

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 14/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 9. 6 .2021 headed by Judge Jasem Mohammad Abood 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 who are authorized to judge in the name of the people, they made the following decision:

The Plaintiffs :

1-Yas Khudhair Judeh 2-Muhammad Salih Hadi 3-Ahmad Salih Hadi
4-Muhammad Salih Salman 5-Ali Salih Salman 6- Salman Salih Salman
7-Faten Salih Salman 8-Maha Salih Salman 9- Suhad Salih Salman
10-Zahra Salih Salman 11-Nafouda Abbas Karam 12-Hassanat
Muhammad Kanaan 13- Raqi Abbas Karam 14- Jannat Muhammad
Kanaan 15- Haider Muhammad Ali 16- miead Majali Diwan
17- Nadima Hassan Mohi

Their attorney, Ahmed Salam Jawad Al-Tufaili.

The Defendant: The Speaker of the Iraqi Council of Representatives / being in his capacity - his two agents are Legal Counsel Haitham Majid Salem and legal employee Saman Mohsen Ibrahim.

First-The Claim:

The plaintiffs claimed, through their attorney, Lawyer Ahmed Salam Jawad Al-Tufaili, in the lawsuit petition No. (14/federal/2020), whose summary included: (The distinguished Iraqi Council of Representatives had previously issued Law No. (2) of 2020 the Second Amendment Law to the Law of Compensation for those Affected by Military Operations, Military Mistakes, and Terrorist Operations No. (20) of 2009, amended (Article 12, Paragraph 4th/ alif) which stipulates (if the martyr is single or divorced, or whose wife and parents died before or after him) brothers and sisters are entitled to the pension and the plot of land stipulated by the provisions of this law. brothers and sisters) without limiting their being on the father's side of the mother's side, so the brothers from the father and the mother and the brothers to the father are in the same rank because injustice and persecution are the rights of all family members, whether they are brothers from the mother or the father, because of the division and differences between brothers and sisters caused by this text and siblings, since all previous laws did not address this issue, and for what has been presented, I ask your esteemed court to rescind the law and issue your just decision in the service of the public interest). Article (1/3rd) of the bylaw for conducting the workflow of the FSC No. (1) of 2005, and the defendant/ being in his capacity was notified of the lawsuit petition and it was answered according to the list of his attorney dated 17/2/20, and his pleas were summarized as: (1) The plaintiff's attorney did not indicate the constitutional text that he claims to violate. (2) The text under appeal was a legislative option in accordance with the powers of the Council of Representatives under Article (61/1st) of the Constitution and does not violate any of the constitutional texts, and the aforementioned text was in accordance with the provisions Inheritance in Iraqi law, and for the reasons presented above and what your esteemed court sees, we request that the case be dismissed and that the plaintiffs be charged with all

judicial expenses), the plaintiffs were notified of the answer list submitted by the defendant's attorney/ being in his capacity and it was answered according to the list of the attorney general of the plaintiffs dated 2/3/2020 , which included its summary (1- The esteemed Iraqi Council of Representatives has violated the Iraqi Constitution of 2005 when issuing Law No. (2) of 2020, where Article (132, paragraphs 1st) of it stipulates that (the state guarantees the care of the families of martyrs, political prisoners and those affected by the abusive practices of the former regime) and that The last amendment to the Martyrs Foundation Law No. (20) of 2020 was unfair and harmed the rights of my clients and hundreds of individuals who benefited from the state grant to the families of the martyrs, as most of them have received a pension since 2009 according to Martyrs Foundation Law No. (3) of 2006, which was amended by Martyrs Foundation Law No. (2) of 2016, but my clients were surprised that they are brothers from the father, their pensions were cut off for ambiguous and illegal reasons ((because they received their salaries on the basis of Law No. (20) of 2016)) which provides for the divorce of brothers and sisters and which applies to its release. 2- I would also like to point out to your esteemed court that the Martyrs Foundation Law No. (2) of 2016 stated in the text of (Article 1, paragraph 2nd) of it the term brothers are absolute and did not specify whether the brothers were on the father's side of the mother's side. Therefore, based on the text of the above article, my clients are covered by rights and the privileges stipulated in the above law. 3- I would like to make it clear to you that the law of the Martyrs Foundation considers the brothers and sisters to be from the martyr's family, and the answer of the Martyrs Foundation / the Legal Department according to their letter No. (26703/14/802) on 22/11/2018 where the expression "brothers and sisters is absolute and the absolute applies" was mentioned in it on firing it. 4- I would like to explain to your esteemed court the retirement salary that was distributed to the families of the martyrs, as it is considered a grant according to the law because it is distributed

according to the shares in the legal division that the families of the martyrs' highlight, and that the division of the salary only came based on the Almighty's saying in the name of God, the Most Gracious, the Most Merciful "the male's share is equivalent to that of two females" God Almighty has spoken the truth, and thus Law No. (2) of 2020 came unfair to the rights of my clients, and there is also a great injustice to the brothers from the Christian and Yazidi sect, for they also have martyrs during the time of the former regime. Thus, Law No. (20) of 2020 violates the rights of my clients, as it leads to the fragmentation of the same family, as all brothers are from one consanguine. 5- I also explained to your justice that the half-brother is the brother of the wife who is widowed or divorced from her husband and marries another husband who is a stranger to her children and not the man who marries two or more. The last of the Martyrs Foundation Law No. (2) of 2020, which leads to the fragmentation of one family and the sowing of strife and hatred, and this is not permitted by Sharia and law, so the Parliament has violated the Iraqi Constitution of 2005 with its articles (2, 61, 132) which calls for family unification the one and not to prejudice their rights, just as the legislator violated the ruling of the Federal Court, which states that any legislation is unconstitutional unless the approval of the government is taken initially, as the Council of Representatives did not submit the law to the Council of Ministers, and as a result it becomes unconstitutional, so I ask your esteemed court to invalidate Law No. (20) of 2020 and issued your fair decision in the public interest), After completing the required procedures in accordance with Article (2/1st) of the aforementioned bylaw, the day 11/5/2021 was set as the date for pleading in implementation of the provisions of (Article 2/2nd) of the mentioned bylaw and in which the court was formed and the parties to the case were called, but the defendant/ being in his capacity and his attorneys, appeared on behalf of the defendant, and neither the plaintiffs nor their attorneys attended despite the notification. The court noted that the plaintiffs' attorney submitted a

request to this court on 11/5/2021, requesting to postpone the date of the pleading to a new date, and for the legitimacy of the request, it was decided to accept it and postpone the pleading until 9/6/ 2021, and with it, the court was formed and the two parties were called, so their attorneys attended and the public pleading commenced. The court reviewed the lawsuit petition and the plaintiff's attorney repeated what was stated in the lawsuit petition. The defendant's attorney/ being in his capacity responded, we request that the case be rejected for the reasons mentioned in the regulation dated 17/2/2020, the court checked the regulations presented by the two parties' attorneys, and after the two parties' attorneys repeated their last statements and requests, the court found that the case became complete for the reasons of the ruling, so it decided to conclude the pleading and issued a decision The following decision had made clear public:

Second-The Decision:

After scrutiny and deliberation by the FSC after reviewing what was stated in the plaintiffs' lawsuit, submitted to this court by their attorney, Ahmed Salam Jawad Al-Tufaili, No. (14/federal/2020), it became clear that its summary included: (Challenging the constitutionality of Law No. (2) of 2020 Law (Second Amendment to the Compensation Law). Those affected by war operations, military mistakes and terrorist operations No. (20) of 2009, as amended), especially the provisions of Article (12 Paragraph 4th/alif) thereof, which states that (if the martyr is single or divorced, or (whose wife and parents died before or after him)) brothers and sisters are entitled to the pension and the plot of land stipulated by the provisions of this law, and if they are not available, it is transferred to the non-brothers and sisters, and the provision of this item applies to those covered by Law No. (2) of 2016, for violating the provisions of Articles (2, 61, 132) of The Constitution of the Republic of Iraq for the year 2005, as Article (2) of it stipulates that (First - Islam is the official religion of the state, and it is a

basic source of legislation: **A** - It is not permissible to enact a law that contradicts the constants of the provisions of Islam. **B** - It is not permissible to enact a law that contradicts the principles of democracy. **C** - It is not permissible to enact a law that contradicts with the basic rights and freedoms stipulated in the Constitution), as stipulated in Article (61 the Council of Representatives shall be competent in the following: First - Enacting federal laws...) As for Article (132/1st) of it, it stipulates that (The State shall guarantee care for the families of the martyrs, political prisoners, and victims of the oppressive practices of the defunct dictatorial regime). The FSC finds that the formal conditions for filing a constitutional lawsuit before this court are available, due to the availability of jurisdiction, litigation and interest, and therefore the plaintiffs' lawsuit falls within the jurisdiction of this court based on the provisions of Article (93/1st) of the Constitution of the Republic of Iraq of 2005 and Article (4/1st) of the FSC Law No. (30) of 2005 as amended by Law No. (25) of 2021, This is because both the plaintiff and the defendant/ being in his capacity are considered legal opponents who meet the conditions of litigation and have the legal capacity to sue, and the plaintiffs have an interest in filing a lawsuit, as they were included in the provisions of Article (12, paragraph 4th/ailf) of the law in question, and thus a lawsuit The plaintiffs fulfill the conditions stipulated in Articles (44, 45, 46, 47) of the Civil Procedures Law No. (83) of 1969, as amended, and the conditions stipulated in Article (6) of the bylaw for conducting work in the FSC No. (1) of 2005, Which means that the plaintiffs' suit is acceptable in form, and with consideration of the objective aspects and the contention of the defenses, which focused on challenging the unconstitutionality of the text of Article (12, paragraph 4th/ailf) of Law No. (2) of 2020 Law (Second Amendment to the Compensation Law for Victims). As a result of war operations, military mistakes, and terrorist operations No. (20) of 2009, as amended). For the reasons referred to above in detail, the Federal Supreme Court finds that the contested law is unconstitutional,

especially the text of Article (12, Paragraph 4th/alif) of it, did not include any violation of the provisions of the Constitution of the Republic of Iraq of 2005, especially articles (2, 61, 132) therefore, the plaintiffs' case is obligatory to respond, for the following reasons: 1- Article (12, Paragraph 4th/alif) of Law No. (2) of 2020 Law (Second Amendment to the Law of Compensation for Those Affected by War Operations, Military Mistakes and Terrorist Operations No. (20) of 2009 as amended) stipulates that (in the event that the martyr is single or divorced) Or (whose wife and parents died before or after him) is entitled to the pension and the plot of land stipulated in the provisions of this law, the brothers and sisters, and in the event that they are not available, it shall move to the half-brothers and sisters, and the provision of this item applies to those covered by Law No. (2) of 2016). The FSC did not find any contradiction between the aforementioned text and the text of Article (2/1st/alif) of the Constitution, which stipulates that (No law may be enacted that contradicts the established provisions of Islam), that is because Article (1) of the Law No. 20 of 2009 amending the Law on Compensation for Those Affected by War Operations, Military Errors and Terrorist Operations stipulates that (this law aims to compensate every natural person who has been harmed as a result of military operations, military mistakes and terrorist operations and to determine the damage and its severity and the basis for compensation About him, and how to claim it), as stated in the reasons for the legislation of Law No. (2) of 2020 the Second Amendment Law to the Law of Compensation for Those Affected by War Operations, Military Mistakes and Terrorist Operations No. (20) of 2009 amended (in order to include and fair the segments of the martyrs and their equality with all rights and privileges Granted in accordance with the laws valid, and alleviating the suffering of citizens in areas that have been affected by war operations, military mistakes and terrorist operations... as well as including the families of martyrs and injured members of the internal security forces, armed forces and security services with the privileges

stipulated in the law...) it is inferred from the foregoing that the purpose of the amended law and the Second Amendment Law contested for its unconstitutionality is to compensate the affected and the families of the martyrs and the injured, and the goal of compensation lies in reparation, because compensation revolves around existence and non-existence with the damage and that the legislator, through the origin of the law and its second amendment, clarified the policy that he pursues in Determining the nature of compensation and its beneficiaries, the manner in which it is granted and the procedures for obtaining it. Therefore, the amount of compensation is not considered a legacy or an inheritance, and therefore there is no justification for distributing its amount to those who deserve it according to the legal division of the martyr covered by its provisions, which means that determining the beneficiaries of the amount of compensation was based on the philosophy that he embraced The legislator in reparation for the damage and determining the beneficiaries, based on who is closest to the martyr among his family members, and according to the intense pain they feel and the real grief and sorrow that befell them as a result of the martyrdom of one of the family members. Naturally, the extent of grief and sorrow that befalls the brother as a result of the martyrdom of his brother is greater in terms of quantity and quality than that which afflicts the brother The half-brother on the father's side of the mother's side, and since the amount of compensation is not considered inheritance, so defining who is entitled to it is contrary to the general legal rules related to inheritance established under the legal oath of the martyr, is not in violation of the provisions of Article (2/1st/alif) of the aforementioned constitution above. 2- The Parliament's legislation for Law No. (2) of 2020 Law (Second Amendment to the Law on Compensation for Those Affected by War Operations, Military Mistakes and Terrorist Operations No. (20) of 2009, as amended), especially the text of Article (12 Paragraph 4th/alif) thereof, which is challenged not to Its constitutionality was based on the competence and

powers assigned to it under Article (61/1st) of the Constitution of the Republic of Iraq for the year 2005, which stipulated that: (the Council of Representatives shall be competent in the following: First - Enacting federal laws...) the issuance by the Council of Representatives of the law challenged by its unconstitutionality means raising the excess of exercising its original jurisdiction in legislating laws based on the provisions of the constitution, as long as it was initiated in accordance with the controls stipulated in the Constitution. 3- Legislation of the law subject to challenge is unconstitutionality, and the origin of the law in place of the aforementioned Second Amendment came in line with the provisions of Article (132/1st, 2nd and 3rd) of the Constitution of the Republic of Iraq and in light of the obligations referred to in the aforementioned article on the state represented by the government and its authorities All those based on its guarantee, care for the families of the martyrs, political prisoners, and those affected by the arbitrary practices of the former dictatorial regime, and to compensate the families of the martyrs and those injured as a result of terrorist acts, Especially since Paragraph (3rd) of the aforementioned article stipulated organizing the state's guarantee of care or compensation for those who are entitled to one or both of them referred to above, by law, which means that the Iraqi parliament was keen to activate Article (132) of the constitution in reality, He issued the necessary laws that were consistent with the general provisions of the aforementioned article, in appreciation of the sacrifices, heroisms and blood that were shed in order to preserve Iraq's independence, sovereignty, stability, unity, security, dignity and freedom. Thus, determining the compensation beneficiaries and their arrangement and hierarchy according to the rule of the closest, the closest does not mean a violation of the law in question, the provisions of Article (132) of the applicable constitution, which means that Law No. (2) of 2020 is the Law (Second Amendment to the Law on Compensation for Those Affected by War Operations, Military Mistakes and Terrorist Operations No. (20) for the year 2009,

as amended), especially the provisions of Article (12, Paragraph 4th/alif) thereof, did not include any violation of the provisions of the Constitution of the Republic of Iraq in Articles (2, 61, 132) of it, Thus, the plaintiffs' suit is obligatory to respond, and for the foregoing, the FSC decided to rule by First – to reject the plaintiffs' suit: 1- Yas Khudhair Judeh 2- Muhammad Saleh Hadi 3- Ahmad Saleh Hadi 4- Muhammad Saleh Salman 5- Ali Saleh Salman 6- Salman Saleh Salman 7- Faten Saleh Salman 8- Maha Saleh Salman 9- Suhad Saleh Salman 10- Zahra Saleh Salman 11- Nafudah Abbas Karam 12- Hasanat Muhammad Kanaan 13- Raqi Abbas Karam 14- Jannat Muhammad Kanaan 15- Haider Muhammad Ali 16- Date of Majali Diwan 17- Nadima Hassan Mohy). Second - To charge the plaintiffs referred to in Paragraph (First) the attorney fees of the defendant's attorney, the Speaker of the Council of Representatives/ being in his capacity, the legal advisor Haitham Majed Salem and the legal employee Saman Mohsen Ibrahim, an amount of one hundred thousand dinars, distributed according to the legal ratios. Based on the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5/2nd) of the FSC Law No. 30 of 2005 amended by Law No. 25 of 2021 and publicly understood on (2/Dhu al-Qa'dah/1442) coinciding with 13/June/ 2021.

Council

/ being in his capacity

/ being in their capacity

Signature of
The president

**Jasem Mohammad
Abod**

Signature of
The member

Samir Abbas Mohamed

Signature of
The member

Ghaleb Amer Shnain

Signature of
The member

Haider Ali Noory

Signature of
The member

Haidar Jaber Abed

Signature of
The member

Khalf Aihmad Rajab

Signature of
The member

Ayoub Abbas Salih

Signature of
The member

**Abdul Rahman Suleiman
Ali**

Signature of
The member

**Diyar Muhammad
Ali**