



The Federal Supreme Court (F.S.C.) convened on 5.10.2021 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 through his attorney that the defendant in addition to his post had previously enacted the Law No. (14) of 2010 (Competition and Anti-Monopoly Law), published in the Iraqi Gazette No. 4147 on 9.3.2010 and in force from the date of its publication in the aforementioned Official Gazette, since the aforementioned law stipulated in Article (15) of it the formation of specialized courts to adjudicate cases of disputes

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arising from consumer protection, competition and prevention of monopoly, which stipulated (the Supreme Judicial Council should form courts to consider disputes arising from consumer protection, competition, anti-monopoly and other practices, the judges in these courts are experienced and knowledgeable in these fields), since the aforementioned article 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, since the aforementioned text included the Council of Representatives waiving its jurisdiction in the field of legislation in the issue of the formation of courts, their types and degrees in this regard, his mandate is obligatory to the Supreme Judicial Council in violation of the provisions of the Constitution for the following reasons:

First: It constitutes a clear violation of the provisions of Article (95) of the Constitution of the Republic. Iraq for the year 2005, which prohibits the establishment of special or exceptional courts to consider a certain type of cases arising in society, which stipulates (it is prohibited to establish special or exceptional courts), the constitutional article here is not intended only for the special criminal courts, but the constitutional prohibition against the establishment of any special or exceptional court, whether civil or penal, as well as its explicit violation of the provisions of Article (13/2nd) of the Constitution, which states: (it is not permissible to enact a law that contradicts this Constitution, and every text contained in the

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constitutions of the regions or any other legal text that contradicts it shall be considered null and void.)

Second: The article contested for its unconstitutionality violated the provisions of Article (96) of the Constitution, which states (the law regulates the formation of courts, their types and levels, their competencies, the method of appointing judges, their service and members of the public prosecution, their discipline and their retirement).

Third: The contested legal text contradicts the provisions of Article (47) of the Constitution, according to which the legislative, executive and judicial authorities must exercise their competencies and tasks on the basis of separation of powers, the matter with which it is not permissible to delegate the competence to form or establish new types of courts to the judicial authority for the foregoing reasons, in addition to the impossibility of applying the contested text because it is not permissible for the Supreme Judicial Council to exercise the competence to form courts and to determine their types, grades, competencies, appeal periods, and the object of appeal against issued judgments and decisions from it, because these issues must be regulated by law and the legislator may not delegate them to the judicial authority because this is considered a renunciation by the legislator of his core competence in the field of legislation without a constitutional basis, in addition to the fact that the texts related to determining the methods and periods for appealing judgments and decisions are arbitral texts that do not have an apparent cause that is

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recognized by reason, rather, the legislator is unique in defining them with peremptory texts that include specific periods for reviewing the methods of appealing judgments and decisions, these periods are inevitable the failure to observe and exceed them results in the forfeiture of the right to appeal, which the judiciary may not specify or measure.

Fourth: The contested article (15) of the Competition and Anti-Monopoly Law violates and contradicts the provisions of the amended Judicial Organization Law No. (160) of 1979 contained in chapter two of it. Which dealt with the competencies of the courts and their formations in general without restriction or specification, including Article (21) of it, which dealt with the formation of courts of first instance, which are courts that specialize in considering civil cases, as well as commercial and contracting contracts, and any other civil lawsuit except for work cases, which are considered by the labor courts according to the law, where it stipulated (a court of first instance or more shall be formed in the center of each governorate or district, and it may be formed in the sub-districts, with a statement issued by the President of the Supreme Judicial Council, and he has the right to expand the court's spatial jurisdiction to more than one district or district), thus, the lawsuits arising from consumer protection, competition, anti-monopoly and other commercial practices are in fact civil lawsuits within the jurisdiction of the courts of first instance, and restricting their consideration to special courts in accordance with Article (15) of the aforementioned law requires

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the preparation of judges, employees and cadres for these courts which represent obligating the supreme judicial Council with not necessary burden if he formed it in each governorate district or district, on the other hand it burdens the citizens if it is formed only in the governorate centers without the districts and sub-districts, where they have to go to those courts to adjudicate which in fact, it is a matter that constitutes a violation of the provisions of the Constitution and the provisions of the aforementioned Judicial Organization Law. Therefore, from all of the foregoing and for the reasons referred to above, he requested to rule the unconstitutionality of Article (15) of the (Competition and Anti-Monopoly Law) No. (14) of 2010 and to charge the defendant in addition to his post all legal fees and expenses. The case was registered before this court in No. (68/Federal/2021), and the legal fee was collected for it, according to what was stated in Article (1/3rd) of the Federal Supreme Court's bylaw No. (1) of 2005, the defendant was informed of its petition and documents following what was stated in Article (2/1st) of the aforementioned bylaw, his two attorneys responded with the answer draft dated 28.6.2021, which included the following:

1. In response to what was stated in paragraph (first) of the plaintiff's attorney's petition, the special or exceptional courts that Article (95) of the Constitution prohibited its formation are (Courts that consider disputes arising from the application of a specific law or that they consider specific cases under its law and their work ends with the end of those disputes arising from

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the application of that law or those specific cases, that is, they are not always characterized in addition to being formed outside the judicial authority), As for the exceptional courts, they are (the courts that were established in special exceptional circumstances, and their formation are often outside the usual judicial contexts, these courts are temporary and disappear with the demise of those circumstances that imposed themselves for the establishment of those courts. 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) issued on 8.11.2015.

2. The text under appeal does not violate Article (96) of the Constitution, but rather it created a type of court whose formation was entrusted to the Supreme Judicial Council, the legislative will finds the need for such a type of court, and this does not contradict the constitutional texts.
3. The allegation of violating the text under challenge to Article (47) of the Constitution is baseless, as the enactment of laws by the competent authority is not considered an interference in the authorities' exercise of their duties, and the issue of separation of powers is a consideration in any law enacted in the Council of Representatives.
4. The claim that the article in question conflicts with the Judicial Organization Law is not correct. As the text represents the

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legislator's intention to organize the courts specialized in competition issues and to prevent monopoly without prejudice to the provisions of the Judicial Organization Law. As the legislator enacts new law regulation it can not be appealed because the subsequent text supersedes the previous text as the Federal Supreme Court ruled in its decision No. (43/ Federal/ Media/2017) issued on (20.6.2017) assuming that the text under appeal created a legal situation that was not provided for in the Judicial Organization Law, then the Federal Supreme Court is not competent in considering the extent of the compatibility of legal texts between previous legislation and subsequent legislation, but rather it is concerned with examining the extent of the constitutionality of legal texts and not the extent of their compatibility with other legislation.

For these reasons and the reasons that the Federal Supreme Court sees, the defendant's attorney requested, in addition to his post, to dismiss the lawsuit, call upon the plaintiff, and charge him with all judicial fees, expenses, and attorney's fees. After completing all the procedures, a date was set for the pleading and the two parties were informed of it, following the provisions of Article (2/2nd) of the aforementioned bylaw. On the appointed day, the court was formed. The attorney of the plaintiff, the legal employee, Labib Abbas Jaafar, attended. The defendant's attorney, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim attended. And started the public pleading, the plaintiff's attorney repeated the

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pleading of the case and requested the judgment according to what it stated. The date 5.10.2021 was appointed for the issuance of the decision, in which the court was formed and issued the following decision in public.

The decision:

Upon examination and deliberation by this court, it was found that the plaintiff, in addition to his post, claimed that the defendant in addition to his post enacted the Law No. (14) of 2010 (Competition and Anti-Monopoly Law) published in the Iraqi Gazette, No. (4147) on 9.3.2010, the aforementioned law stipulates in Article (15) of it (The Supreme Judicial Council shall form courts to consider disputes arising from consumer protection, competition, anti-monopoly and other commercial practices, and judges in these courts shall be experienced and knowledgeable in these fields) and that the article constitutes a breach to the provisions of the Constitution for violating the provisions of Articles (47, 95, and 96) of the Constitution. Therefore, he requested to call upon the defendant, in addition to his position, to plead and rule that Article (15) of the aforementioned law is unconstitutional. This court finds that the text of Article (15) of the Competition and Anti-Monopoly Law No. (14) of 2010 contradicts the provisions of Article (47) of the Constitution of the Republic of Iraq for the year 2005, according to which the principle of separation of powers and the competencies of each of the federal authorities, legislative, executive and judicial, was established. These

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jurisdictions shall be exercised based on the aforementioned principle, and since the formation of the courts is one of the exclusive jurisdictions that belong to the president of the Supreme Judicial Council following what was stated in the amended Judicial Organization Law No(160) of 1979 considering that the supreme judicial Council under the provision of the article (90) of the Constitution is the one who manages the affairs of the judicial bodies, also the Supreme Judicial Council, based on the provisions of Article (91/1st) of the Constitution, manages the affairs of the judiciary and supervises the federal judiciary. Therefore what is stated in article (15) contradicts the provisions of Article (87) of the Constitution, which stipulates that (the judiciary is independent, and the courts of all kinds and degrees take it over, and they issue their rulings following the law). So he shall implement the duties of the judicial authority, this requires the legislative authority to observe the rule of the hierarchy of laws and to consider that the constitution represents the head of the legal hierarchy in this, the authorities that were formed according to it must adhere to it when exercising their powers. This requires the legislative authority to observe the provisions of Article (96) of the Constitution, which stipulates that (the law regulates the formation of courts, their types, degrees, competencies, how judges are appointed, their service, and members of the public prosecution, their discipline, and their retirement). Accordingly, the formation of courts must be following what was stated in the Judicial Organization Law No. (160) for the year 1979

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as amended, and therefore it cannot be attributed to another law, given that the Judicial Organization Law is the law competent to determine how courts are formed, their types, degrees, and jurisdictions, on the other hand, crimes and based on the provisions of Article (23) of the amended Penal Code No. (111) of 1969, are classified according to their gravity into three types of felonies, misdemeanors and violations All crimes, regardless of their description in the law in which they are mentioned, fall under the aforementioned classification, and the type of crime is determined by the type of most severe punishment prescribed for it in the law. Therefore, what was stated in Article (15) of the Competition and Anti-Monopoly Law No. (14) of 2010 includes the aforementioned classification. Accordingly ruling that Article (15) is unconstitutional does not lead to a legislative void, but rather the general rules of investigation and trial are followed according to what was stated in the Penal Code No. (111) of 1969 as amended and the Law of Criminal Procedure No. (23) of 1971, as amended. for the foregoing and the violation of the provisions of Article (15) of the said law to the provisions of Articles (47, 87 and 96) of the Constitution of the Republic of Iraq for the year 2005, The Federal Supreme Court decided to rule the unconstitutionality of Article (15) of the Competition and Anti-Monopoly Law No. (14) of 2010 and to cancel it and charge the defendant, in addition to his post, the fees, expenses, and attorney fees for the plaintiff attorney, the legal employee, Labib Abbas Jaafar, an amount of one hundred thousand

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dinars, distributed according to the law, and the judgment was issued in agreement, final, and binding on all authorities based on the provisions of Articles (93/1st) and (94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/1st) and (5/2nd) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) for the year 2021, publicly on (27/Safar/1443 AH) corresponding to 5.10.2021 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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