

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.56 /federal/media/2016



Kurdish text

The Federal Supreme Court has been convened on 23/6/2016, headed by the judge Madhat Al-Mahmood and membership of judges Farouk Mohammed Al-Sami , Jaafar Nasir Hussein , Akram Taha Mohammed ,Akram Ahmed Baban, Mohammed Saib Al-Nagshabndi, Abood Salih AL-Tememi, 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 court of work in Babil requested from the FSC according to its letter No.(2/Jim/2016) on (12/6/2016) to decide on the legitimacy and Constitutionality of the article (165) from the valid law of work No.(37) for 2015 because of the reasons that were listed in the court session which dated on 12/6/2016, which stipulated that the court of work shall be formed according to what follows: (first: a judge who is nominated by the head of the higher judiciary council based on a suggestion of the head of the court of appeal, second: a representative about public union who is the most represented for workers, third: a representative about the union of employers who is the most represented). The judge burdens the court of work the reasons which he relied on in his request. the text didn't determine in where if the representatives In the clauses second and third from the above article their capacities is original or advisory, and if their presence in the court formation in the criminal cases or in the civil cases which were tried by the court. Besides that, it didn't determine if the court decision shall be issued by the majority or unanimously. The above text didn't mention their Educational qualifications and do they have judge capacity. The requester sees that the formation of the court in this formal contradicts the provisions of

the articles (19/1st) which stipulated (First: The judiciary is independent and no power is above the judiciary except the law.) and the article (47) from the Constitution (The federal powers shall consist of the legislative, executive, and judicial powers and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.) also, contradicts with the article (87) from the Constitution (The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.) lastly the article (89) which explaining the formation of the judicial power. In the light of what above, the requester requests from the court to decide on the legitimacy and Constitutionality of the article (165) from the law of work No.(37) for 2015. The request had been placed under the scrutiny and deliberation by the FSC, and the court reached the following decision.

The Decision:

During the scrutiny and deliberation by the FSC, the court found that the judge of the court of work in Babil has presented a request to the court to decide on the legitimacy and Constitutionality of the article (165) from the law of work No.(37) for 2015, which stipulated that the formation of the court shall include a judge who shall be nominated by the head of the higher judiciary council, representative about the public union who is the most represented for the workers and representative about the employers union who is the most represented. Because the formation violates some Constitutional texts which were listed in the articles (19/1st, 47, 87 and 89). During the pondering in the request and returning to the law of judicial regulation No.(160) for 1979 (amended). We found in the second chapter/ the first part, that it treated the subject of the courts' types, and it stipulated in the article (11) that the types of courts shall be as follows(ninth- the higher court of work and the courts of work and this means that the work's courts which were mentioned in the article (34) from the law of the judicial regulation are part of the higher judiciary council formations and one of the formations of the federal judicial power that was stipulated in the article (89) from the Constitution of the Republic of Iraq for 2005. In addition that the valid law of work No.(37) for 2015 has formulated a method for challenging

the judicial decisions which are issued by the court of work by through the article (167) which decided to form a triple body from the court of cassation and shall be named the work's cases commission for trying the challenges that were stipulated in the law, and the article (168) from the above law has determined the legal period to challenge the decisions that are issued by the courts of work. As for the adding of a representative for the workers and another one for the employers to the court's formation, this doesn't violate the legitimacy or Constitutionality of the article (165) from the law of work No.(37) for 2015. Whereas the FSC didn't find any contradiction between the text of the above article with the Constitutional texts which were listed in the request (19/1st, 47, 87 and 89) because the decision of the courts of work are absolute judicial decisions as like as the decisions of the other courts within the formation of the higher judiciary council. The court with this description doesn't violate the principle of judiciary independent. The court sees that the text of the article (165) from the law of work is legislative option because the work of the court relates to specific cases and limited to one part of the society, it is workers part which required to be represented by someone and represents the part of the employers so the court can reach the right decision in such cases. Based on this the FSC sees that there is no contradiction between the text of the article (165) from the law of the work No.(37) for 2015 and the Constitutional principles which the requester mentioned. The decision was issued unanimously on 23/6/2016.