year 2016 published in the Iraqi Gazette, Issue No. (4418) on 10/3/2016 and effective from the date of its publication in the aforementioned Official Gazette. And since the aforementioned law stipulates in Article (1) of it that (A commission is formed in the Supreme Judicial Council called the Judicial Supervision Commission, which enjoys a legal personality and is one of the

components of the federal judicial authority. It consists of a president, a vice president, and a sufficient number of judicial supervisors) and since the Iraqi Constitution of 2005 stipulates in Article (89) of it (The federal judicial power is comprised of the Higher Juridical Council, the FSC, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law) and thus be The Judicial Supervision Commission is part of the components of the judicial authority and may not have a legal personality independent of the judicial authority and what was stated in Article (1) of the Judicial Supervision Commission Law contradicts the text of Article (89) of the Constitution, based on Article (13) of the Constitution, which states (First – This Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception. Second – No law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void. Therefore, for the reasons mentioned, the prosecutor's representative/ being in his capacity, requested the FSC to invite the defendant/ being in his capacity, to plead and judge the unconstitutionality of Article (1) of the Judicial Supervision Commission Law No. (29) of 2016 and charge the defendant/ being in his capacity, all judicial fees and expenses. The case was registered with this court in No. (156/federal/2021) based on the provisions of Article (1/3rd) of the bylaw of the FSC No. (1) of 2005, and the defendant/ being in his capacity, is informed of its petition and the documents attached to it in accordance with what was stated in Article (2/1st) from the same bylaw, and his two attorneys responded with the answer draft dated 30/11/2021, which included the following:

1. The Judicial Authority shall consist of the Supreme Judicial Council, the FSC, the Federal Court of Cassation, Public Prosecution and Judicial Supervisory Organization in accordance with the provisions of Article (89) of the Constitution these components have received an enumeration

for the ingredients of the Judicial Authority, which is part of the Supreme Judicial Council and have specific tasks in accordance with Article (90) of the Constitution and each of these components, their privacy and terms of reference and functions in accordance with its own law embodies financial and administrative independence and their moral independence to each role entrusted with it, and the components of the judicial authority are members of the Supreme Judicial Council not affiliated with it. 2. The text under appeal came as a legislative option in accordance with the terms of reference of the Council of Representatives based on the provisions of Article (61/1st) of the Constitution. Therefore, the defendant's attorney/ being in his capacity, requested that the plaintiff's lawsuit/ being in his capacity be dismissed, and charged him with all judicial fees, expenses, and attorney fees. After completing all the procedures required by the aforementioned bylaw, a date for the pleading was set in accordance with the provisions of Article (2/2nd) of the same aforementioned bylaw, and the two parties were informed of it. On the day appointed for the pleading, the court was formed, and the plaintiff/being in his capacity attended, as his attorney, the legal employee, Labib Abbas Jaafar, and attended on behalf of the defendant, / being in his capacity, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim. The immanence and public pleading were conducted; the plaintiff's attorney repeated what was stated in the lawsuit petition and requested the judgment according to what was stated in it. The defendant's attorneys answered that they are requesting the dismissal of the lawsuit for the reasons mentioned in their drafts dated 30/11/2021. The pleading concluded and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff the head of the Supreme Judicial Council/ being in his capacity, requested to invite the defendant, the Speaker of Council of Representatives / being in his capacity, to plead and judge the unconstitutionality of Article (1) of the Judicial Oversight Commission Law No. (29) of 2016 for violating the provisions of Articles (13 and 89) of the Constitution of the Republic of Iraq of year 2005 through what was stated in the plaintiff's lawsuit and the defenses of the defendant's attorneys, the court reached the following conclusions: First: Based on the provisions of Article (89) of the Constitution of the Republic of Iraq of 2005, the federal judicial authority consists of the Supreme Judicial Council, the FSC, the Federal Court of Cassation, the Public Prosecution Authority, the Judicial Supervision Authority and other federal courts, which are organized in accordance with the law, and the constitution did not include A text indicating the enjoyment of any of the aforementioned components with a legal personality, except for what was mentioned in Article (92/1st) of it regarding the FSC, which stipulates that (the Federal Supreme Court is an independent judicial body, financially and administratively). Second: - The Supreme Judicial Council manages the affairs of judicial bodies based on the provisions of Article (90) of the Constitution, which stipulates that (The Supreme Judicial Council shall oversee the affairs of the judicial committees. The law shall specify the method of its establishment, its authorities, and the rules of its operation.) and that this competence of the Supreme Judicial Council requires its enjoyment. With an independent legal personality in order to be able to exercise his constitutional powers stipulated in Article (91) of the Constitution, This is what is required by Article (1) of the Supreme Judicial Council Law No. (45) of 2017, which stipulates that ((establishes a council called (the Supreme Judicial Council) enjoying legal personality and financial and administrative independence and represented by its president or whoever

authorizes him and its headquarters in Baghdad)). Third:- Article (1) of the Judicial Supervision Commission Law No. (29) of 2016 whose constitutionality is challenged stipulates that (a commission called the Judicial Supervision Commission shall be formed in the Supreme Judicial Council, which has a legal personality. from the judicial supervisors) and upon further consideration of this text, it was found that it required the formation of a judicial supervision body in the Supreme Judicial Council. In this regard, the constitutional powers exercised by the Supreme Judicial Council under Article (91) of the Constitution, which is (the administration of judicial affairs and supervision of the federal judiciary, the nomination of the president and members of the Federal Court of Cassation, the chief prosecutor, and the head of the Judicial Supervision Authority, and submission to the Council of Representatives for approval of their appointment, and a proposal for the annual budget draft of the federal judicial authority and submission to the Council of Representatives for approval), given to him considering that his personality The legal representation represents the personality of all its components in accordance with what was stated in Article (2/1st) of the Supreme Judicial Council Law No. (45) of 2017, which stipulated (First - the Supreme Judicial Council consists of 1. The President of the Federal Court of Cassation - Chairman. 2. Vice-President of the Federal Court of Cassation - members. 3. Head of Public Prosecution - Member. 4. Head of the Judicial Supervision Authority - member. 5. Heads of the Federal Courts of Appeal - members. 6. Heads of judicial councils in the regions - members.) and since Article (48) of Civil Law No. (40) of the year 1951, as amended, stipulates: (1) Every legal person shall have a representative of his will. For the capacity of a natural person within the limits determined by law 3. He has an independent financial liability 4. He has the capacity to perform, within the limits specified by his memorandum of association and imposed by law 5. He has the right to litigation ... etc.) based on the aforementioned text and the texts of articles (47, 49, 50, 51, 52, 54, 55, 56, 57, 58 and 59) of the

aforementioned law, the public legal persons are of two types, the first of which is the accompanying or interest-bearing public legal persons. Persons practice one type of job performed by the state and specialize in this field and become responsible for it like ministries where each ministry specializes in a specific facility or activity and the second type is regional and local legal persons and these persons are given a part of the public authority to exercise it on behalf of the state but within a specific spatial framework not It goes beyond the limits of this spatial framework, where the public authority is exercised spatially and not qualitatively in a specific region or place, and it cannot exercise this authority outside these limits, the most important of these legal persons is the state, where the public authority is exercised within its borders, as well as the governorates and districts, as the expansion of the geographical area of the state and the multiplicity of its functions require the granting of legal personality to some bodies to conduct daily matters related to the state, and this does not apply to the Judicial Supervision Authority, as it is a body within the Supreme Judicial Council and does not enjoy With financial and administrative independence, it exercises its judicial powers, which are considered part of the competencies of the Supreme Judicial Council. Fourth: - According to Article (87) of the Constitution, which stipulates (the judicial authority is independent and it is assumed by the courts of all kinds and levels, and they issue their rulings in accordance with the law), the independence of the judicial authority is linked to the independence of judges during the performance of their judicial work in accordance with what was stated in Article (88) of the Constitution, which stipulates that (judges are independent, and there is no authority over them in their judiciary except the law, and no authority may interfere in the judiciary or in the affairs of justice) and this independence of the judiciary from both the institutional and functional sides necessitates achieving the unity of the judiciary, because the judges who manage all the joints of the judiciary are judges, and who determines how they are appointed, promoted and assuming judicial

positions is the Supreme Judicial Council as it is the most knowledgeable of them in terms of behavior and experience in accordance with its powers contained in Article (91) of the Constitution and Article (3) of the Supreme Judicial Council Law No. (45) of 2017. Fifth: The plaintiff's request/ being in his capacity, to rule the unconstitutionality of Article (1) of the Judicial Oversight Commission Law No. (29) of 2016 in full, according to what was stated in the lawsuit petition, leads to the creation of a legislative vacuum in terms of the formation of the Judicial Oversight Commission within the Supreme Judicial Council. This court focused on the phrase (has a legal personality) from the aforementioned article and its violation of the provisions of Articles (87, 88, 89, 90, 91, and 92) of the Constitution of the Republic of Iraq of the year 2005, and for all of the above, the FSC decided:

1. Judgment of the unconstitutionality of the phrase (has a legal personality) from Article (1) of the Judicial Supervision Commission Law No. (29) of 2016. 2. Rejection of the plaintiff's claim/ being in his capacity regarding his request judgment of the unconstitutionality of Article (1) of the Judicial Supervision Commission Law No. (29) of 2016 with the exception of the phrase (has a legal personality) from it, according to what was mentioned in paragraph (1) above. 3. The parties shall bear the relative fees and expenses. And the ruling was issued in agreement conclusive and binding on all authorities based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq of 2005 and Articles (4 and 5/2nd) of the FSC Law No. (30) of 2005 amended by Law No. (25) of 2021 and the decision had made clear public on 24/Jumada al-Awwal/1443 coinciding with 29/December/2021.

Signature of
The president

Jasem Mohammad Abod