



The Federal Supreme Court (F.S.C.) convened on 29.9.2021 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 Administrative Director of the Coalition Authority in Iraq had previously enacted Order No. (88) in the name of the Law of (The Rights of Judicial Officials to Return to the Judiciary after Specific Government Service), which was published in the Iraqi Gazette, No. (3984) on 1.6.2004, effective from the date of its signature, as the aforementioned law dealt with the right to return to judicial service

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by judges and members of the public prosecution despite their work in the legislative or executive authorities as stated in Section (1) paragraphs (1 and 2) which provided for (1- for any federal judge or public prosecutor (Judicial employee) who left the Iraqi judiciary to work in a committee established by the federal government (the committee) according to Article (51) of the Transitional Administrative Law, or to work as a member of the National Assembly, the Presidential Council, or the Council of Ministers based on Article (28) of the Transitional Administrative Law, He shall have the right to be reappointed as a member of the Iraqi judiciary after leaving this committee or this job as a member of the National Assembly, the Presidential Council or the Council of Ministers. 2- The judicial employee shall exercise his right to return to the Iraqi judiciary within 90 days after leaving the committee or national association or The Presidential Council or the Council of Ministers, and if the judicial employee exercises his right to return to the Iraqi judiciary, he shall be immediately returned to the same level that he (or she) occupied before joining the committee or serving as a member of the National Assembly, the Presidential Council or the Council of Ministers.), also what stated in Section (2) of the aforementioned order that (no judicial employee who worked in the committee or as a member of the National Assembly or the Presidential Council or the Council of Ministers and then later returned to the Iraqi judiciary may participate in a case arising from this service). And what was also stated in Section (3) of the same

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order, which states (in recognition of the right of the judicial officials to return to the Iraqi judiciary, the judicial employee shall have the right to use his honorary title as a judge or public prosecutor while working in the committee, the National Assembly, the Presidential Council, or Council of Ministers). since the articles of the law (Coalition Authority Order No. 88 of 2004) aforementioned in its entirety and force, constitute a violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 and the applicable laws in force, which requires addressing it with a ruling of its unconstitutionality, especially since the defendant, in addition to his post, is the general successor to the legal personality who assumed the task of legislation in the country, and for the following reasons:

First: The aforementioned Coalition Authority order constitutes an explicit violation of the provisions of Article (19/First) as well as Article (87) of the Constitution of the Republic of Iraq for the year 2005, which dealt with the issue of the independence of the judiciary and its submission only to the rule of law. One of the most important manifestations of this independence is that judges and members of the public prosecution work exclusively in the judiciary and not engage in any other non-judicial work, whether it is in the legislative or executive authority, regardless of their titles or job rank, as legislators (members of the Council of Representatives or provincial councils etc.) or executives (ministers, governors, undersecretaries, etc.) and the consequent

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loss of their impartiality as judges or public prosecutors due to their assumption of those executive or legislative positions that are not consistent with judicial behavior within the judicial institution if they are returned to work in the judiciary, and this is a wound to the independence and impartiality of the judiciary, in addition to the fact that the independence of the judiciary derives its strength from the presence of the judges themselves in the judicial work, and this contradicts what was stated in the aforementioned order, especially Section (3) which permitted the judge or member the public prosecution office may use its own honorary title as a judge or public prosecutor during executive or legislative work.

Second: The aforementioned Coalition Authority order, specifically Section (1), Paragraph (1), also contradicts the provisions of Article (88) of the Constitution, which states: (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 the affairs of the justice), and the images of this conflict in contravention of the constitution, whose unconstitutionality came in the contested order, is manifested by the explicit interference in the affairs of judges and justice by imposing the return of people (judges or members of the public prosecution) who left the judicial work of their own free will and choose to work in non-judicial bodies, whether legislative or executive within government institutions in State.

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Third: The order of the coalition authority challenged for being unconstitutional contradicts the provisions of the Judicial Organization Law No. (160) of 1979 as amended, which is the law that manages the affairs of judges and members of the public prosecution in the federal judicial authority, especially what is stated in Part Three / Chapter Two of it in Article (49/ first a, b and second/ a, b) from it, which dealt with the issue of mandate only and not leaving work in the judicial institution permanently, as it referred to the assignment of the judge, with his written approval, to work in specific bodies exclusively related to legal work, and stipulated the approval of the President of the Supreme Judicial Council for that, and it was prohibited in Paragraph (Second / A) of the same article the assignment of the judge to any job in the official departments and the institutions of the socialist sector, while the coalition authority order does not refer to the meaning of the mandate, but rather refers to the judge or member of the public prosecution permanently leaving his judicial work and joining another purely executive or legislative job, which completely and in detail contradicts the provisions of the aforementioned Judicial Organization Law.

Therefore, for the reasons mentioned above, he requests to rule that the coalition authority order No. (88) is unconstitutional (the rights of judicial officials to return to the judiciary after a specific government service) and to charge the defendant, in addition to his post, all judicial fees and expenses. The case was registered with this court in

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No. (66/Federal/2021), and the legal fee was collected for it, according to what was stated in Article (1/Third) of the Federal Supreme Court's bylaw No. (1) of 2005, and informs the defendant/ in addition to his post of its petition and documents in accordance with what was stated in Article (2/First) of the aforementioned bylaw, and his attorneys responded according to the answer draft dated 22.6.2021 and included the following:

1. In paragraph (First) of the case petition, the plaintiff's agent indicates that the constitution has explicitly stipulated in Article (19/first) that the judiciary is independent and has no authority over it except the law, so the Coalition Authority Order No. (88) is tantamount to a law, and it is based on that that regulating the work affairs of judges has been carried out according to a law, which is in accordance with the constitution. As for what the plaintiff's attorney said that judges should be confined to the judiciary and not in any other institution, it is a personal assessment that has no basis in the constitution, and therefore it is a non-productive argument in the case and the esteemed court does not have the jurisdiction to evaluate it, and this applies to what the attorney of the plaintiff stated that working in other non-judicial institutions will injure the independence and impartiality of the judiciary, as it represents a personal opinion that has no basis in the constitution.
2. The independence of the judiciary does not affect by that the judge's return to judicial work after the end of his work in other

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non-judicial institutions, bearing in mind that this assessment is personal and has no basis and the court is not competent to look into it.

3. What the plaintiff's attorney mentioned about the conflict of the texts under challenge with the Judicial Organization Law No. (160) for the year 1979, is something that the court does not have jurisdiction to consider, which had previously decided that the subsequent legislation is not valid to challenge its constitutionality just because it contradicts a previous law, as the subsequent law supersedes the previous one in its decision No. (43/Federal/Media/2017) on (20.6.2017).

For these reasons and the reasons that the court deems appropriate, he requested to dismiss the plaintiff's lawsuit and to charge him all judicial fees, expenses, and attorney's fees. After completing all the procedures in accordance with the provisions of the aforementioned bylaw, a date was set for the pleading and the two parties were informed of it in accordance with the provisions of Article (2/Second) of the aforementioned bylaw, and on the day appointed for the pleading, the court was formed. The agent of the plaintiff attended, in addition to his post, the legal employee, Labib Abbas Jaafar, and the defendant's agent, legal advisor Haitham Majed Salem also attended. and started the public pleading, the plaintiff's attorney, in addition to his post, repeated what was stated in the lawsuit's petition and requested a ruling accordingly. The defendant agent responded requesting to dismiss the lawsuit for the mentioned

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reasons in the draft dated 22.6.2021, each party made its previous statements and requests, and since there is nothing left to say, the Court decided the conclusion of the pleading and set 28.9.2021 as the date for the issuance of the decision, and because that day coincided with an official holiday, the court was formed the next day, based on the provisions of Article (24) of the Civil Procedure Law No. (83) for the year 1969 amended and issued the following ruling in public.

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff, in addition to his post, claimed that the Administrative Director of the Coalition Authority in Iraq had initiated Order No. (88) (the rights of judicial officials to return to the judiciary after a specific government service), which was published in the Iraqi Gazette with the number (3984) On 1.6.2004 in force from the date of its signature and where the aforementioned law dealt with the right to return to judicial service by judges and members of the public prosecution despite their work in the legislative or executive authorities as stated in section (1), paragraphs (1 and 2), as paragraph (1) stipulates (for any federal judge or public prosecutor (judicial employee) to leave the Iraqi judiciary to work in a committee established by the federal government (the committee) in accordance with Article (51) of the Transitional Administrative Law, or to work as a member of the National Assembly, the Presidential Council, or the Council of Ministers based on Article (28) of the

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Transitional Administrative Law, he shall have the right to be re-appointed as a member of the Iraqi judiciary after leaving this committee or this job as a member of the National Assembly or Parliament and the Council of Ministers) and paragraph (2) stipulates that the judicial employee must exercise his right to return to the Iraqi judiciary within (90) days after leaving the committee, the National Assembly, the Presidential Council, or the Council of Ministers. To be returned immediately to the same level that he (or she) was occupying before joining the committee or serving as a member of the National Assembly, the Presidential Council or the Council of Ministers) in addition to what was stated in Section (2) of the aforementioned order, so because this contradicts the provisions of Articles (19/ First, 87 and 88) of the Constitution of the Republic of Iraq for the year 2005, he requests to call upon the defendant in addition to his post to plead and rule the unconstitutionality of Coalition Authority Order No. (88) (the rights of judicial officials to return to the judiciary after a specific government service). This Court finds that the Constitution of the Republic of Iraq for the year 2005 defines, under Article (47) of it, the federal authorities, which consist of the legislative, executive, and judicial authorities, and they exercise their powers and duties based on the principle of separation of powers, and that this principle is based on the authorities' adherence to the limits of their competencies, and that this requires that each authority is independent of the other through the inadmissibility of one of the authorities interfering in the work of the

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other two authorities. The independence of the judiciary within the constitution came with specificity with a clear meaning, as Article (19 / first) of it stipulates (the judiciary is independent and there is no authority over it except the law), and this indication of the independence of the judiciary was in two terms, first, the independence of the judicial authority, where Article (87) of it stipulates that (the judicial authority is independent, and it is assumed by courts of all kinds and degrees, and their rulings are issued in accordance with the law). The federal judicial authority, according to Article (89) of the Constitution, consists 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 regulated by law, and the one who administers the affairs of judicial bodies in accordance with Article (90) of the Constitution is the Supreme Judicial Council. Therefore, this independence represents the institutional independence of all components of the judicial authority within the general framework of that authority in a manner that ensures the achievement of separation between them and the rest of the legislative and executive federal authorities. Any authority has no right to interfere in the judiciary or the affairs of justice based on Article (88) of the Constitution. Therefore, giving a judge, a member of the public prosecution, or a judicial official among those who worked in the legislative or executive authority to return to the judiciary, contradicts the implications of the independence of the judiciary stipulated in articles

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(19/First), (87), (88) and (89) of the Constitution, and it also contradicts the provisions of Article (98/First and Second) of the Constitution, which prohibits a judge and member of the public prosecution from combining the judicial position with the legislative and executive positions or any other work, it also prohibited them to belong to any party or political organization or to engage in any political activity, since assuming legislative and executive positions by a judge or member of the public prosecution contradicts the provisions of the principle of separation of powers and the independence of the judiciary, therefore, the return of those who hold these positions to the judiciary is completely inconsistent with the aforementioned article, especially since the aforementioned article has equated those who hold a legislative or executive position and those who belong to any party or political organization or work in any political activity, in both cases it is not permissible to combine them, and between assuming the judiciary. Therefore and for all of the foregoing, and since the new principles stated in the Constitution of the Republic of Iraq for the year 2005 for the concept of the independence of the judiciary are not consistent with what was stated in the Coalition Provisional Authority Order No. (88) for the year 2004 and the aforementioned order's violation of the provisions of Articles (19/first, 87, 88 and 89 / first and second) of the constitution, which requires a ruling of its unconstitutionality and its abolition. Accordingly, the Federal Supreme Court decided to rule the unconstitutionality of Coalition Provisional Authority Order No. (88)

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of 12.5.2004 (the rights of judicial employees to return to the judiciary after a specific government service) and to cancel it, and to charge the defendant in addition to his post fees, expenses and attorney's fees for the plaintiff's agent in addition to his post Jurist Labib Abbas Jaafar, an amount of one hundred thousand dinars, the decision was issued in agreement and binding on all authorities, based on the provisions of Articles (93/First) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First) and (5/2) of the Court Law Federal Supreme No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and publicly understood on (21/Safar /1443 AH) corresponding to 29.9.2021 AD.

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Signature of
The president

**Jasem Mohammad
Abbood**

Signature of
The member

Haidar Jaber Abed

Signature of
The member

Ayoub Abbas Salih

Signature of
The member

**Sameer Abbas
Mohammed**

Signature of
The member

Haider Ali Noory

Signature of
The member

**Abdul Rahman
Suleiman Ali**

Signature of
The member

**Ghaleb Amer
Shnain**

Signature of
The member

Khalaf Ahmad Rajab

Signature of
The member

**Diyar Muhammad
Ali**

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