

Republic of Iraq  
Federal Supreme Court  
Ref. 238 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/11/2022 headed by Judge Jassim Mohammed Abood and membership of Judges, Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Suroor Abdul Sattar Abdul Razzaq – her agent the barrister Ali Hadi Jihad.

The Defendants: 1- Speaker of the ICR / being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

2- Director-General of the General Tax Commission in the Ministry of Finance/ being in this capacity – his agent the official jurist Ala'a Alwan Humaidi.

### **The Claim**

The plaintiff claimed through her agent that the second defendant refrained from marking the correction of her generation under an electronic record copy according to which her generation was corrected from 30/6/1963 to the generation of 25/8/1965 based on the provisions of Articles (29, 30, and 35) of the National Card Law No. (3) of 2016, and that this refusal came based on previous instructions that were relied upon under a civil status identity, in which the generation was proven incorrect under the current correction when reviewing the replacement of the national card, where the above

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generation was corrected. The correction does not conflict with the laws and regulations in force. In addition, the first defendant invokes Article (34) of the Retirement Law No. (9) of 2014, which states ((First: The document on which the appointment was made or the age was confirmed shall be reliable to verify the real age of the employee or retiree, and any judicial or administrative correction issued thereafter shall not be considered. Second: As an exception to the provisions of Clause (1<sup>st</sup>) of this Article, the Minister or the Head of an entity not associated with a Ministry or the Governor may approve the end of the calendar year on to breed instead of 1/7 of that year)). Whereas the first defendant is the body responsible for legislating laws and because there is a conflict in the application of the law that affects her rights, and this conflict lies between the Retirement Law and the National Card Law, and the fact that (the plaintiff) relies on it in the correction, and since the court undertakes the process of monitoring the constitutionality of the laws and regulations in force following the provisions of Article (93) of the Constitution, so the plaintiff requested this court to rule to lift the contradiction between the application of Articles (29, 30 and 35) of the National ID Law No. (3) of 2016 And Article (34) of the Retirement Law No. (9) of 2014 and obliging the second defendant to accept the correction, and to charge the defendant's expenses, fees, and advocacy fees. The lawsuit was registered with this court with the number (238/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/I) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendants shall be informed of its petition and documents in accordance with the provisions of item (second) of the same article. The two agents of the first defendant replied to the answering draft dated 13/11/2022 and

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requested the dismissal of the lawsuit and the plaintiff's expenses because it is not permissible to deny the official document and its authenticity, which was relied upon upon appointment, to preserve the stability of the employee's legal status and the provisions of the public office. The agent of the second defendant responded with the reply list dated 8/11/2022, requesting the dismissal of the lawsuit and charging the plaintiff with its expenses, as the General Tax Authority is an entity that does not have a legal personality based on Articles (2<sup>nd</sup> and 3<sup>rd</sup>) of the Internal Regulations of the Ministry of Finance No. (1) of 1990, in addition to the lack of jurisdiction of the court to consider the request of the plaintiff who had previously filed the lawsuit before the Employees Justice Court to demand the cancellation of the decision and the correction of its generation, and the lawsuit is still pending before the aforementioned court. After completing the procedures stipulated in the Court's Rules of Procedure, mentioned above, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day, the court was formed, so the plaintiff or her agent did not attend, and the agents of the first and second defendants attended, and the public adversarial pleading was initiated, the court noted that the plaintiff's attorney submitted a request dated 15/11/2022 requesting the postponement of the date of the pleadings to another day, due to his preoccupation with matters related to his work before the Muthanna Court of Appeal, and since the lawsuit ready for a decision the court decided to reject the request, the court reviewed what was stated in the plaintiff's lawsuit and her requests and supports, the defendants' attorneys answered and each of them requested to dismiss the lawsuit for the reasons stated in the regulations linked to the lawsuit papers, and the

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defendants' attorneys repeated their previous statements and requests, and where there was nothing left to say, the end of the argument has been made clear, and the court issued the following judgment decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focuses on demanding the removal of the contradiction between the application of articles (29, 30, and 35) of the National Card Law No. (3) of 2016 and Article (34) of the Unified Retirement Law No. (9) of 2014, which states ((First: The document on which the appointment or age was confirmed shall be relied upon to verify the real age of the employee or retiree, and no judicial or administrative correction shall be considered. It is then issued. Second: As an exception to the provisions of item (first) of this article, the minister or the head of the entity not associated with a ministry or the governor may adopt the end of the calendar year as the date of birth instead of 1/7 of that year)), and the court finds that the plaintiff's requests contained in her lawsuit petition fall outside the competences of this court stipulated in Article 93 of the Constitution of the Republic of Iraq for the year 2005, as it is not the authority of this court to rule to lift the contradiction contained in the laws or oblige the second defendant to correct the plaintiff's birth. Thus, her claim is subject to dismissal for lack of jurisdiction. Accordingly, the FSC decided to reject the case of Suroor Abdul Sattar Abdul Razzaq and to burden her with the expenses, fees, and advocacy fees for the agents of the first defendant, Speaker of the

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ICR/ being in this capacity, each of the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim, and for the agent of the second defendant, the Director-General of General Tax Commission in the Ministry of Finance/ being in this capacity, the official jurist Ala'a Alwan Humaidi amount of one hundred thousand Iraqi dinars, to be divided between them in accordance with the law. The decision has been issued unanimously, final and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 5/Jamada Al-Oula/1444 Hijri coinciding 30/November/2022 AD.

**Signature of**  
**The president**  
**Jasem Mohammad Abbood**

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