

Republic of Iraq
Federal Supreme Court
Ref. 99 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/5/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalef Ahmed Rajab, Ayoob Abbas Salih, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Challenger: the Judge Muhsin Abid Al-Jabiri/ Judge of Al-Nasiriya investigation Court/ integrity – Presidency of Dhi Qar Federal Appeal Court.

The Challenged Article for Unconstitutionality: article (11/1st/Beh, 2nd/Alif) of Martyrs Foundation Law No. (2) for 2016.

First: Challenge Abstract

By scrutiny, it became clear that the judge of the Nasiriyah Court of Inquiry on integrity issues in the presidency of the Federal Court of Appeal of Dhi Qar (challenging the unconstitutionality of article (11/1/Beh, and 2nd/Alif) of the Martyrs Foundation Law No. (2) of 2016) according to his draft dated 10/3/2022 which sent as an attachment to the FSC with the letter of the presidency of the Federal Court of Appeal of Dhi Qar/ the Head of the Appeal office by the number (8/Alif/office/2022/1540 on 22/3/2022) on the occasion of his scrutinizing of the numbered case (104/Qaf 4/2022), which is being held before the Nasiriyah Court of investigation on integrity cases, concerning the complaint filed by one of the beneficiaries of the Martyrs Foundation Law No. 2 of 2016, for not disbursing the cash allowance instead of the property allocated to him, its conclusion included that ((article (11/1st/Beh) of the above-

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mentioned law stipulated on (the relatives of the martyr who is not affiliated with the state departments are entitled to a pension equivalent to three times the minimum pension stipulated in the Unified Retirement Law No. (9) of 2014 or any law that replaces it, paragraph (2nd/Alif) of the same article states that (for those who are covered with the provisions of this Law shall combine his entitlement from the pension allocated to him in accordance with the provisions of this Law with his career or pension salary, social welfare salary, any retirement share, or any other salary...) from the State, while the Republic of Iraq Constitution for 2005 had indicated in the article (14) to that Iraqis are equal before the law without any discrimination because of sex, race, nationality, origin, color, religion, sect, belief, or opinion, or economic or social status, while enacting the article (11) of the law above-mentioned is unbalancing the principle of equality between Iraqis by discriminates between them, although article (132/1st and 2nd) of the above-mentioned Constitution referred to the state's sponsorship of the families of martyrs and political prisoners affected by the arbitrary practices of the former dictatorship, as well as compensation for the families of martyrs and those injured as a result of terrorist acts. However, such care should not violate the principle of equality among the Iraqi people, which requires that the text of the article (11/1st/Beh, and 2nd/Alif) of the Martyrs Foundation Law No. 2 of 2016, and that be ruled unconstitutional and annulled based on an article (93) Of the Constitution of the Republic of Iraq 2005 and Article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and Article (3) of the Bylaw of the Federal Supreme Court No. (1) for 2005. Accordingly, he is challenging the

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unconstitutionality of the article (11/1st/Beh, 2nd/Alif) of the Martyr Foundation Law aforementioned.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the challenge is based on the unconstitutionality of the article (11) provisions from the Martyr Foundation Law No. (2) for 2016, paragraphs (1st/Beh) and (2nd/Alif) of which, whereas article (1st) stipulated (the relatives of the martyr who is not affiliated with the state departments are entitled to a pension equivalent to three times the minimum pension stipulated in the Unified Retirement Law No. (9) of 2014 or any law that replaces it). Paragraph (2nd/Alif) stipulates (for those included in the provisions of this Law to combine their entitlement from their pension stipend in accordance with the provisions of this Law with their career or pension salary, social welfare salary, any retirement share, or any other salary for (25) twenty-five years from the effective date of Law No. (3) of 2006 amended) based on their violation of article (14) of the Constitution of the Republic of Iraq of 2005, which stipulated that (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status), and article (16) which stipulated (equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken). The Federal Supreme Court finds that the Constitution of the Republic of Iraq 2005 obliged the State to ensure the care of the families of martyrs and political prisoners affected by the arbitrary practices of the former dictatorship and to compensate the families of martyrs and those injured as a result of terrorist acts, based on article 132/1st and

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2nd) of it, paragraph (3rd) of the same article also stipulates ((regulates the provisions of items (1st) and (2nd) of this article by law), and based on the foregoing, the legislation of article 11 of the Martyrs Foundation Law No. 2 of 2016 shall be regulated by its paragraphs (1st/Beh and 2nd/Alif) in response and application of article (132) of the aforementioned Constitution, to compensate those who have covered by its provisions and families from the difficult circumstances they have experienced, it is embodied in the family, emotional, economic and social deprivation, especially the martyrs, their families and other groups included in the text for their sacrifice of the precious and priceless for the sake of the country, its sovereignty and independence, which requires their distinguishing in terms of their entitlement to pensions as well as the combination of pension and any other salary as stipulated in paragraphs (1st/Beh) and (2nd/Alif) of article (11) of the above-mentioned Martyrs Foundation Law. This matter can not be considered a violation of the principles of equality and equal opportunities stipulated in articles (14 and 16) of the Constitution, especially, since the two principles aforementioned are applied to all persons who have legally equal posts according to conditions available in them as the legal base required to be applied to them following the scientific qualification, or the school attainment, experience, age, residence, or classification in a special group, such as martyrs, injured, political prisoners, or those who are affected by terrorist operations or by the former regime or their families. This means that the mentioned category in the challenged text is in equal legal posts, and the text is applied to them exclusively not anyone else according to what the text enjoys of generality and impartiality. Accordingly, the provisions of the article (11/2nd/Alif) of the Martyr Foundation Law aforementioned are

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considered amended provisionally by the article (20/1st) of the General Federal Budget Law for the Republic of Iraq for the fiscal year 2021 which stipulated (all legal texts which allows to combine between two salaries or more shall be annulled for those who assumes a post of Director-General and higher). The Federal Supreme Court had judged in its decision issued by the No. (114/federal/2021) on 27/10/2021, whereas it rejected the case related to its unconstitutionality because there was no constitutional violation. This means that the Federal Supreme Court had judged the constitutionality of the article (11/2nd/Alif) of the Martyr Foundation Law aforementioned which was amended by the article (20/1st) of the General Federal Budget Law for the fiscal year 2021. Moreover, there is no constitutional violation that requires rejecting the challenge. Accordingly, the FSC decided to reject the challenge against the constitutionality of the article (11/1st/Beh, 2nd/Alif) of Martyr Foundation Law No. (2) for 2016. The decision has been issued with a majority, decisive according to the provisions of the articles (93/1st and 94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited in the session dated 10/Shawal/1443 Hijri coinciding 12/May/2022 AD.

Signature of
The president
Jasem Mohammad Abbood

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