

Republic of Iraq  
Federal Supreme Court  
Ref. 65 / federal / 2021



Kurdish text

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The Federal Supreme Court (F.S.C.) convened on 31.8.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

**The plaintiff:**

Head of the Supreme Judicial Council / in addition to his post – his agent the legal official Labib Abbas Jaafar.

**The defendant:**

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.

**The claim:**

the plaintiff in addition to his post claimed that the defendant, in addition to his post, enacted Traffic Law No. (8) of 2019, which was published in the Iraqi Gazette, No. (4550) on 5.8.2019, and entered into force sixty days after its publication in the aforementioned Official Gazette. Article (31/1<sup>st</sup>) of it stipulates that (investigation and misdemeanor courts specialized in traffic cases shall be formed

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in Baghdad and the governorates), he requested to rule that they are unconstitutional for the following reasons:

1. Violation of the provisions of Article (95) of the Constitution of the Republic of Iraq for the year 2005, which prohibits the establishment of special or exceptional courts to consider a specific type of crime, as it is stated (it is prohibited to establish special or exceptional courts) and also violates the provisions of Article (13/2<sup>nd</sup>) of the Constitution, which states (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).
2. The contested article (31/1<sup>st</sup>) of Traffic Law No. (8) of 2019 contradicts and violates the provisions of the amended Judicial Organization Law No. (160) of 1979, especially the articles contained in chapter two of it, which dealt with the jurisdiction of courts and its formations in general without restriction or specification, including Article (31/1<sup>st</sup>) of it, which necessitated the formation of a misdemeanor court in every place where there is a court of first instance, as it stipulates that (a misdemeanor court or more shall be formed in every place where there is a court of first instance and is competent to consider the cases assigned to it in accordance with the provisions of the law), as well as Article (35/1<sup>st</sup>), which stipulates that (one or more investigative courts shall

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be formed in every place where there is a court of first instance, and the judge of the court of first instance shall be an investigative judge unless a special judge is appointed for it, and he shall conduct the investigation in accordance with the provisions of the law). Therefore, restricting the formation of investigation and misdemeanor courts specialized in traffic cases in Baghdad and the governorates, according to Article (31/1<sup>st</sup>) of Traffic Law No. (8) of 2019 requires allocating judges and employees, and this burdens the Supreme Judicial Council with unjustified expenses and cadres. Therefore, he requested to call upon the defendant in addition to his post to plead and to rule the unconstitutionality of the aforementioned article.

based on the provisions of Article (1/3<sup>rd</sup>) of the Federal Supreme Court's bylaw No. (1) of 2005, the case was registered before this Court by No. (65/Federal/2021), the defendant, in addition to his post was informed of its petition and documents, he answered through his agent in accordance with the answering draft dated 21.6.2021 that the plaintiff's claim, in addition to his job, is obligatory to be dismissed for the following reasons:

1. The special or exceptional courts that Article (95) of the Constitution prohibited from establishing are (the courts that consider disputes arising from the application of a specific law or that they consider specific cases under its law, and its work ends with the end of those disputes arising from the application of that

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law or those specific cases, that is, they are not permanent in addition to being formed outside the federal judicial authority), as for the exceptional courts, they are (courts that were established in special exceptional circumstances and are often formed outside the usual judicial contexts, and these courts are temporary and disappear with the demise of those circumstances that imposed themselves for the establishment of those courts and those in charge of these courts are not required to meet the legal conditions, as it is for the judges of the federal judicial authority) this is the text of what was stated in the Federal Supreme Court Decision No. (111/Federal/Media/2015) dated 8.11.2015, and that the investigation and misdemeanor courts specialized in traffic cases in Baghdad and the governorates stipulated in Article (31/1<sup>st</sup>) subject of appeal are not temporary courts, they were not formed outside the judicial authority, they are not courts formed outside judicial contexts, they are not temporary, they do not apply to any special or exceptional description, and they do not violate the provisions of Article (95) of the Constitution.

2. The plaintiff's claim that the article in question is inconsistent with the law of judicial organization, does not necessitate a ruling that it is unconstitutional. As the text represents the legislator's intention to organize the courts specialized in traffic cases without prejudice to the provisions of the judicial organization law. And as the legislator enacts new legal

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regulation doesn't subject to be challenged as unconstitutionality because the subsequent text supersedes the previous text as the Federal Supreme Court ruled according to its decision No. (43/ Federal/ Media/2017) on 20.6.2017. Therefore, he requested that the plaintiff's lawsuit be dismissed in addition to his job.

Based on the provisions of Article (2/2<sup>nd</sup>) of the aforementioned bylaw, a date was set for the pleading, the two parties were notified of it. On the set date for the pleading, the court was formed. The plaintiff's attorney attended, in addition to his job, the legal employee, Labib Abbas Jaafar, and the defendant agents have attended, in addition to his job, the legal advisor Haitham Majed Salem and the legal employee. Saman Mohsen Ibrahim and started the public pleading, the plaintiff's attorney, repeated what was stated in the case petition and requested the judgment according to what was stated in it. The defendant's agents repeated the answering draft dated 21.6.2021 requesting to dismiss the lawsuit. Since there is nothing left to be said, the conclusion of the pleading and set August 31, 2021, as the date for the issuance of the decision, and on the day appointed for its issuance, the court was formed and issued its next decision in public.

### **The decision:**

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff (the Head of the Supreme Judicial Council / in addition to his position) requested, and in accordance

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with what was stated in the petition, to call upon the defendant (the Speaker of the Council of Representatives / in addition to his post) to plead and judge the unconstitutionality of Article (31/1<sup>st</sup>) of the Traffic Law No. (8) of 2019, which stipulated (First - the formation of investigative and misdemeanor courts specialized in traffic cases in Baghdad and the provinces), this court finds that the federal authorities in Iraq under Article (47) of the Constitution are consist of the legislative, executive and judicial authorities, as it stipulates that (the authorities of the federal government is consist of the legislative, executive and judicial authorities, exercising its competencies and tasks based on the principle of separation of powers). As for the judicial authority and the independence that was stipulated in many constitutional articles including article (19/1<sup>st</sup> and 3<sup>rd</sup>) as paragraph (1<sup>st</sup>) of it stated (the judiciary is independent and no power is above the judiciary except the Law). As for Paragraph (3<sup>rd</sup>), it stipulated that (Litigation is a protected and guaranteed right for all), as well as Article (87) of it, which stipulates that (the judiciary is independent, and the courts of all kinds and levels are entrusted with it, and they issue their judgments in accordance with the law). As the article (88) it stated (Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice), and it is known that the constitution determines the competence of each of the public authorities in the state (legislative, executive and judicial), it stated the method of its formation as it comprehensively deals with these matters and leaves the detailed and organizational issues to the legislator. There is no doubt that the law has a complementary role to the constitution, as the ordinary legislator has the power to organize the judicial bodies, indicate how they are formed, indicate the types

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and levels of courts, the conditions and procedures for appointing and transferring judges, and other organizational issues that the constitution was silent about, as Article (96) of the constitution stipulates that (the law regulates the composition of the courts, their types, and degrees, their competencies, how judges are appointed, their service and members of the public prosecution, their discipline, and their retirement) then the existence of a law to organize the judiciary is a logical matter and it is consistent with the general rule of the legislative authority's competence to enact legislation. This authority represents a positive intervention by the legislator, but this authority must be restricted by certain limits and controls that the legislator must observe and abide by, and his interference, in this case, should not be negative and affect the principle of separation of powers and the independence of the judiciary. The work of the legislator must be limited to the scope of the organizational framework specified by the constitution, and this limit should not be exceeded, if the Constitution authorizes the legislator competencies of regulating the Judicial authorities, as stated in Article (89) of the Constitution, which stipulates that (the federal judicial authority shall consist of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Authority, the Judicial Oversight Authority, and other federal courts, which are organized in accordance with the law) but at the same time the legislator must refrain from organizing the judiciary if it is intended to prejudice its independence and in the case of refusal the constitutional means must be used, through which the principle of the rule of law is established and the independence of the judiciary is preserved. In the same context, laws relating to judicial affairs must be issued only on the basis of a proposal or advice from the judiciary

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in order to guarantee its independence away from any attempt to gain access to it by wasting the guarantees of judicial independence or compromising their conditions, and this requires taking the opinion of the Supreme Judicial Council on the legislation that is related to the judiciary, as it is the body that manages the affairs of judicial bodies in accordance with what is stated in Article (90) of the Constitution. Therefore, the legislator's tendency to abolish courts or transfer their jurisdiction to other existing courts or to courts being established for this purpose without consulting the Supreme Judicial Council represents interference in the work of the judicial authority and a violation of its independence and a violation of the principle of separation of powers. On the other hand, the proposal of draft laws related to the judiciary is among the duties of the Supreme Judicial Council, as Article (3/10<sup>th</sup>) of the Supreme Judicial Council Law No. (45) of 2017 stipulates (The Supreme Judicial Council undertakes the following tasks: Tenth - to propose draft laws related to the affairs of the federal judicial authority), also the Judicial Organization Law No. (160) for the year 1979 dealt with the issue of the formation of courts, their jurisdictions, and their types. Article (31/1<sup>st</sup>) of it stipulates that (a misdemeanor court or more shall be formed in every place where there is a court of first instance and is competent to consider the cases assigned to it in accordance with the provisions of the law) and misdemeanor courts consider traffic cases that falls within its jurisdiction and according to its spatial jurisdiction, and the President of the Supreme Judicial Council, upon a proposal from the President of the Court of Appeal, may form a misdemeanor court to consider one or more types of cases based on the provisions of Article (32) of the Judicial Organization Law, and Article (35/1<sup>st</sup>) of the aforementioned law deals with the formation of investigative

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courts, as it stipulates that (a court of investigation or more shall be formed in every place where there is a court of first instance, and the judge of the court of first instance shall be an investigative judge unless a special judge is appointed for it, he shall investigate according to the provision of law), the investigation courts consider investigative cases that fall within their jurisdiction, including traffic cases, and the President of the Supreme Judicial Council, based on a proposal from the President of the Court of Appeal, may allocate an investigation court for a specific type or types of crimes. The work of the investigation and misdemeanor courts, and at the level of all the appellate areas, has been stable for a very long time. Therefore, according to the above, what was stated in Article (31/1<sup>st</sup>) of Traffic Law No. (8) of 2019 is contrary to the provisions of Articles (19/1<sup>st</sup> and 3<sup>rd</sup>), (87), and (88), (89) and (90) of the Constitution of the Republic of Iraq for the year 2005. on it, the Federal Supreme Court decided to rule the unconstitutionality of Article (31/first) of the Traffic Law No. (8) for the year 2019 and to cancel it, and charge the defendant the plaintiff attorney's fees the Legal employee Labib Abbas Jaafar, an amount of one hundred thousand dinars. the decision was issued by agreement final and binding on all authorities in accordance with the provisions of Articles (93) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and publicly understood on Muharram 22, 1443 AH, corresponding to 31.8.2021 AD.

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Signature of  
The president

**Jasem Mohammad  
Abbood**

Signature of  
The member

**Sameer Abbas  
Mohammed**

Signature of  
The member

**Ghaleb Amer  
Shnain**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Khalaf Ahmad Rajab**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Abdul Rahman  
Suleiman Ali**

Signature of  
The member

**Diyar Muhammad  
Ali**

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