

Republic of Iraq  
Federal Supreme Court  
Ref. 1 / federal / 2020



Kurdish text

---

The Federal Supreme Court (F.S.C.) has been convened on 6.6.2021 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 Plaintiff:**

Ragad Abed Alrahman Jasem - her agent the attorney  
Shawkat Sami Al-Samarrai.

**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.

**First: the claim:**

The agent of the plaintiff claimed that the defendant/ in addition to his post has enacted the law of First Amendment to the Unified Pension Law No. (26) of 2019, published in the Iraqi Gazette issue No. (4566) on 9.12.2019, the mentioned law included several texts that were drafted in a not thoughtful manner, which in their entirety violated the provisions of the Constitution and the laws in force,

---

Athraa

Republic of Iraq  
Federal Supreme Court  
Ref. 1 / federal / 2020



Kurdish text

which would seriously harm the public interest and the Iraqi society, and might prejudice the Iraqi national security in the future. The amendments under challenge would also harm the present and future of Iraq. Therefore we challenged its constitutionality from the formal and the objective aspect before your estimated court according to the details appointed in the case petition, its brief is challenging the constitutionality of articles (1, 2/1<sup>st</sup>, 9/1<sup>st</sup> and 2<sup>nd</sup>, 18) of law No. (26) of 2019 the law of First Amendment to the Unified Pension Law No. (9) of 2014 for violating the constitutional provisions formally and objectively in the articles (60, 80, 19/9<sup>th</sup>, 2/1<sup>st</sup>, 25, 27/1<sup>st</sup>, 29/4<sup>th</sup>, 30/1<sup>st</sup>, and 2<sup>nd</sup>, 13/2<sup>nd</sup>) of it, he requested to rule the unconstitutionality of the law subject of challenge and articles (1, 2/1<sup>st</sup> and 2<sup>nd</sup>, 9/1<sup>st</sup> and 2<sup>nd</sup>, 18) of it. Its formal defenses were summed up by the fact that the Council of Ministers proposed to implement the law a year after its publication in the Official Gazette, as well as the draft law granting to the Council of Ministers some important exceptions, but the defendant in addition to his post canceled all the proposed paragraphs, as for the objective defenses, it is embodied that the challenged law to be unconstitutional violated the rights and freedoms mentioned in the constitution and burdened the state treasury with very large financial burdens and did not preserve public money because of the waste it caused by referring nearly (200) thousand employees for retirement. Also, article (9) of the law subject of the challenge has violated the provision of articles (14, 16) of the Constitution which included achieving social justice and the

Athraa



justice of the administrative procedures, in addition, that, the law has a retroactive effect upon approval on 31.12.2019. the case petition was registered, its legal fee has been collected on 2.1.2020 under the provision of the article (1/3<sup>rd</sup>) of the F.S.C. bylaw No. (1) of 2005, the defendant in addition to his post was informed with the case petition, his agent responded with the draft dated on 12.1.2020, his defenses stated that the law under challenge for unconstitutionality submitted to the department of the client as law bill from the Council of Ministers, and it was enacted according to the article (61/1<sup>st</sup>) of the Constitution, its legislation came as legislation option according to the competence of the I.C.R. as a response to the referendum needed by the public function, he requested to dismiss the lawsuit. The plaintiff was informed of the defendant's answering draft. After completing the required procedures according to the article (2/1<sup>st</sup>) of the mentioned bylaw, the date 4.5.2021 was scheduled for the argument under the provision of the article (2/2<sup>nd</sup>) of the mentioned bylaw, the court convened and call upon the parties, they attended and started in presence public argument, they scrutinize the case petition, the plaintiff agent repeated what stated in the case petition and added that the plaintiff lawsuit is based on challenging the constitutionality of law No. (26) of 2019 (the law of First Amendment to the Unified Pension Law No. (9) of 2014), as she was covered with that law because she was born in (1960) as she was working as a consultant in the Ministry of Foreign Affairs, therefore the mentioned law was implemented on her which harmed her by

Athraa

Republic of Iraq  
Federal Supreme Court  
Ref. 1 / federal / 2020



Kurdish text

referring her to retire, the plaintiff agent commented that he will present what assures that she is in that state. The defendant agent presented explanatory draft regard his defenses and was attached to the case petition and a copy of it granted to the plaintiff agent, in order to give time for the plaintiff agent the argument was postponed until 26.5.2021, the court has convened, the agents of both parties has attended and started in presence public argument, the court finds that a request is submitted by (Hamdan Abed Algany Afer) presented by his agent on 24.5.2021 requesting in it to be introduced as third party in the lawsuit beside the plaintiff, it was rejected for the reasons listed in the decision issued from this court on 26.5.2021, also the court noticed that the plaintiff submitted request by her agent to this court requesting to issue urgent custodian order to suspend the implement of the No.(26) of (the law of First Amendment to the Unified Pension Law No.(9) of 2014) the subject of the constitutional challenge of the presented lawsuit, it was rejected for the reasons stipulated in the decision issued from this court No.(2/federal/2020) on 4.5.2021, the agent of the plaintiff commented that he was assigned by the court to clear the interest regard his client from filing this lawsuit, this was submitted during the postpone period according to the drafts submitted to this court, he added that the subject of the lawsuit presented before this court doesn't affect only the right of my client but rather affects the rights of many others of who was covered with the law under challenge for unconstitutionality, therefore it is subject of public opinion, and that the challenged law was prepared

Athraa



during very short period of time, and lack the proper drafting that the law obligate to follow in the law of the I.C.R. No.(13) of 2018 which state that (The Council shall provide the appropriate means to lead to the sobriety of the legislation, the effectiveness of oversight, and the honesty of representation), the agent of the defendant in addition to his post repeated his previous statements and requests. The court decided to close the argument, and appointed the date 6.6.2021 to issue the decision, the following decision was issued publicly.

**Second: the decision:**

During scrutiny and deliberation by the F.S.C., it found that the plaintiff agent requested to rule the unconstitutionality of law No. (26) of 2019(the law of First Amendment to the Unified Pension Law No. (9) of 2014 (the law of First Amendment to the Unified Pension Law No. (9) of 2014) for violating the provision of the Constitution formally represented by that the violation of the proposed law from the Council of Ministers which included to be in force after one year from the date of publication in the official gazette, and to give the Council of Ministers the authority to make some exceptions, in implementation of the provisions of Article (78) of the Constitution, to exclude qualified and experienced people. As for the objective aspect articles (1, 2, 9) of it, as article (1) it stated to cancel the text of the article (10) of the Unified Pension Law No. (9) of 2014 and to replace it with the following: (article 10- the employee shall be referred to retire in one of the following cases First: when completing

Athraa



(60) years old which is the legal age for referring to retire regardless of his service period. Second: if the medical committee decided that he doesn't fit to serve.), article (2) of it stated that ((First- the following are to be excluded from the provision of the legal age for referring to retire A: who is covered with the law of academic service from the holder of the scientific title (professor and assistant professor), B: forensic physicians, anesthesiologists, and psychiatrists. C: advisers and assistant advisers in the State Council. D. those covered by the amended Political Dismissing law No. (24) of 2005, and the families of martyrs of the first and second degree who are covered by the Law of the Martyrs Foundation No. (2) of 2016, and the Law No. (20) of 2009, and the law of the Institution of Political Prisoners No. (35) of 2013. H: civilian pilots who work as pilots and in practice, and who have a valid work permit at the time. Second- the legal age for referring to retirement stipulated in clause (1<sup>st</sup>) of this article when completing (63) years old except paragraph (D) the age of retirement is no more than (65) old.)), article (9) of it stated (all the legal texts that decide another legal age for retire shall be canceled except the following: First- the Laws of the judicial authority. Second- the amended law of Military Service and Retirement No.(3) of 2020) for violating the provisions of articles (14, 15) of the Constitution regard the social justice and equal opportunities, and article (19/6<sup>th</sup>) of the Constitution that obligate justice in administrative procedures, also the law subject of challenge has violated the provision of article (19/9<sup>th</sup>) of the Constitution which

Athraa

Republic of Iraq  
Federal Supreme Court  
Ref. 1 / federal / 2020



Kurdish text

stated that (Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees.), the law subject of challenge was issued on 9.12.2019 and become valid from the date 31.12.2019 according to the provision of article (18) of it, in addition, the provisions of that law contradicts article (2/1<sup>st</sup>/c) of the Constitution which stated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), and article (27/1<sup>st</sup>) of it which stated that (public assets are sacrosanct, and their protection is the duty of each citizen), and article (29/4<sup>th</sup>) of it that prohibited all means of abuse in society, and article (30/1<sup>st</sup>/2<sup>nd</sup>) of it which assure that the State shall guarantee to the family the basic requirements for living and suitable income and shall guarantee social and health security in cases of old age, sickness, employment disability, fear and poverty. Article (13) of the Constitution stated in its first paragraph (this Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception) as the second paragraph it stated (no law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void). The Federal Supreme Court finds that the formal condition for initiating the constitutional lawsuit before this court are available as the jurisdiction, litigation and interest are available, it fall within the jurisdictions of this court according the provision of article (93/1<sup>st</sup>) of the Constitution of 2005, also each of the plaintiff and the defendant in addition to his post are

Athraa



legal litigant meet the litigation conditions and have the legal capacity to sue, and the plaintiff have the interest of filing the lawsuit as she was covered with the law subject of challenge as she was referred to retirement under its provision on 1.2.2020 for completing the legal age determined in it, by that the plaintiff lawsuit has meet the requirements stipulated in articles (44, 45, 46, 47) of the amended Civil Procedures Law No.(83) of 1969, and the stipulated requirements in article (6) of the F.S.C. bylaw No.(1) of 2005 which means that the plaintiff lawsuit is accepted formally, by reviewing the objectives aspects of the lawsuit and its arguments of challenging the formal and objective aspect of the law according to the mentioned details, the F.S.C. finds that the challenged law didn't include any violation formally or objectively for the provisions of the Constitution of 2005, these arguments are binding to be dismissed according to the following details:

First: dismiss the arguments regarding the violation of the challenged law for the formal aspect in the Constitution represented by (violating the proposed bill by the Council of Ministers which included that it become valid after one year from the date of publishing it in the official gazette, and granting the Council of Ministers some exceptions in implementation to the provision of the article (87) of the Constitution to exclude the competencies and the who have experience from the provision of the law subject of the challenge for unconstitutionality) for the following reasons:

Athraa





1. the challenged law was submitted to the I.C.R. as a law bill from the Council of Ministers, its legislation was according to the legislative jurisdiction and authorities of the I.C.R., according to the article (61) of the Constitution that stated (the Council of Representatives shall be competent in the following: First: Enacting federal laws.), by that the legislation of the challenged law for unconstitutionality didn't lead to exceeding the authorities or competences of other powers or interfering it, which means it didn't violate the provision of the article (47) of the Constitution that stated (the federal powers shall consist of the legislative, executive, and judicial powers and they shall exercise their competencies and tasks based on the principle of separation of powers).
2. The legislation of the law subject of the challenge for being unconstitutional was to bring the reforms required by the public function to achieve the public interest following the general policy of the state that the Prime Minister and the Council of Ministers undertake to implement according to the provisions of the two articles (78, 80) of the Constitution, this is by providing the opportunity for young people to exercise their role in building society and assuming public jobs, and by giving those who have exceeded the legal age specified in it sufficient time to rest and engage in social activities that suit their age away from

---

Athraa



work pressure and burdens by referring them to retirement. this is because work is a right for all Iraqis in a way that guarantees them a dignified life in application of the provisions of Article (22/1<sup>st</sup>) of the Constitution. However, this right must be exercised in the light of the law and in a manner that achieves the public interest and equal opportunities, because Iraqis are equal before the law without discrimination based on the provisions of Article (14) of the Constitution, but this equality does not mean that the legal rule applies to all, even those who do not meet the conditions of its application. Rather, it applies to those who have the capabilities, conditions, and qualifications that enable them to be subject to its provisions without prejudice to the generality and abstraction that this rule must enjoy.

3. In the challenged law for unconstitutionality, it stated that it become valid from the date 31.12.2019 and published in the official gazette in implementing to article (18) of it, this doesn't contradicts the provision of the Constitution, this also applies for its validity in retroactive effect, as article (19/9<sup>th</sup>) of the Constitution stated (Laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees), which means that the mentioned text allows the laws to have retroactive effect if it stipulated in it on that, unless it related to taxes or fees, and as long as the challenged law is not related to imposing

Athraa



taxes or fee, so there is no prevention to be implemented in retroactive effect, it was published in the official gazette on 9.12.2019 and stipulated in article (18) of it that it become valid from the date 31.12.2019, especially that article (73) of the Constitution of Iraq stated that (The President of the Republic shall assume the following powers: Third: To ratify and issue the laws enacted by the Council of Representatives. Such laws are considered ratified after fifteen days from the date of receipt by the President), which means that the validity of the legislation and its effectiveness doesn't depend on its issuance and ratification by the President of the republic because the concept of ratification and issuance is devoted to signing and publishing in the Official Gazette, and not legislation that is within the jurisdiction of the legislative authority, which has the right to decide to consider laws in force from the date of voting on it, or the date of its issuance or publication in the Official Gazette, or on a date before or after the date of its issuance or entry into force or retroactively based on the controls referred to in the aforementioned Article (19/9<sup>th</sup>) of the Constitution. There is no commentator on the legislator except taking into account the public interest within the limits of the discretionary authority granted to him to achieve it, especially since not ratifying and issuing laws by the President of the Republic, which legislation has been

Athraa



occurred by the Council of Representatives, is considered effective after fifteen days from the date of their receipt.

4. According to the texts of the law under challenge for unconstitutionality, not granting any party including the Council of Ministers the authority to except some peoples of its provisions, is also doesn't violate the Constitution s there is no constitutional text decide that, especially since the provisions of the articles (78, 80) of the Constitution didn't mention the authority of the Prime Minister or the Council of Ministers to excludes some employees for specific reasons from been covered with the provision of the law under challenge, approving such authority is meant to exclude the limit of the jurisdictions stated in the above-mentioned articles, and contradicts the provision of the article (14) of the Constitution which stated the principle of equality, as drawing the general policy of the State must not be on the base of excluding some categories from being covered with the provisions of the valid laws.

Second: Dismiss the arguments regarding the violation of the challenged law for the objective aspects of the Constitution in articles (1, 2/1<sup>st</sup> and 2<sup>nd</sup>, 9/1<sup>st</sup> and 2<sup>nd</sup>, 18) of law No. (26) for 2019 (the Law of First Amendment for the Unified Pension Law No. 9 2014) for violating in its objectives aspects the provision of the Constitution of 2005 in the articles (2/1<sup>st</sup>/c, 13/2<sup>nd</sup>, 14, 16,

---

Athraa



---

25, 27/1<sup>st</sup>, 29/4<sup>th</sup>, 30/1<sup>st</sup>, and 2<sup>nd</sup>, 60, 80) of it 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 achieving 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 the 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 based on 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

---

Athraa



open the way for young elements and new capabilities to take their role in the public service and the 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 certain groups 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

---

Athraa



with the required efficiency, and this is what the legislator aimed to in article (34) of the Constitution. we conclude from the aforementioned that the law subject of the challenge for unconstitutionality (the law No. 26 of 2019, First Amendment Law of the Unified Pension Law No. 9 of 2014) didn't include any formal or objective violation of the provision of the Constitution of 2005, which requires to dismiss the plaintiff's lawsuit.

for all the foregoing, the court decided the following:

First: dismiss the plaintiff Ragad Abed Alrahman Jasem's lawsuit initiated before this court by her agent the attorney Shawkat Sami Al-Samarrai No. (1/federal/2020) challenging in it the formal and objective aspects of the constitutionality of the Law No. (26) of 2019 First Amendment Law of the Unified Pension Law No. 9 of 2014 for violating the provision of the Constitution.

Second: burden the plaintiff 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 (93/1<sup>st</sup>) and (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 (6.6.2021) A.D., (24. Shawal .1442) A.H.

---

Athraa

Republic of Iraq  
Federal Supreme Court  
Ref. 1 / 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***

---

Athraa