

Republic of Iraq
Federal Supreme Court
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The Federal Supreme Court (F.S.C.) convened on 3.2.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Adel Abd Alrazaq Abass, Khaled Taha Ahmed, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The Appellants:

1. Hussein Ali Dulaimi / Deputy Public Prosecutor before the Karbala Misdemeanor Court.
2. Qahtan Adnan Al-Darraji / Deputy Public Prosecutor before the Zubair Investigation Court.

The contested article:

Article (54) of the Juvenile Welfare Law No. (76) of 1983, as amended.

The Summary of the appeal:

A- First Appeal No. (153/Federal/2021):

Through scrutiny, it became clear that the Deputy Public Prosecutor (Hussein Ali Dulaimi / assigned to work before the Karbala Misdemeanors Court / within the Public Prosecution Office in Karbala affiliated to the headquarters of the Public Prosecutor in the Holy Karbala) and according to his regulations dated 11/11/2021 attached, by the Public Prosecution Office letter before the Karbala Misdemeanors Court No. (174) on 1/11/2021, addressed to the headquarters of the Public Prosecution in Holy Karbala, and sent to this court according to the letter of the Presidency of the Public Prosecution/Legal Division No. (57/ opinion/ 2021/22132) on 11/14 2021, he challenge before this court the constitutionality of Article 54 of the Juvenile Welfare Law No. which stipulated (The Juvenile Court shall be held under the chairmanship of a

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judge of the third category at least, and two members, one of whom is legal and the other is specialized in the sciences related to juvenile affairs and who have experience of not less than five years. and it shall consider felonies and decide in a cassation manner the decisions of the investigative judge in accordance with the provisions of this law), for violating the provisions of the Constitution of the Republic of Iraq for the year 2005, especially Articles (19/first), (87), (88), (89) and (90) and (91) thereof for the following reasons:

(1) The presence of two members of the Juvenile Court who are not judges violates the principle of independence of the judiciary, especially since court decisions are issued by a majority and it is possible for the decision to be issued by a majority vote of the two members who are not judges, and the court has a cassation character and may overrule a decision issued by the investigating judge with a discriminatory decision issued by non-judges, and since the independence of the judiciary has become imperative to secure justice and guarantee rights preserving freedoms, tackling jumping above the law, and protecting citizens and their freedoms. Therefore, all the prevailing basic laws came together to stipulate that the judicial authority is subject in its work only to the law and conscience, and then it is forbidden for all other legislative and executive bodies to interfere in its work to guarantee the principle of impartiality of the judge, which embodies the independence of the judiciary.

2- The text of Article (54) of the aforementioned Juvenile Welfare Law is contrary to Article (87) of the Constitution of 2005, which stipulates “The Judicial Authority is independent, and it is assumed by courts of all kinds and degrees, and their judgments are issued in accordance with the law.” Therefore, the one who carries out the tasks of the authority The judiciary is the courts of all kinds and degrees. The rule of law stems from the sovereignty of the judiciary, which limits the legislative and executive authorities from exceeding

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the limits of their competencies. When exercising its powers, a distinction must be made between the authority of the legislature to legislate a specific law and the content of that law, which must not contradict the constitution. Therefore, the formation of the courts must be in accordance with what was stated in the Judicial Organization Law No. (160) for the year 1979 as amended based on the provisions of Article (96) of the constitution, which states: “The law regulates the formation of courts, their types, degrees and jurisdictions, the method of appointing judges, their service and members of the public prosecution, and their discipline.” and referring them to retirement), and therefore it is not permissible to assign the formation of courts, their types, degrees, and jurisdictions to a law other than the Judicial Organization Law. There is no authority over them in their judiciary except the law, and no authority may interfere in the judiciary or the affairs of justice), because one of the pillars of the independence of the judiciary is the inadmissibility of taking over the judiciary without judges, as judges are chosen and prepared with specific conditions and specifications to take over the judiciary, and thus it is impossible for others to perform Thus, Article (98) of the Constitution prohibited the judge and member of the public prosecution to combine the judicial position with the legislative and executive positions or any other work, and they may not belong to any party or political organization, but more than that they may not work in any political activity. This prohibition prevents him from continuing his judicial work when the judge or member of the Public Prosecution is not adhered to, and this prohibition is not necessary for state employees who are members of the Juvenile Court. Juvenile crimes fall under the general classification of crimes, and they can be considered by the criminal courts according to the jurisdictions contained in the amended Criminal Procedure Law No. (23) of 1971. It is possible to issue a statement naming a

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court specialized in juvenile cases consisting of one or more judges to consider juvenile cases in accordance with the Juvenile Welfare Law No. (76) for the year 1983), and for the reasons mentioned above, it requests a ruling that Article (54) of the aforementioned Juvenile Welfare Law is unconstitutional.

B- The second appeal No. (217/Federal/2021):

Through scrutiny, it became clear that the Deputy Public Prosecutor (Qahtan Adnan Al-Daraji/ assigned to work before the Zubair Investigation Court/ within the Public Prosecution Office in Zubair affiliated to the Public Prosecution Department in Basra), and in accordance with its list of number (262) dated 12/15/2021, sent To this court according to the letter of the presidency of the Federal Court of Appeal of Basra / the office of the head of the court No. (8363 / office / 2021) on 12/21/2021, he challenged before this court the constitutionality of Article (54) of the Juvenile Welfare Law No. (76) of 1983 as amended, which The juvenile court shall be held under the chairmanship of a judge of the third category at least, and two members, one of whom is legal and the other is specialized in sciences related to juvenile affairs, and they have experience of not less than five years, and it considers felonies and decides in a discriminatory manner the decisions of the investigative judge in accordance with the provisions of this law), for violating the provisions of this law. The Constitution of the Republic of Iraq for the year 2005, especially Article (47) of it for the reasons referred to in detail in the regulation, the summary of which lies: It consists of independent judges who have the authority of a judge and graduate from the Judicial Institute and the advanced types of judges, as the independence of the judiciary requires that no employee interfere in the decisions he issues, not even discuss them, because the trial court alone undertakes the discussion and evaluation of evidence and determines the appropriate punishment in the light of the evidence in accordance with the law. Especially since the judge is the closest to the truth and the criminal incident and is familiar with its persons, circumstances, and circumstances, and because the juvenile court has two types of sitting and

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formation, the first is a juvenile court as a body and the other is the juvenile investigation court. In criminal sciences or other sciences related to juveniles, they have experience of not less than five years. of the judicial authority and may not be interfered with by any authority, for the judiciary to be independent of the rest of the powers stipulated in the Constitution in Article (47) thereof and For exercising his work based on the principle of separation of powers, because the judiciary is independent and has no authority over it except the law, and the text under appeal contravenes the applications of the judiciary, constitutional texts and legal texts contained in the Judicial Organization Law No. 160 of 1979, as amended, and the direction of the Federal Supreme Court in its decisions, including (74 /Federal/2021 on 10/10/2021 and (142/Federal/2021) on 12/5/2021, which referred to the principle (general jurisdiction of the judiciary, independence of the judiciary and separation of powers). Article (54) of the Juvenile Welfare Law No. (76) of 1983, as amended, and the reformation of an independent judicial body that looks into felonies and decides on discriminatory decisions, and its members are judges and of advanced categories, not by arbitrators, and their role as judges and their opinion applies to the investigating judge because the decisions of the investigative judge are decided by the courts of cassation formed by the Judicial Organization Law.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the first appeals No. (153/Federal/2021) and the second in No. (217/Federal/2021) were focused on challenging the constitutionality of Article (54) of the Juvenile Welfare Law No. (76) of 1983 as amended, and the Union The subject matter of the appeal and its reasons, so it was decided to unify them together and consider them together and consider the appeal in No. (153/Federal/2021) as the basis for being the previous one in the registration, and when drafting Article (54) of the aforementioned Juvenile Welfare Law, which stipulates (The Juvenile Court shall be held under the chairmanship of a

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judge of the same class At least the third and two members, one of whom is legal and the other is specialists in sciences related to juvenile affairs and considers felonies and decides in a discriminatory manner the decisions of the investigative judge in accordance with the provisions of this law), whose constitutionality is challenged, subject to scrutiny and deliberation by the Federal Supreme Court. In the aforementioned text, it exercises genuine judicial jurisdiction to consider cases (juveniles), and the participation of non-judges in its membership does not violate the provisions contained in the constitution, as long as the formation of the court and naming its members is carried out by the Supreme Judicial Council, exclusively, without interference from any of the state authorities, in confirmation of what was stated in the Constitution of the Republic of Iraq for the year 2005, as Article (87) of it stipulates: Article (90) of it stipulates (The Supreme Judicial Council manages the affairs of judicial bodies, and the law regulates the way it is formed, its competencies, and the rules for its workflow). Judicial Affairs and Supervision of the Federal Judiciary), which was reflected, based on the provisions contained in the Judicial Organization Law No. (160) of 1979, as amended when referring to the Juvenile Court therein, and that the Constitution of the aforementioned Republic of Iraq approved special provisions for the protection of the family and juveniles in particular. It was represented by the text of Article (29/First/A) of it, which stipulates (the family is the basis of society, and the state preserves its entity and its religious, moral, and national values), and paragraph (b) of it stipulates (the state guarantees the protection of motherhood, childhood and old age, and takes care of children and young adults). Chapter, and providing them with the appropriate conditions for the development of their talents and capabilities), and paragraph (third) of the aforementioned article stipulates (it is prohibited to adequately economic exploitation of children, and the state takes measures to protect them), and Paragraph (Fourth) of it stipulates that “all forms of violence and abuse are prohibited.” In the family, school and society), and Article (30) of it stipulates (First - the state guarantees to the individual and the family - especially

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children and women - social and health security, and the basic requirements for living a free and dignified life, providing them with appropriate income and adequate housing, secondly - the state guarantees Health insurance for Iraqis in the event of old age, illness, inability to work, homelessness, orphanhood or unemployment, and works to protect them from ignorance, fear and poverty, and provides them with housing and special methods for their rehabilitation and care, and this is regulated by law), and that protection is embodied in the legislation in force. By providing the necessary legal guarantees for juvenile trial to ensure a fair trial, taking into account the juvenile's privacy and circumstances, which were represented by the provisions of the Juvenile Welfare Law No. Her opinion, which stipulated in the formation of the juvenile court the presence of two members, one of whom is legal and the other specialized in science related to juvenile affairs, was also represented by the provisions of the aforementioned amended Judicial Organization Law, in line with the principles included in the modern criminal policy related to the investigation and trial of juveniles, the procedures to be taken, and the judicial authorities that It undertakes this in a manner that provides guarantees of investigation and a fair trial in order to provide more legal guarantees than those provided to adult defendants at the time of investigation and trial, especially since the provisions of the aforementioned Constitution of the Republic of Iraq, specifically Article (88) thereof, which stipulates (judges are independent, no There is no authority over them in their judgment except the law, and no authority may interfere in the judiciary or in the affairs of justice) and Article (19/first) thereof which stipulates (the judiciary is independent and there is no authority over it except the law), would prevent any authority other than the Supreme Judicial Council from Managing the affairs of judicial bodies or naming their members, In implementation of the provisions of Article (47) thereof, which stipulates that (the federal authorities consist of the legislative, executive and judicial authorities, they exercise their powers and duties on the basis of the principle of separation of powers), as it affirmed the principle of separation of powers with several important guarantees of public rights and

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freedoms in the rule of law, as The existence of cooperation among the authorities in the state, does not mean that any of the authorities interfere with the competencies and powers of the other authorities stipulated in the constitution, and saying otherwise would usurp the constitutionally protected rights and freedoms, and violate the provisions of the constitution, as all the actions and procedures of the authorities in the state must be Subject to its provisions in application of the provisions of Article 47 thereof, especially since the principle of judicial independence is a realistic application of the principle of separation of powers, as the flexibility of applying that principle does not mean in any way allowing interference by other than the Supreme Judicial Council in naming judges or naming the chief and members of the formations Judicial in any way, in violation of the provisions of Article (88) of the aforementioned Constitution, which stipulates (...no authority may interfere in the work of the judiciary or in the affairs of justice), and on the On the basis of the foregoing, the formation of the Juvenile Court in accordance with the text of Article (54) of the aforementioned Juvenile Welfare Law does not violate the provisions of the Constitution as long as the Supreme Judicial Council is exclusively competent to nominate its president and members without interference from any other party or authority based on the provisions of the law and in line with Provisions of the Constitution and modern principles in the criminal policy of juveniles in order to provide guarantees for investigation and a fair trial, and for the foregoing, Article (54) of the Juvenile Welfare Law No. (76) for the year 1983 as amended, is not considered a violation of the provisions of the Constitution of the Republic of Iraq for the year 2005, and does not represent an interference in the jurisdiction of The judicial authority, and it is not in a position to violate the principle of judicial independence, for embodying the principle of the exclusive and original jurisdiction enjoyed by the Supreme Judicial Council in managing the affairs of judicial bodies, which requires a ruling to dismiss the appeal for the absence of a constitutional violation. A constitutional violation and the decision was issued by agreement conclusive and binding on all authorities based on the

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provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/or No. and 5/Second of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, on Rajab 4 / 1443 AH corresponding to 2 / 6 / 2022 AD.

**Signature of
The president**

***Jasem Mohammad
Abbood***

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