

Republic of Iraq
Federal Supreme Court
Ref. 5 / federal / 2020



Kurdish text

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:

Staar Jabar Khedheer - his agents the attorneys Waleed Shaeal Kedhem and Basem Khazal Khashan.

The Defendants:

1. 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 Ebraheem.
 2. The prime minister/ in addition to his post – his agent the legal adviser Haider Ali Jaber Al-Sofy.
 3. The minister of finance / in addition to his post.
 4. The head of the national pension committee
- } Their agent the legal official Shatha Aashor Alwan

The Claim:

The plaintiff by his agent claimed that article (1) of law No. (26) for 2019 is unconstitutional the law of the first amendment of the unified pension law No. (9) of 2014 that was published in the

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Iraqi Gazette issue No. (4566) on 9.12.2019 for the following reasons:

First: This article included financial implications, the I.C.R. cannot legislate it, as the lowering of the age for referring to retirement from sixty-three to sixty years old will impose huge financial obligations on the government, as the number of employees who will be referred to retirement exceeds two hundred and fifty thousand employees, and thus this large number deserves the end-of-service bounty. Adding new burdens, namely the salaries of the new employees who will be appointed, and that the judiciary of this court has settled the ruling that the legal texts that entail financial obligations on the government are unconstitutional unless they are provided by the government.

Second: the resigned government may not impose financial obligations on the government that follows it, and the law whose constitutionality is being challenged was published in the Gazette on 9.12.2019 is ten days after the date of the resignation of the Prime Minister, and the resigned government whose work under the provisions of the constitution is limited to the conduct of daily business may not submit a draft law or accept any amendment proposed by the Council of Representatives and which imposes huge financial burdens on the next government,

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cuffing it and causing its inability to implement its government program.

Third: this law will lead to the bankruptcy of the Public Pension Agency, as the financial burdens that this law places on the Public Pension Agency are enormous and will lead to its bankruptcy within a short period or its inability to fulfill its financial obligations, and that this will cause serious harm to the individuals targeted by this law and the retired people in general, as the laws are enacted to achieve public interest and to protect the rights stipulated in the Constitution including the right of citizens in free honored living which the retirement authority may be unable to provide as a result of the heavy financial burdens that the council of Representatives has miscalculated, each legal text affect the rights guaranteed by the Constitution consider void under the provision of article (13) of it, for the aforementioned, the plaintiff requested to call upon the defendants for argument, and to rule the unconstitutionality of article (1) of the law No.(26) of 2019 the law of first amendment of the unified pension law No.(9) of 2014, under the provision of article (1/3rd) of the F.S.C. bylaw No.(1) of 2005.

This lawsuit has been registered before this court No. (5/federal/2020), the defendants had been informed in addition to

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their post according to the provision of the article (2/1st) of the mentioned bylaw. The agent of the first defendant responded with the draft dated 12.1.2020 stating that the law subject of the challenge was submitted to the I.C.R. as law bill presented by the governorate (the Council of Ministers) according to the provision of the article (60/1st) of the Constitution, the I.C.R. has legislated it according to the provision of the article (61/1st) and came as legislative choice according to its jurisdictions and in response to the reforms needed by the public function, he requested to dismiss the lawsuit and burden the plaintiff all legal expenses. The agent of the second defendant responded with the draft dated 14.1.2020 that his client under article (80) of the Constitution is not within his tasks to enact laws, article (60/1st) of the Constitution made him competent for preparing laws bills and to refer it to the I.C.R., by that he is not competent to enact laws, his litigation is not directed therefore he requested to dismiss the lawsuit. The agent of third defendant (the minister of finance) and the fourth the head of the national pension committee in addition to their posts responded with the draft dated on 20.1.2020 stating that her client the head of the national pension committee in addition to his post is an executive party that implement the pension legislations , by that he is not a litigant in this lawsuit, also challenging that the law has financial implement is in the laws that wasn't submitted by the governorate, and after reviewing the law bill it found that it is an government bill that has been approved by the Council of Ministers, also has reduced the financial burdens on the treasury for the general public, because the salaries and allowances of those sought in the article under challenge while they are in the job service are more than the retirement salary in all cases, and they are also entitled to the end of service reward

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when (25 years of service) is available, whether they are referred to retirement at the age of (63) or (60), and requested to dismiss the lawsuit for not directing the litigation. After completing the required procedures according to paragraph (1st) of the article (2) of the F.S.C. bylaw and according to the provisions of paragraph (2nd) of the same article, the date 26.5.2021 was appointed for considering the lawsuit, on that date the court convened, the plaintiff attended himself with his agent, the agents of the defendants also attended and started in presence public session, the plaintiff agent repeated the case petition adding that the bill is from the Council of Ministers under article (11) of it included (the law shall be implemented after one year from the date of enacting it) and that the reason for litigating the second defendant in this lawsuit is to inquire from him about what listed in the case subject as it set out the general policy of the state, and filing lawsuit requesting the unconstitutionality of the text subject of a lawsuit to burden him financial fees as result for repealing article (11) of the presented bill from him. As for the defendants' agents, they repeated their former requests. 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 has challenged with the unconstitutionality of article (1) of the law no.(26) of 2019 (first amendment law of the unified pension law No.9 of 2014) for the reasons listed in the case petition, for what was listed in the

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answering drafts and explanatory drafts of the parties agents, this court finds that of the conditions for accepting any lawsuit are (litigation capacity, litigation, and interest) that are stipulated in articles (3, 4, 5, 6) of the civil procedures law No.(83) of 1969 which was confirmed to be valid by the F.S.C. bylaw No.(1) of 2005 in any issue that no legal text mentioned in the F.S.C. amended law No.(30) of 2005 or privet text in this regulation under article (19) of it, with an explaining for the condition of interest in accepting the constitutional lawsuit under article (6) of it in paragraphs (1st, 2nd, 3rd, 4th, 5th, 6th) which brief that the interest must be occur, direct and influential in the legal, financial or social position of the plaintiff, and that there is a direct and independent harm to him from the legislation that can be removed if a decision of unconstitutionality of the legislation was issued, that the damage is not a theoretical, future or unknown to the last of what is mentioned in the aforementioned paragraphs. By reviewing the plaintiff lawsuit regarding the first defendant (the Speaker of the I. C. R in addition to his post) and the reasons he based on in the claim that the article is unconstitutional stating that this article included financial implication on the state treasury, the I.C.R. cannot legislate it unless with the government approval, and this law will lead to the bankruptcy of the fourth defendant (the head of the national pension committee/ in addition to his post). These reasons, if true, will give rise to a reason for the person concerned to file such a lawsuit, which is the government represented by the Presidency of the Council of Ministers and its

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dependencies, the third and fourth defendants (the minister of finance, and the head of the national pension committee/ in addition to their posts). Thus, this lawsuit lacks the condition of interest necessary to accept it on the side of the plaintiff, and this condition is not met as well as what was stated in the plaintiff's lawsuit that this law will lead to the bankruptcy of the pension committee and its inability to fulfill its obligations and that this will cause serious harm to the individuals targeted by the law, because this claim was based on expectations presented by the plaintiff and was denied by the agent of third and fourth defendants in addition to their posts, as they represent the parties responsible for these commitments, she assures that the law is for the interest of her clients as it reduces the burden on the state treasury. On the other hand, the F.S.C. finds that its jurisdictions on legislations issued by the legislative authority are limited by the provision stipulated in article (61/1st) of the Constitution which stated that the legislative authority (the Council of Representatives) is the power to enact laws, this jurisdiction doesn't arise or cover the competent of the I.C.R. as long as it didn't exceed the constitutional limits, if it exceeded that then the F.S.C. could under the request of the party with interest refer it to the constitutional limits to estimate the unconstitutionality of the challenged law, as for what is less than that, as for anything below that, there is no comment on the legislative authority in exercising its constitutional powers in regulating rights and according to its discretion. As for the second, third, and fourth defendants (the prime

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minister, the minister of finance, head of the national pension committee/ in addition to their posts), the challenged text has not been issued by them, as they represent the executive authority that is competent to implement laws as what it is, by that the lawsuit in regard of them lack the condition of litigation devoted by article (4) of the amended civil procedures law No. (83) Of 1969 estimating that their admission leads to a judgment or they must be convicted or obliged by something if the case was approved. From all that, this court finds that that the plaintiff lawsuit should be dismissed for the aforementioned reasons. For all that the Federal Supreme Court decided:

1. Dismiss the plaintiff Staar Jabar Khedheer lawsuit of the defendant the speaker of the I.C.R. – in addition to his post for lacking the condition of litigation.
2. Dismiss the plaintiff lawsuit of the defendants the prime minister, the minister of finance, head of the national pension committee/ in addition to their posts for not directing the litigation to them.
3. To burden the plaintiff the expenses and fees for the defendants' agents amount of (one hundred thousand) IQ.D distributed equally.

This decision has been issued according to law and binding on all authorities according to articles (93/1st) and (94) of the Constitution, and article (4, 5) of the F.S.C. amended law no. (30) For 2005, and articles (4, 6) of the civil procedures law No. (83) Of 1969 amended,

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and article (6) of the F.S.C. bylaw No. (1) of 2005, unanimously, final and binding on all authorities, issued publicly on 26.5.2021 A.D., 13. Shawal .1442 A.H.

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