In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. ٢/federal/2020

Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 4.5.2021 headed by the Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali whom are authorized to judge in the name of the people, they made the following decision:

The Requester Issuing of the Custodian Order: Raghad Abd Al , Rahman Jasim her agent Shaukat SAMI Al , Samarrai.

First- Summary of the request:

The requester issuing of the custodian order Raghad Abd Al , Rahman Jasim in her petition on 2/1/2020 submitted to the FSC by her lawyer Shaukat SAMI Al , Samarrai, to issue an urgent custodian order for filing the case No. (1/federal/2020) before this court (suspension of Law No. (26) of 2019 includes the First Amendment Law of the Unified Retirement Law No. (9) of 2014, which is the subject of constitutional challenge to the case before the FSC No. (1/federal/2020) and all its articles until the case is resolved, considering the letters attached to the application as an integral part of their annexes for the reasons referred to in detail by the incarnate request (that the legislative and executive branches were in great embarrassment when enacting Law No. (26) of 2019), The First Amendment Act of the Unified Retirement Act 9 of

2014, the evidence of the preparation of a bill representing a second amendment to the law in question was first read by the Council of Representatives, with the aim of adding new exceptions to certain functions in order not to include them in its provisions and the issuance of Council of Ministers decision (465) on 31/12/2019, it is reported that the disengagement of retired employees will be extended for up to three months and for fear of the entry into force of the Second Amendment Law despite its serious violation of the principles of justice and equal opportunities contained in Articles (14) and (16) of the Constitution, and to implement the content of the decision, the above mentioned would cause direct harm and achieve public rights, including the plaintiff's rights in the mentioned case, and according to the articles (151 & 152) of the Civil Procedure Law No. (83) of 1969 (amended) so requester issuing of the custodian order request for an urgent order as noted above).

The Decision:

After scrutiny and deliberation by the FSC found that the requester issuing of the custodian order Raghad Abd Al , Rahman Jasim because of her filing of case No. (1/federal/2020) in FSC, she requested in her draft dated 2/1/2020 submitted to the mentioned court by her attorney Shaukat Sami Al-Samarrai issuing of the custodian urgent order (suspension of Law No. (26) of 2019 includes the First Amendment Law of the Unified Retirement Law No. (9) of 2014, which is subject to constitutional challenge in court case No. (1/federal/2020) and in all its articles until the case is resolved. The FSC found that the issuing of the custodian urgent order in the constitutional case proceedings before it, it has not been discussed or approached in FSC's Law No. (30) of 2005 amended or the bylaw for the conduct of the proceedings in the FSC No. (1) of 2005 and is therefore subject to the provisions referred to in articles (151 and 152) of the Civil Procedure Law No. (83) of 1969 amended, to the extent that it is commensurate with the nature and specificity of the constitutional case based on the provisions of article

(19) of the bylaw for the conduct of the proceedings of the FSC referred to above, which stat that (apply the provisions of the Civil Procedure Law No. (83) of 1969) the Proof Law No. (107) of 1979, while it is not contained in a special provision in the FSC's Law and this system) within the meaning of article (17) of it which state that (the court's rulings and decisions are decisively and do not accept any appeal…), on the basis of the foregoing, the issuance of a custodian order by the FSC is governed only by the controls and conditions to be met for its issuance referred to in the Civil Procedure Law, for the final decisions that issued by this court and not to submit for the ways to appeal, which lies in submitting a request for two copies containing the facts, the documents and the availability of urgency and not to enter into the original right and decide in it, since the scrutiny of the request of the requester for the issuance of the custodian order by this court has proved that there is no urgency that must be available to issue the custodian order and that issuing a custodian order to suspend law No. (26) of 2019, the First Amendment Act of the Unified Retirement Law No. (9) of 2014 means entering into the original right and deciding in it, in particular, the requester issuing of the custodian order challenged the constitutionality of the law to be suspended and is tantamount to giving an opinion prematurely on the constitutionality of the law challenged before this court under the No. (1/federal/2020) lawsuit filed by the requester issuing of the custodian order this is contrary to what the Iraqi judiciary has settled on in its constitutional and ordinary aspects and the established judicial norms in the constitutional judicial systems of Arab and Foreign countries that are established in this area based on the provisions of the Constitution and the laws valid based on the realization of the right and the achievement of justice and fairness away from inclinations, whims, arbitrariness and flattery. Thus, the ruling of the requester issuing of the custodian order is the duty to reject for two reasons, the first is the lack of urgency in it and the second is that the ruling in it means entering the original right and giving a prior opinion

on the unconstitutionality of the law to be suspended its implementation in advance of the challenge to its constitutionality before this court. For the above the FSC decided to reject the request of the requester issuing of the custodian order Raghad Abd Al , Rahman Jasim includes issuing the custodian urgent order (to suspend law No. (26) of 2019, the first amendment to the Unified Retirement Law No. (9) of 2014 is the subject of constitutional challenge to the FSC's case No. (1/federal/2020). The decision was issued decisively and obligated ruling for all authorities, according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and Article (5/2nd) of the FSC's Law No. (30) of 2005 (amended) by the law No. (5/2nd) of the FSC’s Law No. (30) of 2005 (amended) the decision had made clear public on 4/May/2021 coinciding with 22/ Ramadan /1442.

Signature of

The president

Jasem Mohammad Abod

Signature of

The member

Sameer Abbas Mohammed

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