



The Federal Supreme Court (F.S.C.) has been convened on 26.5.2021 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 Ibrahim Husain who are authorized to judge in the name of the people, they made the following decision:

The Plaintiff:

The Minister of Defense / in addition to his post - his agent the assistant legal advisor Ali Talib Qasim.

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 Ibrahim.

The Claim:

The agent of the plaintiff claimed that the I.C.R. issued law No. (26) Of 2019 (first amendment law of the unified pension law No.9 of 2014) that is published in the Iraqi Gazette issue No. (4566) on 9.12.2019 that become valid on 31.12.2019, according to the plaintiff' claim that amendment included provisions that violate the law and the Constitution for the following reasons:

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1. Article (2/1st/dal) of the amendment law above has stated on excluding who is covered by the amended Political Segregation Law No. (24) Of 2005, and 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 Political Martyrs Foundation No. (35) of 2013 from referral to retirement upon completion of the age of (60) years according to what stipulated in article (1/1st) of the mentioned amendment law, this article specified the retirement age of (65) years and didn't specify if it is reaching (65) years or completing it which represent legislation defect in issuing the law.
2. Article (9) of that amendment law stipulated (all legal texts that establish another legal age for the employee to retire shall be repealed, except for, first: the laws of to the judicial authority, second: the amended Military Service and Retirement Law No.(3) of 2010), as article (45) of the Military Service and Retirement Law stated in paragraph (1st) of it the followed mechanism used when referring the military to retirement according to the table specified in the aforementioned article, which begins in sequence (alif/ general and a major) the age is specified in the same line, for retirement, which is (63) years, and the rest of the military ranks, in front of the age, although the assignment of officers from holders of military ranks (general and a major) at the

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age of (63) years, after adding a period of five years, according to the exception contained in the article (2/1st/dal) of the above law, as they are covered by the political separation law, so that the specified age for retirement becomes (68) years, but the law contradicts that.

3. The Constitution of Iraq of 2005 stipulated in article (2/1st/c) that no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution, also what is stipulated in article (13/2nd) of it, what was listed in section two, (rights and liberties) chapter one (rights) in the article (16) equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken, the enactment of the amended unified pension law which contradicts the constitutional principles. For all the aforementioned, as the text being challenged –according to the claim- included violation for law and Constitution, the Ministry of defense is of the security ministries which have officers and civil employees who have experience and competence in performing their duties required by the security work, the application of the provisions of the First Amendment Law No. (26) of 2019 will lead to the weakening of the military institution and its loss of the expertise of its members who made sacrifices in the performance of their duties, in addition to the fact that its members of officers and ranks are subject to the provisions

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of a special law, which is the amendment Service and Retirement military Law No. (3) of 2010 the effective, that determined the legal age for members of the armed forces, which was adopted in the light of military progression and the accumulation of experience. As the F.S.C. undertakes the process of monitoring the constitutionality of the laws and regulations in force in accordance with the provisions of Article (93) of the Constitution, therefore the plaintiff in addition to his post requested this court to call upon the defendant in addition to his post and inform him with the case petition, set a date for the argument and to rule the unconstitutionality of article (2/2nd) of first amendment law of the unified pension law that was published in the official gazette issue No. (4566) on 9.12.2019, and to burden the defendant in addition to his post the expenses and fees and advocacy fees. After completing the required procedures, the answering draft of the defendant was received during the legal term under article (2/1st) of the F.S.C. bylaw No. (1) Of 2005, a date was scheduled for the argument under paragraph (2nd) of the same article. On that day the court convened, the plaintiff in addition to his post didn't attend despite the informed by the hand record on 28.4.2021, the agents of the plaintiff in addition to his post has attended, and started the argument with the absence of the plaintiff/ in addition to his post as he didn't present legal excuse for not

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attending, or sending who represents him legally, the defendant agents repeated their statements and requests in the answering draft. The court found that the lawsuit acquired its ruling reasons so decided to close the argument, the decision issued publicly.

The decision:

During scrutiny and deliberation by the F.S.C., it found that the plaintiff in addition to his post requested to rule the unconstitutionality of article (2/2nd) of law No. (26) of 2019 first amendment law of the unified pension law No.9 of 2014 which stated that (second: the legal age for retirement stipulated in the clause (1st) of this article upon completion of (63) sixty-three years of age, except paragraph (D), the retirement age shall not be more than (65) sixty-five years of age), the mentioned paragraph (1st) stipulated ((the following shall be exceptional from the provision of legal age for referring to retirement:

- a. Those covered by the university service law who hold the scientific title of professor and assistant professor.
- b. Forensic physicians, anesthesiologists, and psychiatrists.
- c. Advisers and assistant advisers in the State Council.
- d. Who is covered by the amended Political Segregation Law No. (24) Of 2005, and 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

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and the law of the Political Martyrs Foundation No. (35) Of 2013.))

The plaintiff in addition to his post based his claim on the aforementioned substantiations, as for the defendant agent he responded with the answering draft dated 12.1.2020 that included (1. The law subject of the challenge was submitted to the I.C.R. as law bile presented from the governorate (the Council of Ministers) according to the provision of the article (60/1st) of the Constitution. 2. the law subject of the challenge was legislated by the I.C.R. according to the provision of the article (61/1st) and came as legislative choice according to the jurisdictions of the I.C.R. specified by the Constitution, as the law bill came as a response for the reforms needed by the public function), the defendant in addition to his post requested to dismiss the lawsuit and to burden the plaintiff/ being in this capacity all the judicial expenses mentioned in the answering draft. After scrutinizing the plaintiff' claim and the drafts of both parties, it found that the lawsuit was filed by (the plaintiff in addition to his post) according to the court's jurisdictions stipulated in article (93/1st) of the Constitution of 2005 and article (4/1st) of the F.S.C.' amended law No. (30) Of 2005 regarding considering the constitutionality of laws and regulations. In this lawsuit, to consider the constitutionality of article (2/2nd) of law No. (26) Of 2019 first amendment law of the unified pension law No. (9) of 2014. The court finds that the bylaw of the F.S.C. No. (1) of 2005 has stated the procedures and mechanisms that must be followed

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when filling lawsuit of unconstitutionality, that is in chapter two of it (articles 3-6), these articles specified the mechanism and required conditions to file the lawsuit in this regard, as for the different cases including this case of filling the lawsuit by official body, article (5) of the F.S.C. bylaw stated (if an official body requests, on the occasion of an existing dispute between it and another party, to decide on the legitimacy of a text in a law, legislative decision, regulation, instructions or order, it sends the request with a claim to the Federal Supreme Court, justified with its support, in a letter signed by the competent minister or head of the body not associated with a Ministry). During scrutiny and deliberation of the case petition, it found that it doesn't include any of the two conditions mentioned in the article (5) of the F.S.C. bylaw as it was filed directly by the plaintiff agent and signed by him (the agent) and that the bylaw in the mentioned article is clear in its provision that the lawsuit must be sent to the F.S.C. by a letter signed by the minister himself, and that the personal agency doesn't fulfill that article. On the other hand, the case petition didn't indicate an existing dispute between the Ministry of Defense or any of its associated bodies as required by the mentioned article. The court also noticed that the plaintiff didn't attend the session nor his agent so that the court could inquire from him, accordingly the lawsuit doesn't fulfill its required conditions then to consider its content so that it is binding to be dismissed for that aspect. For the aforementioned the court decided:

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Republic of Iraq
Federal Supreme Court
Ref. 3 / federal / 2020



Kurdish text

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1. Dismiss the plaintiff lawsuit the minister of defense – in addition to his post.
 2. To burden the plaintiff the minister of defense – in addition to his post the expenses and fees for the defendant agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final and binding on all authorities according to articles (93/1st) and (94) of the Constitution, and article (4/1st) of the F.S.C. amended law No. (30) For 2005, and article (5) of the F.S.C. bylaw No. (1) of 2005, issued publicly on 26.5.2021 of the A.D., 13.Shawal.1442 A.H.

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