



The Federal Supreme Court (F.S.C.) was convened on 25.5.2021 headed by 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 Ebraheem Husain who are authorized to judge in the name of the people, they made the following decision:

The applicants for the issuance of the state order:

1.Khair allah Abdul Samad Muhammad 2.Muhammed 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 15. Nouri Abdel Nabi Nasser 16.Sajid Saad Hassan 17.Khalil Ismail Muhammad 18.Sami Jeber Kazem 19. Hadi Yasser Abboud 20.Mahdi Abdul-Kadhim Abed / their agent the attorney Mortada Mansi Al-Shamry.

The person who's the state order is against:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post.

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**First- The brief of the request:**

The applicants for the issuance of the state order each of (1.Khair allah Abdul Samad Muhammad 2.Muhammed 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 15. Nouri Abdel Nabi Nasser 16.Sajid Saad Hassan 17.Khalil Ismail Muhammad 18.Sami Jeber Kazem 19.Hadi Yasser Abboud 20.Mahdi Abdul-Kadhim Abed) by their agent the attorney Mortada Mansi Al-Shamry requested in the draft submitted to the Federal Supreme Court No.(176/federal/2019) dated on 31.12.2019 its legal fee was collected on 2.1.2020, to suspend the implement of paragraph (2<sup>nd</sup>) of article (2) of the Law No.(26) of 2019 related to referring the holder of scientific titles to retire until deciding the lawsuit with unconstitutionality according to the provision of article (151) of the Civil Procedures Law No.(83) of 1969, as it included (the Speaker of the Council of Representatives in addition to his post has issued the Law No.(26) of 2019 the law of First Amendment to the amended Unified Pension Law No.(9) of 2014, published in the Official Gazette issue No.(4566) on 9.12.2019, article (1) of it stated (the employee shall be referred to retire upon completing 60 years old), article (2/1<sup>st</sup>/alif) of it stated that (whom are covered with the Academic Service Law from the

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holder of the scientific titles professor and assistant professor, are to be excluded from the provision of the legal age), but it restricts the mentioned exclusion and specified the legal age of the mentioned category in paragraph (2<sup>nd</sup>) of article (2) so that the referral of the employee to retire is upon 63 years old. As the aforementioned text has been legislated hastily and contradicts the desired results of it since the general education is the base for advancing the society and a right guaranteed by the state in the article (34) of the Constitution, this law leads to emptying universities, colleges and bodies of competencies and holders of scientific titles, and they are at an age characterized by the pinnacle of giving, and what is the country's need for these scientific competencies to advance the reality that characterizes the country, and that emptying ministries, bodies, universities, colleges and all the joints of the state of scientific competences and the holders of the titles due to the last amendment of the Pension Law in time we desperately need it that considered as suicide for the efficiency of these joints and bodies from a scientific and cultural point of view, and it determines the extent of their success and the correctness of their decisions. Also, the mentioned law has lowered the age of retirement of the holder of the scientific titles from (65) years to (63) years aforementioned in the text of the article (11/1<sup>st</sup>/alif) of the Academic Service Law No. (23) of 2008 without referring to or mentioning what stipulated in paragraph (beh) of the same article and law which stated (the powers of the university council or the commission to extend the service of the professor and

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assistant professor for a period of no longer than five years according to the need of the department or the college, the extension must be every three years.) which confused universities and bodies due to the lack of knowledge of if the referred to retirement at the age of (63) without the extension term, or to add to it the mentioned extension term. It also did not refer to the groups over the age of 63 and still serving as a result of the aforementioned extension, which is one of the legal gains that cannot be addressed. Also, the Pension Law is a general law unlike the Academic Service Law, which is a special law, and the extent of the application of the rules of that (the private rule restricts general). Therefore, since my aforementioned clients are holders of scientific titles and suffer direct and real harm from the aforementioned law, and the date 31.12.2019 has been set for the validity of the law, under that law and the date of its validity the separation orders of his clients are to be issued from their institutions, therefore we request to issue state order to suspend the implementation of paragraph (2<sup>nd</sup>) of the article (2) of the Law No. (26) of 2019 related to referring the holder of scientific titles to retire until deciding the lawsuit with unconstitutionality according to the provision of the article (151) of the Civil Procedures Law No. (83) of 1969.

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**Second: The decision:**

During scrutiny and deliberation by the F.S.C. t found that the requester of the state order each of (1.Khair allah Abdul Samad Muhammad 2.Muhammed 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 15. Nouri Abdel Nabi Nasser 16.Sajid Saad Hassan 17.Khalil Ismail Muhammad 18.Sami Jeber Kazem 19.Hadi Yasser Abboud 20.Mahdi Abdul-Kadhim Abed) by their agent the attorney Mortada Mansi Al-Shamry, with his draft presented to the Federal Supreme Court registered by the No. (176/ federal/2019) dated on 31.12.2019 which its fee was collected on 2.1.2020 requested to issue state order to (suspend the implementation of paragraph (2<sup>nd</sup>) of the article (2) of the Law No. (26) of 2019 related to referring the holder of scientific titles to retire until deciding the lawsuit with unconstitutionality according to the provision of the article (151) of the Civil Procedures Law No. (83) of 1969 for the reasons listed and detailed in the aforementioned draft. The Federal Supreme Court finds that its competence and power to issue state orders based on requests submitted to it or cases brought before it has not been addressed or mentioned in the F.S.C. amended law No. (30) of 2005, nor its Bylaw of court workflow procedures No. (1) of 2005. Thus, the court's authority to issue state orders is

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subject to provisions referred to in the two articles (151, 152) of the amended Civil Procedures Law No.(83) of 1969 to the extent that is commensurate with the nature and specificity of the constitutional case, based on the provisions of the article (19) of the Bylaw of workflow procedures in the court, which stipulates that (the provisions of the Civil Procedures Law No.(83) of 1969 and the Evidence Law No.(107) of 1979 shall be applied in cases where there is no special provision in the F.S.C. Law and this Bylaw), and in terms of article (17) of it, which states that the judgments and decisions issued by the Court are final and do not accept any method of appeal...), on the basis of the foregoing, the issuance of a state order by the F.S.C. is governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Law for the finality of decisions issued by this court and not being subject to the methods of appeal, that lie in submitting an application in two copies including the facts, evidence and documents, the availability of the urgency, and not to enter into the origin of the right and decide on it. When the request was reviewed by this court, it was proved that there is no urgency that must be present for the issuance of the state order, and that the issuance of the state order means entering into the origin of the right and deciding on it, especially since the applicants for the issuance of the state order challenged the constitutionality of the article (2 /paragraph 2) whose implementation is required to be suspended in the law No.(26) of 2019 (the law of First Amendment to the amended Unified Pension Law No.(9) of

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2014), by the lawsuit No.(175/federal/2019) filed by the applicants for the issuance of the state order, it fee was collected on 2.1.2020, it is consider as giving an opinion prematurely about the unconstitutionality of the contested article before this court, and that this contradicts the established judicial norms in the constitutional judicial systems of Arab and foreign countries, and with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this field according to the basis of the provisions of the Constitution and the laws in force based on the realization of the right and the achievement of justice and fairness away from inclinations, whims, abuse and flattery. Therefore, deciding on the request of those requesting the issuance of the state order is obligatory to be dismissed for two reasons, the first is the absence of the character of urgency in it, and the second is that deciding on it means entering into the origin of the right and giving a prior opinion of the unconstitutionality of the article (2/2<sup>nd</sup>) of the aforementioned law whose implementation is requested to be suspended, because of challenging its constitutionality before this court by those requesting the issuance of the state order according to the aforementioned detail. For the aforementioned, the Federal Supreme Court decided to dismiss the request of those requesting the issuance of the state order each of (1.Khair allah Abdul Samad Muhammad 2.Muhammed Eneissi Joy 3.Abdul Mahdi Saleh Hussein 4.Dakhil Rady Nedewi 5.Adel Yaqoub Yusuf 6.Abdul Razzaq Mahmoud Muhammad

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Republic of Iraq  
Federal Supreme Court  
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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 15. Nouri Abdel Nabi Nasser 16.Sajid Saad Hassan 17.Khalil Ismail Muhammad 18.Sami Jeber Kazem 19.Hadi Yasser Abboud 20.Mahdi Abdul-Kadhim Abed). This decision has been issued according to articles (94) of the Constitution of 2005, and article (5/2<sup>nd</sup>) of the Federal Supreme Court amended law No. (30) for 2005, unanimously, final, and binding on all authorities, issued publicly on (12. Shawal .1442) A.H., (25.5.2021) A.D.

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Republic of Iraq  
Federal Supreme Court  
Ref. 176 / federal / 2019



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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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