

Republic of Iraq  
Federal Supreme Court  
Ref. 269 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/1/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Abdul Munam Abdul Wahab Mohammed.

The Defendant: The Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff pleaded before the Basra Labor Court of the Presidency of the Basra Court of Appeal during its consideration of the lawsuit numbered (79/Labor/2022) the unconstitutionality of Article (43/3<sup>rd</sup>) of the Labor Law No. (37) of 2015, in its session, dated 5/12/2022, the aforementioned court assigned him to file the constitutional lawsuit and pay the legal fee for it based on Article (18/2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and after it accepted it, it sent it to this court according to the letter of the Presidency of the Basra Court of Appeal / Court Basra work in number (1/ unconstitutionality/ 2022 on 8/12/2022), in which he claimed that the defendant had previously issued the Law of the Ministry of Education No. (11) of 2011, which stipulated in Articles (30 and 31) thereof to limit the authority to grant a license to

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establish a private educational institution and issue an order to close it to the Minister of Education, and based on Article (34/4<sup>th</sup>) of the Constitution, which ruled to regulate private education by law, the Private and Foreign Education Law No. (5) of 2013 was issued, which stipulated in Articles (3 and 10) thereof also limited the authority to grant a license to establish the institution. Private education and the issuance of the order to close it by the Minister of Education, However, the defendant issued the Labor Law No. (37) of 2015, which included in Article (43/3<sup>rd</sup>) that it is not permissible to close or liquidate the project without obtaining the approval of the Minister of Labor and Social Affairs to do so, which is a general text that includes all projects subject to the provisions of the Labor Law in force, including private educational institutions approved in accordance with the aforementioned private and foreign education system, whereas the administrative and accounting contexts in the Ministry of Labour and Social Affairs depend on the application of the provisions of the Labour Law in force on the private educational institution and the inclusion of its employees in the provisions of retirement and social security for workers No. 39 of 1971, as amended, as of the date of granting the leave to that institution by the Minister of Education and not from the date of its examination, and whereas the promotion of the transaction of closing the file of the private educational institution at the Ministry of Labour and Social Affairs and its affiliated departments requires the issuance of a ministerial order from the Minister of Education and the attachment of an original copy thereof. Among the documents required to promote the closure transaction, Therefore, the implementation of the text of Article (43/3<sup>rd</sup>) of the Labor Law on the canceled private educational institution leads to the treatment of that canceled

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institution as an existing and continuous project covered by the social security contributions of workers until the approval of the Minister of Labor and Social Affairs on the closure treatment, and given that the said article of the Labor Law does not specify a specific time limit for the Minister of Labor to issue his approval to close or name a specific deadline for the completion of the project closure transaction, the completion of the closure transaction of any project often takes months. Many and sometimes a year or more, which results in the founders of the canceled educational institution being held responsible for additional financial consequences by obliging them to pay labor subscription fees and delay fines for a legally closed project that does not exist in reality, this contradicts the factual fact that the legal and actual existence of that institution has expired as of the date of the issuance of the Minister of Education's order to close it, as it constitutes a clear violation of Article (22/2<sup>nd</sup>) of the Constitution, which ruled that the law regulates the relationship between workers and employers on economic grounds, taking into account the rules of social justice, so the plaintiff asked the Federal Supreme Court to rule on the unconstitutionality of paragraph (3<sup>rd</sup>) of Article (43) of the Labor Law No. (37) of 2015 for private educational institutions. Being subject to a special legal regime that regulates the provisions of its existence and termination. The lawsuit was registered with this court with the number (269/federal/2022) based on the provisions of Article (21/I) of the Court's Rules of Procedure No. (1) of 2022, and the defendant shall be informed of its petition and documents in accordance with item (second) of the same article, and his agent replied in the regulation dated 27/12/2022, the conclusion of which is that the plaintiff did not indicate the current, direct and influential interest in his legal,

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financial or social status, or that the text requested to be ruled unconstitutional was actually applied to him based on the text of Article (20/ 1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Court, Also, the plaintiff's request to amend the challenged paragraph because it conflicts with another special law that falls outside the jurisdiction of the Federal Supreme Court in accordance with Article (93) of the Constitution, so they requested the dismissal of the lawsuit and the plaintiff to bear the judicial fees and expenses. After completing the procedures stipulated in the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff attended in particular and the defendant's agent attended and began to conduct the public adversarial pleading, the plaintiff repeated what was stated in the lawsuit petition and requested a judgment in accordance with what was stated therein and showed the court a response list that the court reviewed and linked the original within the case papers, and the defendant's agent responded and requested the dismissal of the lawsuit for the reasons mentioned in the reply list. The parties repeated their previous statements and requests, and since nothing remained to be said, the end of the argument has been made clear, and the court issued the following judgment decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff, during the consideration of the lawsuit numbered (79/Labor/2022) before the Basra Labor Court and in the pleading session on 5/12/2022, pleaded the unconstitutionality of Article (43/III) of the Labor Law No. (37 of 2015), which states that

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(the employer may not close his project, suspend it from work, or liquidate it except after obtaining the approval of the Minister) and filing the lawsuit to do so, paying the legal fee, and it was indicated and accepted by the Basra Labor Court. And sent it to this court to consider it according to jurisdiction and to save the original lawsuit until the constitutional lawsuit is resolved, upon receiving the file, it was indicated and registered in the number (269/federal/2022), and through the court's review of the contents of the file and reviewing the defenses and requests of the parties and the regulations presented by them, it was found that the project subject of the lawsuit is a private (private) project belonging to the private sector, and based on the provisions of Article (43/3<sup>rd</sup>) of the Labor Law No. (37 of 2015), the employer or the project may not close, stop or liquidate it except after obtaining The approval of the Minister of Labor, because the Labor Law and the Labor Retirement and Social Security Law No. (39) of 1971, as amended, are the two laws that must be applied to the private project, and thus the plaintiff's claim must be dismissed because there is no constitutional violation, the conflict between the laws is not necessary to rule unconstitutionality, as the constitutional violation requires a violation of the provisions and principles of the Constitution of the Republic of Iraq of 2005, and for the foregoing, the court decided to dismiss the plaintiff's lawsuit Abdel Moneim Abdel Wahab Mohammed for the absence of a constitutional violation and to burden him with the fees, expenses, and fees of the defendant's agents, the Speaker of the ICR/ being in this capacity, the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim, amount of one hundred thousand Iraqi dinars, to be divided between them according to the law. The decision has been issued unanimously, final, and binding for all authorities according to

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the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 6/Rajab/1444 Hijri coinciding 29/January/2023 AD.

**Judge**  
**Jassim Mohammed Abbood**  
**President of the Federal Supreme Court**

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