

Republic of Iraq
Federal Supreme Court
Ref. 277 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 5/2/2023 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, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Zaid Sabah Azeez Al-Talqani – his agent the Barrister Mohammed Majeed Resan.

The Defendants: 1- The President of the Republic/ being in the capacity – his agent the legal counselor Salah Lazim Shamkhi.

2- President of Popular Mobilization Commission/ being in this capacity – his agent the Director General of the legal department Ibrahim Salman Jabbar.

The Claim

The plaintiff claimed through his agent that the Iraqi Council of Representatives issued Law No. (26) of 2019 (the First Amendment Law of the Unified Retirement Law No. (9) of 2014), which stipulated in Article (1) thereof ((The text of Article (10) of the Unified Retirement Law No. (9) of 2014 is hereby repealed and replaced by the following: Article 10 The employee must be referred to retirement in one of the following two cases: First: Upon completion of (60) sixty years of age, which is the legal age for referral to retirement, regardless of the period of his service)), Article (2/1st) thereof stipulates that the following shall be excluded from the provisions of the legal age for retirement: Alif-

saady

Republic of Iraq
Federal Supreme Court
Ref. 277 / federal /2022



Kurdish text

Those covered by the University Service Law who holds the scientific title (professor and assistant professor). Beh- Forensic doctors, anesthesiologists, and psychiatrists. Jim- Advisers and Assistant Councillors of the State Council. Dal- Those covered by the Political Chapter Law No. 24 of 2005, as amended, and the families of martyrs of the first and second degree Covered by the Martyrs Foundation Law No. 2 of 2016, Law No. 20 of 2009, and the Political Prisoners Foundation Law No. 35 of 2013. Heh- Civil pilots who work to fly aircraft practically and have a valid work permit at the time)), Paragraph (2nd) of the same article stipulates ((The legal age for referral to retirement stipulated in item (first) of this article upon completion shall be (63) sixty-three years of age, except for paragraph (d), the retirement age shall not exceed (65) sixty-five years of age)) Thus, the aforementioned legal provisions are applicable and may not be worked on otherwise, the President of the Republic and the Prime Minister are obliged to implement the laws issued by the legislative authority on the basis of the Constitution of the Republic of Iraq, which defines the powers of the Council of Ministers under the text of Article (80/3rd) thereof, which stipulates that "the Council of Ministers shall exercise the following powers: Third: Issuing regulations, instructions and decisions with a view to implementing laws.", therefore, the Council of Ministers is constitutionally obliged to implement the law and not to violate it, and that acting contrary to the law constitutes a constitutional violation that requires the President of the Republic to intervene to address every constitutional violation, as he is responsible for protecting the Constitution based on what the constitutional text obligated him to do in Article (67) thereof, which stipulates (The President of the Republic is the head of state and the symbol of the unity of the nation, represents the sovereignty of the country, and ensures compliance with the

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Republic of Iraq
Federal Supreme Court
Ref. 277 / federal /2022



Kurdish text

Constitution, and the preservation of Iraq's independence, sovereignty, unity, and territorial integrity, in accordance with the provisions of the Constitution) The two defendants violated the constitutional and legal provisions by extending the retirement age of the head of the Popular Mobilization Commission as he exceeded the age of sixty-five years and is still exercising his duties as head of the Commission, contrary to the First Amendment Law to the Retirement Law, since Law No. (40) of 2016 considered the Popular Mobilization Foundation as one of the military institutions in the federal state, the Military Retirement Law No. (3) of 2010 applies to the defendant, considering that the Prime Minister is the Commander-in-Chief of the Armed Forces and is responsible for referring the leaders affiliated with their military institutions to retirement and there is no exceptional provision of the age requirement, so the plaintiff asked the court to oblige the defendants to implement Law No. (26) of 2019, and refer the head of the Popular Mobilization Authority to retirement and charge them the fees, expenses, and advocacy fees. The lawsuit was registered with this court with the number (277/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1st) 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 item (second) of the same article, and the agent of the first defendant replied with the answering draft dated 10/January/2023, the conclusion of which is that there is no interest for the plaintiff to file the lawsuit, he does not provide evidence that factual damage was suffered by him as a result of the issuance of the contested order in accordance with Article (6) of the Civil Procedure Law and Article (20) of the Court's Rules of Procedure, nor is his client fit as a litigant in the case based on the provisions of Article (4) of the Civil Procedure Law, as the subject matter of the case

saady

Republic of Iraq
Federal Supreme Court
Ref. 277 / federal /2022



Kurdish text

is related to the jurisdiction of the Commander-in-Chief of the Armed Forces based on the provisions of item (2nd/1) of Article (1) of the Popular Mobilization Authority Law No. (40). for the year 2016, in addition to the lack of jurisdiction of the court to hear the case because its subject matter is related to the appeal by an administrative decision issued by an executive authority, it has another way to appeal it, the members of the Popular Mobilization Commission are subject to the military laws in force in all respects based on the provisions of item (2nd/3) of Article (1) of the Law of the Popular Mobilization Commission, so the Unified Retirement Law No. (9) of 2014 and its amendments do not apply to them, in addition to the fact that his client is not the one who issued the administrative order to extend the service of (the second defendant), and the plaintiff's failure to clarify the constitutional basis that his client violated makes the lawsuit unsupported in the constitution, so he requested the dismissal of the plaintiff's lawsuit and charging him the fees, expenses and attorney's fees, and the second defendant's agent replied with two response lists that included the same defenses as the first defendant's agent that there is no interest for the plaintiff in filing the lawsuit, in addition to the lack of jurisdiction of the court to hear it, and the subjection of the members of the Popular Mobilization Commission to the military laws in force, and the request to dismiss the plaintiff's lawsuit and charge him fees and expenses, and after completing the procedures required by the court's internal regulations, a date was set to consider the case without pleading based on Article (21/3rd) thereof, in which the court was formed and began its consideration, the court scrutinized what was stated in the petition, its supports, the plaintiff's requests, and what was stated in the reply lists submitted by the first and second defendants' attorneys, and

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since the court completed its audits, the end of the minutes 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 filed the lawsuit before this court against the defendants in addition to their functions to demand that they be obliged to implement Law No. (26) of 2019 ((Law of the First Amendment to the Unified Retirement Law No. (9) of 2014)) and to refer the head of the Popular Mobilization Authority to retirement and to charge them fees, expenses and advocacy fees, this is to extend the retirement age of the President of the Popular Mobilization Commission as he has exceeded the age of sixty-five years and is still exercising his duties as Chairman of the Commission in violation of the provisions of the Constitution of the Republic of Iraq of 2005, especially Article (67) thereof, which stipulates (The President of the Republic is the head of state and symbol of national unity, represents the sovereignty of the country, and ensures compliance with the Constitution, and the preservation of Iraq's independence, sovereignty, unity, and territorial integrity, in accordance with the provisions of the Constitution) and Article (80/3rd) thereof, which stipulates (The Council of Ministers shall exercise the following powers: Third: Issuing regulations, instructions and decisions with the aim of implementing laws) Contrary to Law No. (26) of 2019 ((Law of the First Amendment to the Unified Retirement Law No. (9) of 2014)) in Articles (1 and 2/1st) thereof, which set the legal age for retirement, for the reasons detailed in the lawsuit petition, and this court finds that the lawsuit must be dismissed as a form of lack of interest of the plaintiff when it is filed, as Article (20/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 Published

saady

Republic of Iraq
Federal Supreme Court
Ref. 277 / federal /2022



Kurdish text

in the Iraqi Gazette issue (4679) on 13/6/2022, in terms of Article (25/1st) thereof, it stipulates that the plaintiff in the subject matter of the lawsuit filed before this court has an interest, a status, direct and influential in his legal, financial or social status, provided that it is available from the time of filing the lawsuit until the issuance of the judgment in it, and that the concept of direct personal interest, which is a condition for accepting the constitutional lawsuit, is determined in the light of two elements that determine its content and one does not overlap with the other or merge into it, although their independence from each other does not negate their complementarity and without them collectively, not this court may exercise its control over the constitutionality of the laws and regulations in force, First: that the plaintiff assesses, within the limits of the capacity in which he was admitted, evidence that a factual damage has been inflicted on him, and this damage must be direct and independent of its elements, which can be perceived and confronted with judicial satisfaction, and not an illusory, theoretical or unknown damage, to the effect that the exercise of this court of its jurisdiction under Article (93) of the Constitution of the Republic of Iraq of 2005 must be a foothold to face factual damages in order to restore them and liquidate their legal effects. Second: The matter in this damage shall be due to the contested legislative text or the decisions, regulations, instructions, and procedures issued by the federal authorities if the contested legislative text was not applied to the plaintiff in the first place, or he was not addressed by its provisions, or he had benefited from its advantages, or the violation of the rights he claims does not belong to him, as well as what is stated in item (third) of Article (93) of the Constitution, that is if the decisions The regulations, instructions, and procedures issued by the federal authorities did not cause real harm to the plaintiff and did not affect his rights and it was

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not applied to him or he was not addressed by it or he had benefited from its advantages, the direct personal interest is negated because the invalidation of the legislative text or the ruling of invalidity of the decisions, regulations, instructions and procedures issued by the federal authorities will not bring the plaintiff any practical benefit by which his legal status can change after the adjudication of the constitutional lawsuit from what it was when it was filed, and therefore the reins of enforcing this condition were racist in the hands of the Federal Supreme Court, thus, the absence of interest means that the filing of the lawsuit violates the Federal Supreme Court Law, and this necessarily assumes that the judicial litigation by which the plaintiff begs to invoke the peremptory constitutional rule and impose it on its addressees meets the conditions of its acceptance and the capacity and interest fall under it, as a great deal of care must be distinguished between the effects generated by the supremacy of the constitutional rule and the conditions required by the constitution or the legislator or both to contact the case with the judicial body that adjudicates it, the legislator has informed the case brought before this court of specific situations through which the lawsuit can only be instituted and as one of its components. Due to the non-fulfillment of the conditions for the application of Article (20/1st) of the Rules of Procedure of the Federal Court and in accordance with Article (25/1st) thereof when filing the case, due to the lack of interest in the plaintiff in it, therefore, the plaintiff's claim shall be dismissed in form, and for the foregoing, the Federal Supreme Court decided to rule as follows:

1. Dismissal of the plaintiff's lawsuit Zaid Sabah Aziz Al-Talqani in form, due to his lack of interest when filing the lawsuit.
2. To burden the plaintiff with the expenses, fees, and advocacy fees of the defendants' agents/ being in this capacity, the legal counsel Salah

saady

Republic of Iraq
Federal Supreme Court
Ref. 277 / federal /2022



Kurdish text

Lazim Shamkhi and the Director General Ibrahim Salman Jabbar, an amount of one hundred thousand dinars, distributed following 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 5/2nd) 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 13/Rajab/1444 Hijri coinciding 5/February/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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