

In the name of God most Gracious most Merciful

Republic of Iraq  
Federal supreme court  
Ref. 11/federal/2020



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 30.5.2021 headed by Judge Jasem Mohammad Abod and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: President of Tikrit University/ being in his capacity and his agent Dr. Younis Mahmoud Karim and human rights officer Muhannad Karim Jouder

The Defendant: Speaker of Council of Representation/ being in his capacity his deputy, legal advisor, Haitham Majed Salem, and jurist Saman Mohsen Ibrahim

The Claim:

The plaintiff President of Tikrit University/ being in his capacity claimed that the Council of Representation issued law No. (26) of 2019 The First Amendment Act of the Unified Retirement Act No. (9) of 2014 amended the legal age of retirement to complete (60) sixty years and excluded the holders of scientific titles (professor and assistant professor) from retirement until the completion of (63) sixty-three years and the mentioned text leads to the loss of a large percentage of experienced and competent teaching staff, and the text in question has not been studied in depth by the Council of Representatives and added

new financial burdens instead of providing them because retirees will receive their pension stipends in addition to the end-of-service bonus. Therefore, the provision in question is contrary to Article (2/1<sup>st</sup>/Jim) of the Constitution, which prohibits the legislation of any law that conflicts with public rights and freedoms, as well as article (34) of the Constitution, which stipulates that (First: Education is a fundamental factor for the progress of society and is a right guaranteed by the state. Primary education is mandatory and the state guarantees that it shall combat illiteracy. Second: Free education in all its stages is a right for all Iraqis. Third: The State shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity. Fourth: Private and public education shall be guaranteed, and this shall be regulated by law) Therefore, he requested to call upon the defendant/ being in this capacity to plead and to judge by unconstitutionality of Law No. (26) of 2019 and to cancel the articles that contradict the provisions of the constitution concerning the teachers who hold the title of professor and assistant professor and charge him with fees, expenses and attorney fees. After the case was accepted and the legal fee was fulfilled based on the provisions of Article (1/2<sup>nd</sup>/3<sup>rd</sup>) of the FSC's Bylaw No. (1) of 2005 registered in No. (11/federal/2020 and asked by both parties to answer them in writing in accordance with the provisions of Article (2) of the bylaw. The defendant's agent replied by his list that the law was challenged by the Council of Ministers as a bill following the provisions of Article (60/1<sup>st</sup>) of the Constitution and that the Council of Representatives has enacted this law based on the constitutional powers granted to it following Article (61/1<sup>st</sup>) of the Constitution, so he asked for the plaintiff's case/ being in his capacity to be rejected. After completing the required procedures following the provisions of article (2/1<sup>st</sup>) of the FSC's Bylaw, the court set a date for the pleading and heard the case based on the provisions of paragraph (2<sup>nd</sup>) of the mentioned article. On-time, the agents of the parties attended and the court began to

hear the case and the pleading publicly. The prosecutor's request that he repeat the petition and that his client's appeal is based on the unconstitutionality of article (2/1<sup>st</sup>/alif) of Law No. (26) of 2019, which excluded those covered by the University Service Act from the campaign of a professor and assistant professor who is a provision of Article (1/1ts) of the same law, as well as item (2<sup>nd</sup>) of Article (2), which specified the legal age of retirement for those with the title of professor and assistant professor to complete sixty-three (63) years of age and that his client requests the cancellation of the two texts mentioned and consider the retirement age for those who hold the title of professor and assistant professor complete sixty-five (65) years. The agents of the parties repeated their statements and where there is nothing left to say the end of pleading has been made clearly and appointed on 30/5/2021 a date for the judgment and on the specified day the agents of the parties attended and the court recited the decision publicly.

### The Decision:

After scrutiny and deliberation, the FSC found that the President of Tikrit University filed this case as a representative of one of the official bodies, Tikrit University, which belongs to the Ministry of Higher Education and Scientific Research, although the Constitution of the Republic of Iraq 2005 guaranteed the official authorities the right to appeal directly to the FSC based on an article (93/3<sup>rd</sup>) of the Constitution, the FSC's Bylaw No. (1) of 2005 in the article (5) of it two conditions for accepting an appeal by the official authorities required the first to have an actual dispute between the official body that filed the appeal and another party, and it's under clearly most be showing an official body, too, although the bylaw did not explicitly explain this. This is the case that these disputes are judicial or administrative, as the text used the term disputes. This means that no official body can challenge a law, system, instructions, or legislative decision before the

FSC unless there is a real and realistic dispute between it and another official body, this requirement is in exchange for the requirement of the necessary interest in direct action by natural persons (individuals) or private moral. The second condition set by the internal regulator to institute such cases or requests is that the official body submitting the appeal sends the appeal to the FSC and that the case contains its assignment, to be sent to this court through the official body developed by a letter signed by the competent minister or the head of the body not associated with the ministry. If there are no such conditions, the application or the case submitted by the official body must be rejected. Since the prosecutor, the president of Tikrit University / being in his capacity, did not prove that there was any actual immunity between him and any other official body and that his claim was not sent to this court with a letter signed by the Minister of Higher Education and Scientific Research as one of his followers, so his claim is rejected. That's on the one hand, on the other the ruling that the two legislative texts in question, which were targeted by the plaintiff in addition to his job in his claim, means abolishing the exception obtained by teachers and assistant professors by making the legal age of retirement (63) sixty-three years of age and returning to the text of the article (1) of the law, which stipulates the imperative of retirement upon completion of (60) sixty years of age and that intersects with plaintiff's interest/ being in his capacity making the legal age for the assignment of professors and assistant professors to complete (65) sixty-five years is outside the jurisdiction of the FSC because amending the legislative texts is an exclusive jurisdiction of the Council of Representatives and interfering in it is a violation of the principle of the Constitution, which is the principle of separation of powers stipulated in Article (47) of the Constitution. For all of the above the FSC decided the following:

- 1- Ruling to reject the plaintiff's case the president of Tikrit University / being in his capacity.

2- The plaintiff obliged the president of Tikrit University / being in his capacity with fees and judicial expenses and fees lawyers and the defendant's agents speaker of the Council of Representatives / being in his capacity legal adviser Haitham Majid Salem and jurist officer Director Saman Mohsen Ibrahim (100,000) one hundred thousand dinars distributed following the law the decision was issued by agreement decisively and obligating on all authorities based on the provisions of Articles (93/1<sup>st</sup> & 94) of the Constitution of the Republic of Iraq for 2005 and Article (5) of the FSC's Law No. (30) of 2005 (amended) and article (5) of the FSC's Law No. (1) of 2005 the decision had made clear public on 30/May/2021 coinciding with 17/Shawwal/1442.