



The Federal Supreme Court (F.S.C.) has been convened on 1.6.2021 headed by Judge Jasem Mohammad Abboud 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 Plaintiffs:

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| 1. Majed Maky Abd Alhasan | 2. Hussein Halwas Mahdi | 3. Bassem Hamid Abboud |
| 4. Ali Muhammad Obaid | 5. Yaamor Murad Obeid | 6. Fareeq Samawy Abdul Hassan |
| 7. Hakim Mahdi Abdul Hassan | 8. Abbas Hadi Habib | 9. Dia Abbas Mahdi |
| 10. Abdel-Khaleq Abdel-Hamza Kashash | 11. Abdul Karim Mahdi Abdul Hassan | 12. Zahir Habib Abbas |
| 13. Ali Hussein Hadi | 14. Aid Hassan Nagy | 15. Kazem Talib Jabbar |
| 16. Akram Salim Abdel Rahman | 17. Thaeera Talib Jabbar | 18. Khloud Abbas Razzouqi |
| 19. Fadel Abbas Radi | 20. Salah Nasser Hussein | 21. Ali Shaker Mahmoud |
| 22. Nadia Ibrahim Malik | 23. Muhannad Fareeq Hamidi | 24. Naglaa Shanshul Jawad |

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 17/ federal/ 2020



Kurdish text

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| 25.Ali Hussein Abd | 26.Ali Hamza Mahdi | 27.Noor Salam Ali |
| 28.Ban Hatem Faleh | 29.Mohamed Reda Shaker | 30.Sabah Makki Majid |
| 31.Muhammad Ali Moez Jaber | 32.Mazen Hassan Karim | 33.Fadel Malik Rashid |
| 34.Firas Karim Abboud | 35.Jawad Abdul-Kadhim Ali | 36.Jamal Sadiq Ibrahim |
| 37.Abdul Karim Hamza Hussein | 38.Majed Salim Karim | 39.Thawraa Aziz Tanish |
| 40.Kazem Mazkhor Fadl | 41.Bushra Hani Hamid | 42.Karim Rahi Moussa |

Their agent is the attorney Hamed Ibraheem Al-Awady.

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 Ebraheem.

The Claim:

The agent of the plaintiffs claimed that the defendant in addition to his post has enacted the Pension Law No.(26) of 2019 (first amendment law of the unified pension law No.9 of 2014) article (10/1st) of it stated the referral of the employee to the retirement when completing (60 years) of age which is the legal age for retirement, regardless of the length of his service, this paragraph is in violation of the provisions of the constitution in force of 2005, as it

Athraa



contradicts the text of the article (2/c) of the constitution that states (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), as well as violation to the provisions of article (22/1) (work is a right for all Iraqis in a way that guarantees a dignified life for them) and the provision of article (29/1st/a) which stated (the family is the foundation of society; the State shall preserve it and its religious, moral, and national values), and article (30/1st) (the State shall guarantee to the individual and the family – especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing), article (37/1st/a) (the liberty and dignity of man shall be protected), as this article caused harm for more than (250.000) employee who completed the age of sixty and their families by referring them to retire by it and reducing three years of the service age which leads to the lowering of their month salary by percentage of (50-75%) of the salary he received in service, as every employee of this segment has financial obligations between him and the state represented by loans and advances, which are paid out of his monthly salary, and when he is referred to retirement, he cannot pay these financial obligations. In addition, every employee has children in schools and private colleges and pays them monthly installments to pay the wages of these institutions, as well as the transportation of them, and all of this is arranged and programmed according to the employee's monthly budget based on the amount of his monthly salary and based on remaining in his job

Athraa



for a period of three years, which is reaching the age of (63), which is the real and appropriate age to retire the employee in all societies in neighboring countries, and it was approved by the comparative laws in those countries. But this law surprises this segment and makes them confused about how to fulfill their financial obligations based on the number of their salaries and the remaining period of (3) years. The defendant legislated this article according to what was stated in the reasons for this law, which is to motivate the movement of personnel and appoint a group of young graduates from colleges. this is unacceptable and does not conform to logic and is defective with the defect of legislative deviation, because the state, in this case, renounces its main duty towards the citizen is to provide real job opportunities based on the annual budget of one hundred billion dollars annually, through which the state can provide job opportunities for young people, with no less than five hundred thousand job opportunities annually, and not at the expense of this segment and its interests and the interests of its families, as this article caused direct damage to the approx. out of eight hundred Iraqi families, and if this legislation was intended or included within the jurisprudential rule to pay the most severe harm with the least harm, there would have been a point of view for this legislation, but the harm of this legislation was greater than its benefit. On the other hand, the legislator did not take into consideration this age group of employees in state institutions and in various specializations who have long experience within the limits of their specializations, such

Athraa



as engineers, doctors, teachers and technicians, which achieves the public interest for the functioning of the state's public utilities and that replacing them by appointing new graduates without acquiring experience from the senior employees with long-serving accumulated services, such as this segment referred to premature retirement, which makes work in government institutions in a state of reluctance and confusion, and this harm is reflected in the public interest, especially since the constitution is the supreme document that regulates the life of society in the state and guarantee its civil and economic and political rights and public freedoms of the people are preserved, and this is achieved through the enactment of laws that achieve the interests of the people in general and not the interest of one group at the expense of another, and this is what happened in the legislation of the article. Specifically, the articles mentioned above, and since national laws require the father to support the family from children and students in schools and colleges until their graduation, and the state's duty after that is to find job opportunities for these, as is the case in most countries, especially since the constitution in its article (25) obligates the state by reforming the economic system, as it stipulates that the state guarantees the reform of the Iraqi economy according to modern economic foundations, in a way that guarantees full investment of its resources, diversification of its sources, and encouragement and development of the private sector, in addition, Law No. (26) of 2019 was issued under unnatural circumstances, and these circumstances were (the launch of popular protests) in most

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 17/ federal/ 2020



Kurdish text

governorates of Iraq and pressure by young people on the government to reform the economic and political situation. The goal of this legislation was to calm the street and absorb resentment without the aim of achieving the public interest, the defendant in addition to his post did not take into account all aspects to be balanced and achieve social justice. Therefore, the content of this paragraph contradicts the provisions of the aforementioned constitution and is flawed by the defect of legislative deviation. Therefore, he requested to call upon the defendant to argue and rule to cancel the article (10/1st) of the Pension law for violating the provisions of the Constitution, and to burden him with the expenses and advocacy fees. Under the provision of the article (1/3rd) of the F.S.C. bylaw No. (1) of 2005, after registering the lawsuit and informing the defendant in addition to his post with its petition according to the provision of the article (2/1st) of the mentioned bylaw, his agent responded with draft dated on 19.2.2020 stating that the plaintiff lawsuit is binding to be dismissed because the law subject of the challenge presented to the I.C.R. as law bill from the governorate (the Council of Ministers) according to the provision of the article (60/1st) of the Constitution, it was legislated by the I.C.R. according to the provision of the article (61/1st), it came as a legislative option according to the competence of the I.C.R. stated by the Constitution, as the law bill came as a response to the reform needed by the public jobs, therefore the defendant agent requested to dismiss the lawsuit and to burden the plaintiffs the judicial expenses.

Athraa



After completing all the stipulated procedures in the article (2/1st) of the F.S.C. bylaw, a date was scheduled for the argument according to the provision of paragraph (2nd) of the mentioned, on that date, the court convened, the agent of the plaintiffs has attended, the agent of the defendant attended also and started in presence public argument, the court heard the requests and arguments of the parties agents who repeated the case petition and answering draft, then the argument is closed, the court issued the following decision publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiffs' agent challenged the constitutionality of article (1) of the law No.(26) of 2019 First Amendment Law of the Unified Pension Law No.(9) of 2014 as this article stipulated ((the text of article (10) of the Unified Pension Law No.(9) of 2014 is repealed and replaced with the following: article -10- the employee shall be referred to retirement in one of the two cases, first: upon completing (60) sixty years of age, which is the legal age for retirement, regardless of the time of his service), the paragraph (1st) of article (10) mentioned above is the subject of challenge of unconstitutionality as stated in the statements of the plaintiffs' agent in the minute of the session on (11.5.2021), the plaintiffs' agent listed number of reasons in the case petition that he sees as substantiation for the deviation of the defendant when enacted this article from the constitutional rules stipulated in the Constitution of 2005 which was listed in details

Athraa



above, the court summarized it as the text being challenged for unconstitutionality violated the text of article (2/c) of the Constitution that stated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), and violated the provision of article (22/1) of the Constitution that stated (work is a right for all Iraqis in a way that guarantees a dignified life for them), and violated the provision of article (29/1st/a) that stated (the family is the foundation of society; the State shall preserve it and its religious, moral, and national values), and article (30/1st) that stated (the State shall guarantee to the individual and the family – especially children and women – social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing), and article (37/1st/a) that stated (the liberty and dignity of man shall be protected). Among the reasons is that the legislation also damages more than two hundred and fifty thousand employees and their families, which amount to eight hundred families, according to what was stated in the lawsuit petition from those who have completed sixty years of age for their retirement and the decrease in their salaries by a percentage of (50 – 75%) of the salary they receive before referring them to retirement, which caused their incapacity For the payment of their obligations that they had arranged at the level of the salary they received before their retirement. One of the reasons that the plaintiffs' agent sees is that youth employment is not a justification for harming another segment, especially since the state is able to

Athraa

Republic of Iraq
Federal Supreme Court
Ref. 17 / federal / 2020



Kurdish text

provide five hundred thousand job opportunities out of the annual budget of one hundred billion dollars annually, and this law will deprive state institutions in various specializations from their employees with important experience and competence in their specialties such as engineers, doctors and teachers, who cannot be compensated by hiring new employees who have no experience and it will make state institutions reluctance and confusion, just as the state is responsible for economic reform and providing job opportunities, and Iraqi laws require parents to spend on their families from their childhood and when they were students in schools and after their graduation, the state is responsible for providing them with job opportunities, the legislation was issued under abnormal circumstances represented by popular protests calling for reform, the aim was to calm the street and absorb resentment without achieving the public interest. This is a summary of the reasons presented by the plaintiffs' attorney that were answered by the defendant's attorney that the law was presented by the governorate under the provision of the article (60/1st) of the Constitution, the legislator enacted it in response to the reforms needed by the public service, and it is a legislative option. By reviewing what was proposed by the two parties' attorneys through mutual drafts and the ongoing pleading, this court finds that the defendant's legislation of the contested text does not prejudice the legislator's obligation to fulfill the obligations imposed by the constitutional provisions mentioned by the plaintiffs' attorney, because if the legislator is committed to legislating the

Athraa



guaranteeing laws by providing the right to work for all Iraqis in a way that guarantees them a decent life while obligating the state to do so and preserving the family and its religious and moral values and the basic requirements for living, adequate income and adequate housing, this does not mean the state's obligation that the employee has the right not to be referred to retirement until after completion of the age of sixty-three years, because the estimation of the functional age of the employee is a matter that the nursery appreciates according to the circumstances that the society is going through as well as the conditions of the state and the solutions it needs. These solutions are assumed to have been decided in the public interest. If the legislative authority decides to reduce the retirement age, that is, the employee has completed sixty years of his age, and this is what was stated in the challenged text, to allow the youth segment to take up jobs, this remains one of the solutions and alternatives that the legislative authority has decided to suit to address the problem of unemployment among graduates from the youth, and there is nothing wrong with this legislation being issued under pressure from protests, the court does not see that this is a violation of the constitutional provisions listed by the plaintiffs' attorney in the lawsuit petition. On the other hand, the decrease in salary due to retirement is not in itself a violation of a constitutional provision as long as the minimum level of these salaries ensures an adequate living life for the employee covered by this law and according to what is estimated by the legislative authority. The court also found that the legislator in article

Athraa



(5) of the challenged law has amended the provisions of the article (21/1st, and 4th) of law No. (9) of 2014 by reducing the retirement age entitlement to (45) years instead of (50) fifty years, it also made the minimum pension salary with living allowances not less than five hundred thousand dinars, while before the amendment it was not less than four hundred thousand dinars, this amendment came taking into account the financial condition of the retired employee more than the previous law. Also, the legislation reason mentioned in the enactment reasons is to take advantage of the personnel movement in attracting youth personnel, this is an attempt by the defendant, in addition to his post, to fulfill the constitutional provisions contained in the Constitution of the Republic of Iraq in the article (14) that established the principle of equality between Iraqis before the law, as well as what was stated in the article (16) that emphasized the principle of equal opportunities among Iraqis, the state guarantees taking measures to achieve that. As for the plaintiffs' agent's awareness that the legislation of this law will lead to the loss of important experiences that were owned by the employees covered by the law, this is in addition to the fact that it is not realistically established, also, the matter of proving or not proving the suitability of the law to the public interest in its results and the extent to which it meets the interests of the social body that the legislative authority represents in evaluating the laws in which it is assumed that they are issued taking into account and achieving the interest of the public who elected this authority, this requires the application of the law and the continuation

Athraa



of a certain period so that its results can be clarified and the evaluation of this can be done in the institutions and public interests covered by the law, it is often not possible to know that through a judicial investigation. this court considers that this is one of the powers and options of the legislative authority in dealing with issues that fall within its competencies, as long as it aims to achieve the public interest without exceeding the constitutional limits, and all of this assumes to fall under the oversight of the people who have the right to say their word in evaluating the solutions and issues taken by the legislative authority, and whether its options are successful or not and in the light of this popular assessment, the people's authority rises to issue their decision to re-elect this authority or not, according to what was drawn up by the provisions of the articles (20, 56/1st) of the constitution, and this is the essence of the parliamentary system that the 2005 constitution adopted in its article (1). As for the issuance of the amendment subject of challenge under the pressure of popular pressure and protests, and that its aim is to calm the street and absorb resentment without taking into account the public interest, this court sees, based on the assumption of the validity of the above, that every legislation must have a reason and that legislation is enacted for addressing a social or economic problem or the organization of a specific matter, so it is assumed that it is not just because of the desire to issue legislation, devoid of serious, realistic reasons, or at least the serious reasons that the legislator believed in his mind and it does not undermine the constitutionality of the

Athraa



legislation if it is issued for pressing reasons such as popular protests as long as the legislative authority in this regard is committed and observing the limits of the constitutional texts, this court has also sees from the comparative constitutional cases that the jurisdiction of the constitutional courts extends to the apparent meaning of the text and does not extend to the motives of the legislation and its distant reasons, because this is considered to be the core of the jurisdiction of the legislative authorities. For all that, this court finds that the plaintiffs' lawsuit is not based on constitutional substantiations worthy to be answered, and it is better to be dismissed. Accordingly, the Federal Supreme Court decided to:

1. dismiss the plaintiffs' lawsuit.
2. burden the plaintiffs the expenses and fees for the defendant agents amount of (one hundred thousand) IQ.D distributed equally. This decision has been issued unanimously, final and binding on all authorities according to articles (93/1st) and (94) of the Constitution of 2005, and articles (4, 5) of the Federal Supreme Court amended law no. (30) for 2005, issued publicly on (1.6.2021) A.D., (19.Shawal.1442) A.H.

Republic of Iraq
Federal Supreme Court
Ref. 17/ federal / 2020



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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