



The Federal Supreme Court (F.S.C.) has been convened on 30.5.2021 headed by the Judge Jasem Mohammad Abbood 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 Monther Ibrahim Husain whom are authorized to judge in the name of the people, they made the following decision:

The Plaintiffs:

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|--|-------------------------------------|
| 1. Khair Allah Abdul Samad
Muhammad | 2. Muhammad Eneissi Joy |
| 3. Abdul Mahdi Saleh Hussein | 4. Dakhil Rady Nedewi |
| 5. Adel Yaqoub Yusuf | 6. Abdul Razzaq Mahmoud
Muhammad |
| 7. Abdel Salam Ghadhban Makki | 8. Jassim Mohammed Ahmed |
| 9. Ali Hemdhe Diab | 10. Falhi Abdul Hassan Ali |
| 11. Abdel Halim Ali Hussein | 12. Zaki Abdullah Ahmed |
| 13. Iyad Abdel Wahab Abdel Qader | 14. Amira Kazem Nasser |

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Republic of Iraq
Federal Supreme Court
Ref. 175 / federal / 2019



Kurdish text

15.Nouri Abdel Nabi Nasser

16.Sajid Saad Hassan

17.Khalil Ismail Muhammad

18.Sami Jeber Kazem/
professors and assistant
professors at the University
of Basra

19.Hadi Yasser Abboud

20.Mahdi Abdul-Kadhim
Abed/ professors of Al-
Qasim Green University

Their agent the attorney Mortada Mansi Al-Shamry.

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 director Saman Muhsen Ibrahim.

The claim:

The agent of the plaintiffs claimed that the I.C.R. issued the law No. (26) of 2019 the law of First Amendment to the amended Unified Pension Law No.(9) of 2014 in which the legal age for retirement was set at the completion of (60) sixty years, and it excluded the holders of scientific titles (professor and assistant professor) from being referred to retirement until the completion of (63) sixty-three years. the aforementioned text has been legislated hastily and violated the desired results, as it leads to emptying universities, colleges and bodies of competencies and holders of scientific titles, it

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consider in violation of article (34) of the Constitution, in addition, the mentioned law has lowered the age of retirement of the holders of scientific titles from (65) to (63) years according to the provision of article (11/1st/alif) of the Academic Service Law No.(23) of 2008 without referring to what stated in paragraph (beh) of the same article which stipulated the powers of the university council or the commission to extend the service of the professor and assistant professor for a period of no more than five years, which caused confusion to universities and bodies due to the lack of knowledge of if the referred to retirement at the age of (63) without an extension, or to add to it the mentioned extension period. Therefore, he requested to call upon the defendant in addition to his post for argument, and to rule to repeal and revoke paragraph (2nd) of article (2) of the Law No. (26) Of 2019 related to referring the holder of the scientific titles to retirement for unconstitutionality. after accepting the lawsuit and collecting its legal fee according to the provision of article (1/2nd, 3rd) of the F.S.C. bylaw No.(1) for 2005, it was registered by the number (175/ federal /2019),the defendant/ in addition to his post was informed with its petition according to the provision of article (2/1st) of the bylaw. The agent of the defendant responded with his draft dated on 12.1.2020 stating that the law subject of challenge was received from the Council of Ministers as law bile according to the provision of article (60/1st) of the Constitution, and that the I.C.R. has enacted this law according to the constitutional authorities granted to it according to article (61/1st) of the Constitution,

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therefore, he requested to dismiss the plaintiffs lawsuit. The agent of the plaintiffs responded with the explanatory draft on 11.2.2020 stating that claiming that the law subject of challenge was a legislative option according to the jurisdictions of the I.C.R. doesn't affect that it was enacted in a hurry, it does not preclude addressing some of its texts that directly harmed the public interest through emptying universities, colleges and institutes of scientific competencies, the challenge of his clients is subjected on paragraph (2nd) of article (2) first part of it regard referring the universities professors the holders of scientific titles to retirement upon completing (63) years, and that the challenge doesn't exceed other than that paragraph of the law. After completing the required procedures according to article (2/2nd) of the F.S.C. bylaw, the court scheduled a date for the argument, on that date the court convened and call upon the parties, they attended and started in presence public argument, the agents of the parties repeated their statements. The court decided to close the argument, and appointed the date 30.5.2021 to issue the decision, the following decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C. of what listed in the plaintiffs claim and the drafts of the parties and what their agents submitted in the argument session, it found that the plaintiffs' agent requested to rule the unconstitutionality of paragraph (2nd) of article

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(2) of the law No.(26) of 2019 (the law of First Amendment to the Unified Pension Law No.(9) of 2014) which stated that (the legal age for retirement stipulated in the clause (1st) of this article shall be upon completion of (63) sixty-three years of age) that related to whom are covered with the law of Academic Service from the holder of scientific title (professor and assistant professor) under the claim of violating article (34) of the Constitution, in addition to the reasons listed in the case petition. The F.S.C. finds that the lawsuit is accepted from the aspects of jurisdiction, litigation , and interest, as it fall within the jurisdiction of this court according to the provision of article (93/1st) of the Constitution of 2005, also both of the plaintiffs and the defendant in addition to his post are legal litigants and meet the adversarial conditions and have the legal capacity to sue, also the plaintiffs has the interest in initiating the lawsuit, as they are holder of scientific title (professor, or assistant professor) and the legislation subject of challenge had been implemented on number of them, also the mentioned legislation is to be implemented on other of them upon completing the legal age of retirement, by that the plaintiffs' lawsuit acquired the conditions stipulated in articles (44, 45, 46, 47) of the amended Civil Procedures Law No.(83) of 1969, and the stipulated conditions in article (6) of the F.S.C. bylaw No.(1) of 2005. Objectively the court finds that the legislative text required to be ruled unconstitutional didn't includes any violation to the constitutional text referred to by the plaintiffs agent which is article (34) that stated the right of education and it guaranteed by the state

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and it encourages the scientific research and shall support excellence, creativity, invention, and for the following reasons:

1. Most of the constitutions in the world, if not all of them, including the constitution of Iraq of 2005, agree to restrict some rights. This comes for many reasons, including preventing conflict with other rights, or to prevent abuse of the rights of others, or to achieve certain public interests, provided that this is done by law, that is, the restriction is issued from the legislative authority and that it does not affect the essence of the right, and this is what was confirmed by the Iraqi constitutional legislator in article (46) of it that stipulates (restricting or limiting the practice of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that limitation or restriction does not violate the essence of the right or freedom).
2. Some rights are of a nature that permits or sometimes necessitates its restriction, and that the right to work, from which the right to employment is subdivided, is among the rights that by their nature impose the necessity of restriction for a specific period of time that ends in its natural form with retirement and for several reasons, including the right of the employee to take some rest after a long service and enjoy the rest of his life with some freedom that the public office imposed many restrictions on, as well as in order to open the way for young elements and new capabilities to take their role in the public service and the

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management of public and private facilities, in addition, the temporal restriction of the right to work and the right to employment comes to avoid a decrease in the cognitive abilities of people when they age and to prevent its effects on the public job, which needs the perpetuation of its activity on a continuous and renewed basis, and this is achieved only through the elements that have the physical ability and high mentality that is able to manage public utilities actively and regularly.

3. The original principle is that Iraqis are equal before the law, but this does not require equal treatment of those who differ in their legal positions, abilities or competencies as long as this is based on objective foundations that contribute to achieving the public interest that the legislator seeks to achieve, and that the legislator in the law subject of challenge has excluded the mentioned groups in the lawsuit (professor, and assistant professor) and distinguished them from others in a positive way in terms of determining the retirement age, as he made it completing the age of (63) instead of the (60) sixty years prescribed for the necessity of referring the employee to retirement upon completion, based on objective reasons related to the abilities, competencies, skills, personal characteristics and educational ranks of the persons in addition to achieving the public interest by ensuring the continuation of the work of state institutions with the required efficiency, and this is what the legislator aimed to in article (34) of the Constitution.

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4. What the plaintiffs has claimed that the text subject of challenge cause confusing the universities, collages, and committees for the reason of not knowing if the academic professor is to be referred to retire on the age of (63) years without the extending, or to add to it the extending period stipulated in paragraph (beh) of article (11/1st) of the Academic Service Law No.(23) of 2008, this claim lack the legal substantiation and must be ignored, because what described by the agent of the plaintiffs of confusing caused by implementing the challenged law cannot be a reason to rule that it is unconstitutional, as ruling that a legal text is unconstitutional required that legal text to be in violation for one or more of the Constitution provisions.

For all the foregoing, the Federal Supreme Court decided the following:

First: Dismiss the plaintiff's lawsuit.

Second: Burden the plaintiffs the expenses and fees for the defendant agents amount of (one hundred thousand) IQ.D distributed according to the legal ratio.

This decision has been issued according to articles (93) and (94) of the Constitution of 2005, and article (5) of the Federal Supreme Court amended law No. (30) For 2005, unanimously, final and binding on all authorities, issued publicly on (17.Shawal .1442) A.H., (30.5.2021) A.D.

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Kurdish text

Signature of

The president
*Jasem Mohammad
Abbood*

Signature of

The member
*Ghaleb Amer
Shnain*

Signature of

The member
Haidar Jaber Abed

Signature of

The member
Haider Ali Noory

Signature of

The member
Khalaf Ahmad Rajab

Signature of

The member
Ayoub Abbas Salih

Signature of

The member
*Abdul Rahman
Suleiman Ali*

Signature of

The member
*Diyar Muhammad
Ali*

Signature of

The member
*Monther Ebraheem
Husain*

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