

Republic of Iraq
Federal Supreme Court
Ref. 120 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 26.6.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Galib Ammer Shnen, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

The lawyer Faleh Mahdi Khudair.

The defendants:

1. The President of the Republic of Iraq / In addition to his position - his two deputies are the Chief Legal Expert Ghazi Ibrahim Al-Janabi and the Legal Adviser Salah Lazem Shamkhi.
2. The Speaker of Parliament / in addition to his position - his two deputies are Legal Counsel Haitham Majed Salem and legal official Saman Mohsen Ibrahim.

The claim:

The plaintiff claimed that the second defendant (the Speaker of the Council of Representatives / in addition to his position) legislated Law No. (26) of 2019 amending the Unified Retirement Law No. (9) of 2014 which was ratified by the first defendant, and since Article (18) of it stipulated (Implementation of this law is from the date of

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December 31, 2019), which harmed the employees who were retired before the issuance of this law in Articles (3 and 12) of it, as they did not include the advantages of these articles. (14 and 16) of it, which emphasized the principle of equality between Iraqis and equal opportunities. It is not fair and just for employees to do a specific capacity with the same capacity, conditions, and time, so some of them are given their advantages because they were retired after 12/31/2019, which is what the law stipulated above, and others have deprived The fact that they were referred to retirement before the mentioned date, especially those covered by Article (12) of the aforementioned law, as the legal age and other circumstances forced them to retire, and for all of the foregoing, the plaintiff requested from the Federal Supreme Court (ruling the unconstitutionality of Article (18) of the aforementioned Law No. (26) of 2019 to guarantee the rights of Iraqi employees referred to retirement without discrimination and equally and to achieve justice). The case was registered with this court in No. (120/Federal/2022), and the legal fee was collected for it according to the provisions of Article (1/Third) of the Federal Supreme Court's internal system No. (1) of 2005, and it informs the defendants of its petition and documents in accordance with the provisions of Article (2/First) from the same bylaw above, the first defendant's attorney (the President of the Republic / in addition to his position) replied with the answering regulation dated 17/5/2022, the summary of which is that he did not find that he had a direct, direct and influential interest for the plaintiff in his legal,

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financial or social position to challenge the contested law and did not provide evidence that actual harm had been caused to him by the legislation required to be repealed in accordance with the text of Article (6) of the Federal Supreme Court's internal system No. (1) of 2005, and that his client is not suitable as a litigant in this case, and that his ratification The law, the subject of the case, is an application of the provision of the Constitution in accordance with what was decided by Clause (Third) of Article (73) of it, which stipulates (The President of the Republic assumes the following powers: Third - ratifies and issues the laws that enacts by the Council of Representatives, and it is considered ratified after fifteen days from the date of its receipt), and that the parliament's issuance of the law in question is a legislative option adopted by the people's representatives in accordance with their powers stipulated in Article (61) of the Constitution Determining the retirement age for those who have completed their sixty years of age according to the above-mentioned law came to renew energies and put them in the public office and to refer those who gave the flower of their youth for that service to retirement after they performed the duty of service to the state, so that the youth after him would take over the community service by joining the public office After it emerged that the youth group represents more than (50%) of the total Iraqi people, it is necessary for the state to find capacity opportunities for these young people and push them to enter public capacities instead of those who performed a long service in them for the purpose of bringing about a

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fundamental change in the public service and this is the reason that prompted the Council of Representatives to issue this legislation. As for saying that the legislation in its article (eighteen) has harmed those who were referred to retirement at the age of less than sixty-three by depriving them of the privileges stipulated by the law in articles (3 and 12) of it, then all retirees benefit from it. of the service salaries that they performed according to the service of each of them, whether this legislation exists or not, and the legislation did not cause any harm to the categories of employees who are still in service, because it took into account the interest of the state and the total of young groups and the interests of a retired general, Therefore, due to the lack of a constitutional basis for the establishment of this lawsuit and the lack of litigation, the first defendant's attorney requested that the plaintiff's lawsuit be dismissed and he is charged with fees, expenses, and attorneys' fees. And the attorneys of the second defendant (the Speaker of the Council of Representatives / in addition to his capacity) responded to the answer list dated 5/15/2022, which included the same plea that the first defendant's attorney made regarding the lack of interest and the harm not being achieved, and they added that the text under appeal came as a legislative option for the Council of Representatives in accordance with its powers Constitutional Court and a request to dismiss the case and to charge the plaintiff with fees, expenses and attorney fees. After completing the procedures stipulated in the aforementioned bylaw, a date for the pleading was set in accordance with the

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provisions of Article (2/Second) thereof, and the parties were informed of it. On the appointed day, the court was formed, so the plaintiff, lawyer Faleh Mahdi Khudair, attended, and the first defendant, the President of the Republic, attended/ In addition to his capacity as his attorney, the legal employee, Salah Lazem Shamkhi, and the second defendant attended, and his attorneys, the legal advisor Haitham Majed Salem, and the human rights employee Saman Mohsen Ibrahim, proceeded to conduct the public pleading. It was stated in the lists of the defendants' attorneys and added that the interest was realized in filing the lawsuit as he is retired and that his request includes adding (30%) of the actual service performed in the former Atomic Energy Organization / the Ministry of Science and Technology currently, and that the decision issued by the Board of Audit of Retirees Cases numbered (725) On 17/4/2022, he rejected the objection and confirmed the retirement authority's decision to reject his application based on Law No. (26) of 2019 (the Law of the First Amendment to the Retirement Law). Consolidated No. (9) of 2014 which was considered effective on 31/12/2019 and therefore his request was rejected based on the text of Article (18) of the aforementioned law, the first defendant's attorney responded and requested that the case be dismissed for the reasons stated in the regulation dated 17/5/ 2022 and the attorneys of the second defendant responded and requested that the case be dismissed for the reasons mentioned in the regulation dated 15/5/2022 and added that the plaintiff did not indicate the constitutional text on which he relied by

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violating the text under appeal. The parties' agents repeated their previous statements and requests, and since nothing remains to be said, the court decided on the conclusion of the pleading and issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the summary of the plaintiff's lawsuit is the request to rule the unconstitutionality of Article (18) of Law No. (26) of 2019 (the First Amendment Law of the Unified Pension Law No. 9 of 2014), which states (This law is implemented from dated 12/31/2019) for the reasons stated in the petition and mentioned in the preamble to this judgment, and for the public pleading and for informing the court of the defenses of the first defendants, the President of the Republic and the second Speaker of the Council of Representatives, in addition to their positions through the regulations submitted by their attorneys and during the pleading, and to inform the court of the judgment's decision Issued by it in the number (1 / Federal / 2020), the plaintiff, Raghad Abdul Rahman Jassim, and the defendant, the Speaker of the Council of Representatives, in addition to his capacity, in which she requested the ruling of unconstitutionality of Articles (1 and 2 / first and second), (9/first and second) and (18) of Law No. (26) of 2019 (Law of the First Amendment to the Unified Retirement Law No. 9 of 2014) for violating it formally and Objectivity of the provisions of the

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Constitution of the Republic of Iraq of 2005 in articles (60, 80, 19/ninth), (2/first/c), (25), (27/first), (29/fourth), (30/first and second) and (13 /Second) This is for the reasons stated in her lawsuit and that its subject matter is the same as the subject matter of this lawsuit and the judgmental paragraph contained therein, which is the ruling to dismiss the plaintiff's lawsuit and charge her fees and expenses for the reasons detailed in the judgment decision, and since the constitutional lawsuit is described as a specific lawsuit because it relates to the constitutionality of abstract general laws and not personal rights Purely, and that the judgments issued by this court are final and binding on all based on Article (94) of the Constitution of the Republic of Iraq for the year 2005, and if the parties to the case change, its argument applies to everyone from individuals and public authorities, and there is no way to raise the issue of the constitutionality of a law before this court if the court has already ruled In its constitutionality, even if the parties to the case change, and for the foregoing, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff, lawyer Faleh Mahdi Khudair, because the matter had already been decided upon according to the ruling issued by this court. In the number (1/Federal/2020) on 6/6/2021 and charged with judicial expenses, including attorney fees, the attorneys for the first defendant, the President of the Republic of Iraq, in addition to his capacity, the Chief Legal Expert Ghazi Ibrahim Al-Janabi, the Legal Counsel Salah Lazem Shamkhi, and the deputy of the second defendant, the Speaker of the Council of Representatives,

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in addition For his capacity, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim have an amount of one hundred thousand dinars distributed according to legal ratios, and the agreement was issued a final and binding judgment for all authorities based on the provisions of Articles (93 / first) and (94) of the Constitution of the Republic of Iraq for the year 2005 and articles (4 and 5/Second) from the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and publicly understood on Dhul-Qa'dah 26/1443 AH corresponding to 06/26/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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