

Republic of Iraq  
Federal Supreme Court  
Ref. 173 / federal / 2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 20/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: Amer Karem Aldaamy – his agent the attorney Muhamed Ali Muhamed.

The defendant: the Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post- his agent the legal advisor Haytham Majid.

**The claim :**

The agent of the plaintiff claimed in the case petition that the defendant the speaker of the I.C.R. has approved the Unified Pension Law No.(26) for 2019 (first amendment of the unified pension law No.9 for 2014) published in the Iraqi Gazette issue (4566) on 9.12.2019, it included clauses and paragraphs, such as determining the age of retirement to (60) years, which cause prejudice to the rights of section of the state employees whom are none for qualification and experience, causing administrative and scientific void throw dismissal the competencies of the service

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unlike others, which consider as clear violation to article (2/Jim) of the Iraqi constitution which stated that no law may be enacted that contradicts the rights and basic freedoms stipulated in the constitution, and articles (14), (16) regard the principle of equal opportunities, all that under the claim of providing an employment posts to addressing unemployment, which affects the rights of large section of people in comparing with the neighbors States and the civilized world States in which the retirement age is (70) years under the consideration that they are competent and experts. For the aforementioned reasons and according to article (93) of the constitution, the plaintiff' agent requested to rule the unconstitutionality of article (10/1<sup>st</sup>) of the unified pension law No.(26) for 2019, and to compile the defendant being in this post to issue the required legislation. After informing the defendant with the case petition, his agent responded with the answering draft requesting to reject the lawsuit because the plaintiff filed the lawsuit before the validity of the law, as stipulated in article (18) of it that it become valid on 31.12.2019, it also came as legislative choice for the I.C.R. according to it stipulated jurisdictions in article (61/1<sup>st</sup>) of the constitution. After completing the required procedures according to the F.S.C. Bylaw, the date 20.1.2020 was scheduled for the argument, the court convened, the agent of the plaintiff didn't attend despite the informing by the law, the agent of the defendant has attended and continue with the argument in the absence of the plaintiff. During scrutiny, the court found that the case is complete



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for reasons of judgment then decided to close the argument and issued the following decision publicly in the session.

**The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff requested to rule the unconstitutionality of article (10/1<sup>st</sup>) of the Law No.(26) for 2019 (first amendment of the Unified Pension Law No. 9 for 2014) which state on referring the employee to retirement when completing (60) years of age, and to compile the defendant being in this post to issue the required legislations. The F.S.C. found from reviewing article (18) of the law being challenge for unconstitutionality No.(26) for 2019 stipulates that (this law shall be implemented from the date 31.12.2019 and to be published in the official Gazette), accordingly the plaintiff has filed his lawsuit before the validity of the law. Therefore considering it is out of the F.S.C. jurisdictions stipulated in article (93/3<sup>rd</sup>) of the constitution, and article (4) of it law No.(30) for 2005 of overseeing the constitutionality of laws and regulations in force, whereas the challenge was submitted before the law become in force, therefore the lawsuit is binding to be rejected from this aspect, the court decided to reject the lawsuit and to burden the plaintiff the expenses and the advocacy fees for the defendant' agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 20/1/2020.