

Republic of Iraq
Federal supreme court
Ref. 26/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 8.6.2021 headed by Judge Jasem Mohammad Abod 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 Munther Ibrahim Hussein who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Nidal Abdel-Zahra Mardaou / her agents Mohammad Majid Al-Saadi, Ahmed Mazen Makiya and Hassan Saadoun Habib.

The Defendant: Speaker of Council of Representation/being in his capacity his deputy, legal advisor, Haitham Majed Salem, and jurist
Saman Mohsen Ibrahim

The Claim:

Prosecutors claimed in the petition that the defendant, the Speaker of the House of Representatives, in addition to his job, had already passed the First Amendment Law of the Unified Retirement Law No. (9) of 2014 No. (26) of 2019, which included an article (2/1st) of it ((The following are excluded from the provisions of the legal age for retirement: 1- Those covered by the university service law who hold a scientific title (Professor, Assistant Professor)).

2- Forensic doctors, anesthesiologists, and psychiatrists. 3- Advisers and assistant advisers in the State Council. 4- Those covered by the (amended) Political Separation Law No. (24) of 2005 and those with first and second-degree martyrs covered by the Martyrs Foundation Law No. (2) of 2016 and No. (20) of 2009 and Law of the Institution of Political Prisoners No. (35) of 2013. 5- Civilian pilots who work as pilots and have a valid work permit at the time)). Since these exceptions came in violation of the Constitution in Article (14) of it, which stipulates the principle of equality. And that the legislator did not observe this principle, he distinguished the categories mentioned in Article (2/1st) of the Unified Pension Law, which excluded them from the provisions of the legal age specified in Article (1) of the Unified Retirement Law this is due to the importance of its missions and positions and what it provides to serve the public interest. He did not point out the importance of the Divan of Federal Financial Supervision, which is no less important than those categories, as it is the most important regulatory and financial institution in the country. The services it provides are no less important than the tasks provided by groups excluded from the age requirement for retirement, as it is a sensitive center and its functions have a significant impact on building a country free of corruption through the powers and functions assigned to it under the Divan of Federal Financial Supervision Law No. (31) of 2011. Given the importance of these tasks and the positions occupied by their members, which require a high level of competence, professionalism, comprehensive experience, and long specialized practice for their staff to carry out these enormous tasks, it is not possible to dispense with those accumulated experiences, which are difficult to compensate for in the future. The legislator also did not take into account (the principle of equal opportunities) stipulated in article (16) of the Constitution, and the opportunity given to the mentioned groups must be given to the Divan of Federal Financial Supervision to match the reasons for the exceptions in terms of the importance of

competence and the accumulated experience derived from the long practice in the field of jurisdiction, given that the State is the constitutional guarantor to achieve this principle, which was affirmed by the Constitution. For all the reasons above the Deputy Prosecutor asked the FSC to instruct the Council of Representatives to amend the text of Article (2/1st) of Law No. (26) of 2019 the First Amendment Law of the Unified Retirement Law in accordance with the constitutional content and its objectives aimed at including the Divan of Federal Financial Supervision by excluding the provisions of the legal age specified by Article (1) of the Unified Retirement Law. The defendant charged fees, expenses, and legal fees. Under the request on 18/2/2020, the prosecutor requested the FSC to issue a state order suspending the issuance of any custodian or administrative order requiring the retirement of employees of the court who have reached the legal age until the case is resolved. After the defendant informed the Speaker of the Council of Representatives/ being in his capacity of the petition, his agent answered the answer draft on 25/2/2020, asking for the rejection of the case because the law in question was received to the Council of Representatives from the Council of Ministers as a bill in accordance with the provisions of Article (60/1st) of the Constitution, It was a legislative option for the Council of Representatives in accordance with its jurisdiction under article (61/1st) of the Constitution because the bill was in response to the reforms needed by the public service. After required in accordance with the FSC's Bylaw No. (1) of 2005, the Court appointed on 8/6/2021 a date for the pleading. On time, the court was formed and the plaintiff's agent, lawyer Mohammed Majid al-Saadi, and the defendant's agents attended / being in his capacity, and the immanence and public pleading was initiated, the plaintiff's agent requested that the custodian order be dismissed, adding that his client is an employee of the Divan of Federal Financial Supervision and requests that the Speaker of the Council of Representatives/ being in his capacity be obliged to amend Article (2/1st) of Law No. (26) of 2019, the First

Amendment Law of the Unified Retirement Law No. (9) of 2014 to include the employees of the Divan of Federal Financial Supervision among the exceptions mentioned in the above item while the defendant's agents requested / being in his capacity to reject the plaintiff's case for the reasons mentioned in their previous draft and the agents of the parties repeated their statements and requests and where there is nothing left to say the end of pleading has been made clearly and because the court is ready to prepared the decision of the judgment, it was recited publicly.

The Decision:

After scrutiny and deliberation the FSC and what is stated in the plaintiff's case and the mutual drafts between the parties and what their agents stated in the hearing, found that the plaintiff's case focused on asking this court to compel the defendant Speaker of the Council of Representatives/ being in his capacity to amend item (1st) of Article (2) of Law (26) of 2019, the First Amendment Law of the Unified Retirement Law No. (9) of 2014 (amended), by including employees of the Divan of Federal Financial Supervision in the categories excluded in the item referred to, meaning that they are excluded from the legal age of retirement upon completion of 60 sixty years of age, since one of the most important constitutional principles enshrined in the Constitution of the Republic of Iraq in 2005 is the principle of separation of powers, which all three authorities (legislative, executive and judicial) exercise their functions as an independence, the legislature is alone in the powers of legislation and the executive branch (the Council of Ministers and the President of the Republic) has powers of implementation, while the judiciary has the powers to separate disputes, this principle represents the basic guarantee of the establishment of a democratic and legal state and defines its features and limits through the terms of reference provided by the Constitution for each of the three authorities.

Since the legislation of laws is one of the exclusive jurisdictions of the legislature in accordance with the provisions of Article (61/1st) of the Constitution, therefore, the request of the FSC to oblige the Council of Representatives to amend any legal provision is considered interference in that legislative authority, which is contrary to the principle of separation of powers stipulated in Article (47) of the Constitution of the Republic of Iraq 2005. Therefore, what the plaintiff requested is outside the jurisdiction of this court and is a requirement to dismiss its case and all of the above and by request, the court has decided to rule on the following:

First: reject the case of the plaintiff Nidal Abdel-Zahra Mardaou.

Second: The plaintiff charged fees and judicial expenses and the fees of the lawyers of the defendant's agents/ being in his capacity legal adviser Haitham Majid Salem and jurist officer Director Saman Mohsen Ibrahim (100,000) one hundred thousand dinars distributed in accordance with the law. The decision was issued by agreement decisively based on the provisions of Articles (94) of the Constitution of the Republic of Iraq for 2005 and Article (5) of the FSC's Law No. (30) of 2005 (amended) by the Law (25) of 2021 the decision had made clear public on 8/June/2021 coinciding with 26/Shawwal/1442.

Signature of
The president
Jasem Mohammad Abod

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
Munther Ibrahim Hussein