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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 position, claimed that the defendant in addition to his post had previously enacted Law No. (37) of 2015 (the Labor Law), which was published in the Iraqi Gazette, Issue 4386 on 9.11.2015 become valid ninety days after the date of its publication in the aforementioned official Gazette. since the aforementioned law stipulated in Article (165) of it, the formation of the Labor Court by stating (A labor court or more shall be formed

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in each governorate of the following: First: A judge nominated by the President of the Supreme Judicial Council based on a proposal from the President of the Court of Appeal. Second: A representative of the general union most representative of workers. Third: a representative of the most representative employers' union.), since Article (165/2<sup>nd</sup> and 3<sup>rd</sup>) of the aforementioned law constitutes a violation of the provisions of the Constitution and the applicable laws in force, which necessitates addressing it by ruling that it is unconstitutional for the following reasons:

1. It constitutes an explicit violation of the provisions of Article (87) of the Constitution of the Republic of Iraq for the year 2005, which dealt with the issue of the independence of the judicial authority in all its facilities by saying (the judicial authority is independent and it is handled by courts of all kinds and levels and issues rulings following the law), also contradicts the provisions of Article (88) of it by saying (judges are independent and there is no authority over them in their judgment except the law, and no authority may interfere in the judiciary or the affairs of justice) and also contradicts the provisions of Article (89) of it by saying (The Supreme Judiciary Council manages the affairs of judicial bodies, and the law regulates the manner of its formation, its competences, and the rules for its workflow), what is meant by the judicial bodies mentioned in the constitutional article are the courts. The Supreme Judicial Council is the supreme authority that regulates the functioning of these courts

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of all kinds, whether they are bodies or others, the way they are formed, and their working judges. Therefore, the presence of parties outside the womb of the judiciary who participate in decision-making within the composition of any court of any kind constitutes a violation of the independence and impartiality of the judiciary, and what is stated in Article (165) of the Labor Law, paragraph (2<sup>nd</sup>) that the court is composed of a member representing the General Union For workers and Paragraph (3<sup>rd</sup>) of the same article from a representative member of the Employers' Federation is considered a clear and blatant interference in the work of the judicial authority by persons who have nothing to do with judicial work, there is no doubt that the independence of the judiciary derives its strength from the presence of the judges themselves in the judicial work, which must be characterized by complete transparency and impartiality, and that the presence of others who are not judges can easily expose them to temptations or pressures that negatively affect the judicial decision.

2. The contested article (165/2<sup>nd</sup> and 3<sup>rd</sup>) of the Labor Law is considered, according to paragraph (1) above, also in violation of 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), since the constitution is the most important document in the lives of

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peoples lives, it is the basic law on which the enactment of all other laws depends. It is the social contract between people and the ruling authority. It regulates the relationship between rulers and the people. Therefore, legislation must accompany it and conform to its provisions, and derive from its principles and spirit.

3. The contested article (165/2<sup>nd</sup> and 3<sup>rd</sup>) of Labor Law No. (37) for the year 2015 contradicts the provisions of the amended Judicial Organization Law No. (160) for the year 1979 contained in the second chapter of it, which dealt with the jurisdiction of the courts and their formations in general without restriction or allocation including Article (34/2<sup>nd</sup>) of it, which deals with the competencies of the labor courts. No text in this law refers to the participation of a member other than the judges in anybody or court, and since the goal for which the judiciary was created is to establish justice, protect rights, spread security and preserve lives money and the prevention of injustice and aggression is the locomotive of safety and development at various levels, and through its role, the manifestations of trust in the judicial institution are evident. The people were assured of the judiciary, security and safety prevailed among them.

Therefore, and from all of the above and for the reasons referred to above, the plaintiff requested a ruling of the unconstitutionality of Article (165/2<sup>nd</sup> and 3<sup>rd</sup>) (of the Labor Law) No. (37) for the year 2015 and charge the defendant, in addition to his post, all fees, and

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expenses. According to 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 in the number (67/Federal/2021), the defendant, in addition to his post, was informed of its petition and documents following what was stated in Article (2/1<sup>st</sup>) of the aforementioned bylaw, his two attorneys responded with the answer draft dated (28.6.2021), which included the following:

1. Regarding the claim of violating the text in question to Article (87) of the Constitution, the participation of non-judges in judicial committees and bodies does not affect the independence of the judiciary in any way, as the decision (the judgment decision) remains the responsibility of the competent judge, and the presence of members alongside the competent judge comes to support the court concerned with the information and circumstances surrounding each case to reach a just and realistic judgment that addresses the conditions of labor and workers cases.
2. The text in question does not contradict the Constitution in Article (13/2<sup>nd</sup>) thereof, as illustrated by the plaintiff's agent.
3. Regarding the violation of the contested text to the law of judicial organization, this is considered a conflict between the laws and it does not fall within the jurisdiction of the Federal Supreme Court stipulated in Article (93) of the Constitution.

For these reasons and the reasons the court deems appropriate, the defendant's attorney requested that the plaintiff's lawsuit be

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dismissed and to charge him with all judicial fees and expenses. After completing all the procedures, a date was set for the pleading and the two parties were notified of it in accordance with the provisions of Article (2/2<sup>nd</sup>) of the aforementioned bylaw. 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 position, 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 reasons in the draft dated 28.6.2021, the date 9/28/2021 appointed as the date for the issuance of the decision, and because the said day coincided with an official holiday, the court was formed on the next day, in accordance with the provisions of Article (24) of the Civil Procedures Law No. (83) for the year 1969, as amended, and issued the following decision.

**The decision:**

Upon examination and deliberation by the Federal Supreme Court, it was found that the plaintiff, in addition to his post, claimed that the defendant, in addition to his post, had already enacted Labor Law No. (37) of 2015 published in the Iraqi Gazette issue No. (4386) on 9.11.2015 become in force ninety days after the date of publishing, he requested a ruling that Article (165/2<sup>nd</sup> and 3<sup>rd</sup>) of the

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forementioned law is unconstitutional for violating the provisions of Articles (13/2<sup>nd</sup>), (87), (88) and (89) of the Constitution of the Republic of Iraq for the year 2005, this court finds that Article (165) above stipulated (A labor court or more shall be formed in each governorate of the following: First: A judge nominated by the President of the Supreme Judicial Council based on a proposal from the President of the Court of Appeal. Second: A representative of the most representative general union of workers. Third: A representative of the Employers Union the most representative), since the Constitution of the Republic of Iraq of 2005 contained several principles and provisions related to the judicial institution, with an explanation of the mechanisms for forming its bodies, and then it defined the competencies of some of them and referred this matter of other bodies to the ordinary legislator. The principles and provisions focused on the necessity that the judicial authority and its employees have a great deal of independence, as Article (19/1<sup>st</sup>) of the constitution stipulates (the judiciary is independent, with no authority over it except the law), and that the right to litigation is safeguarded and guaranteed to all following the provisions of paragraph (3<sup>rd</sup>) of the same article. Article (88) of the constitution stipulates (Judges are independent and there is no authority over them in their judgment except the law, and no authority may interfere in the judiciary or the affairs of justice) and since the independence of the judiciary has become a firm belief stipulated by the heavenly laws before international treaties and charters, constitutions and national laws

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called for it as part of the conscience, the principle of judicial independence is an imperative to secure justice, guarantee rights, preserve freedoms, address crossing over laws, and protect citizens and their freedoms. Therefore, all the basic laws prevailing in the world today (covenants, constitutions, and laws) provided that the judicial authority is subject to nothing but the law and conscience in its work. All other legislative and executive bodies shall not interfere in their work to ensure the principle of impartiality of the judge, which embodies the independence of the judiciary. Based on all of this, Article (87) of the Constitution stipulates that (the judiciary is independent, and it is assumed by the courts of all kinds and degrees, and they issue their rulings following the law). On the other hand, the constitution in the article (89) of the component of the judicial authority (The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, 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), although the Iraqi constitutional legislator had dealt in some detail with what is related to some of the competencies of the components of the judiciary, as Articles (90 and 91) of the Constitution included the competencies of the Supreme Judicial Council as it is the highest federal judicial authority that manages the affairs of judicial bodies and the law regulates the method of its formation, its competencies and the rules of its workflow. In addition to his other competencies stipulated in Article

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(3) of the Law of the Supreme Judicial Council No. (45) of 2017, and that all of this will require the implementation of the constitutional texts and their implications, as the rule of law derives from the sovereignty of the judicial authority, and that which limits the transgression of the legislative and executive powers within the limits of its constitutional competencies is the judicial authority, where the Federal Supreme Court exercises its powers stipulated in Article (93) of the Constitution, including monitoring the constitutionality of laws and regulations in force and adjudicating cases that arise from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority, this requires that the judicial authority be placed in a position that enables it to perform that role in fulfillment of the principle that there is no authority over the judiciary except for the law, in accordance with what was stated in Article (19) of the Constitution over it, and based on the provisions of Articles (87 and 88) of the Constitution, only judges may assume the judiciary, and this principle is the basic foundation for the independence of the judiciary and the independence of judges, and based on this principle, the formation of courts is the competence of the Supreme Judicial Council. The head of the Supreme Judicial Council decides the court in which the judge begins work after the issuance of the republican decree appointing him as a judge based on the provisions of Article (37 / first) of the Judicial Organization Law No. (160) for the year 1979 as amended. In addition, Article (36/1<sup>st</sup>) of the aforementioned

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law required who appointed as a judge to be a graduate of the Judicial Institute, therefore, the formation of a court with the participation of non-judges in it would violate the provisions of Articles (19/first), (87), (88), (89), (90) and (91) of the constitution, which requires to rule the unconstitutionality of Paragraphs (Second and Third) of Article (165) of Labor Law No. (37) of 2015 and since this court's decision No. (56/Federal/2016) on 23.6.2016 included (there is no conflict between the text of Article ( 165) of Labor Law No. (37) of 2015 and the constitutional principles), which requires reversing what was stated in the aforementioned decision. Accordingly, and for all of the above, the court decided to rule the unconstitutionality of Paragraphs (Second and Third) of Article (165) of Labor Law No. (37) of 2015 and to reverse what was stated in its decision No. (56 / Federal / 2016) on 23.6.2016 and charge the defendant in addition to his post fees, expenses and attorney's fees for the plaintiff's agent, the legal employee, Labib Abbas Jaafar, an amount of one hundred thousand dinars, the decision was issued final and binding for all authorities, and in agreement following the provisions of Articles (47, 87, 88, 89, 90, 91, 93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4 and 5/2<sup>nd</sup>) of Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and issued publicly on (Safar 21/1443 AH), (29.9.2021 AD).

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Republic of Iraq  
Federal Supreme Court  
Ref. 67 / Federal / 2021



Kurdish text

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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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