

Republic of Iraq  
Federal Supreme Court  
Ref. 27 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 4/4/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali, who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Barrister Mohammed Ali Abdul Hussein.

The Defendants: 1- Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

- 2- Minister of Finance / being in this capacity
- 3- Head of National Retirement Commission/  
being in this capacity.

Their agent the  
senior legal  
counselor Hanan  
Saadon Abbas

### **The Claim**

The plaintiff claimed that the first defendant issued the Unified Retirement Law No. (9) of 2014 published in the Iraqi Gazette No. (4314) on 10/3/2014 and Article (42) of it stipulated (this law shall be published in the Official Gazette and implemented from the date of 1/1/2014), which resulted in this article differentiating between retirees referred to retirement before the law came into force and those referred to retirement after it enters into force, which violates the Constitution of the Republic of Iraq of 2005 in each of its preamble, which states (We are a people). Iraq is just rising from its depression, and looking confidently to its future through a republican, federal, democratic, and

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pluralistic system, we are determined by our men and women, our elders, and our youth, to respect the rules of law and achieve justice and equality), and article (2/Jim) of it, which did not allow the enactment of a law that contradicts the fundamental rights and freedoms contained in the constitution, as well as Article (14) of it, which affirmed the principle of equality among Iraqis, then the first defendant issued an amendment to the aforementioned law No. (26) of 2019 and published in the Iraqi Gazette No. (4566) on 9/12/2019, and Article (18) of it stipulated (This law shall be implemented from 31/12/2019 and published in the Official Gazette), under Article (5) thereof, Article (21/ First, Fourth and Ninth) of the original law was amended as item (ninth) reads: ((The assignee to retirement and has a service of not less than (25) twenty-five years shall be paid the end of service gratuity and calculated based on the full last salary and allowances multiplied by (12) and shall apply to cases from the date of entry into force of the amendment)) Although the good faith of the legislator in the application of justice was included in this article because it reduced the period required for entitlement to the bonus from (30 to 25) However, the legislator continued to violate the aforementioned constitutional provisions without a legal basis, the plaintiff believes that this has a material and moral impact on his person as an Iraqi citizen first, a pensioner who retired in 1995 and has a retirement service of more than 32 years, for which retirement arrears were paid, and that what he received when he was referred to retirement was equal to 3,000 Iraqi dinars, which represents the entitlement of 6 months, while the remaining amounts were added to his retirement service, it also embodies a situation that contradicts the principle of social justice contained in the Constitution, and that by virtue of his work in the law, he had previously achieved a material gain for his clients in the lawsuit

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filed before the Real Estate Property Claims Authority, Babylon Branch, No. (400819) on 9/8/2007, represented by compensation for the outrageous injustice inflicted on them worth more than (11) million dinars, and since the text of the original Article (21/9<sup>th</sup>) of Law No. (9) of 2014 came, as it stipulated ((Ninth: The employee referred to retirement for completing the legal age or at his request or for health reasons shall be paid, and he has a retirement service of not less than (30) thirty years, end of service gratuity calculated based on the full last salary and benefits  $\times 12$ )), and the second and third defendants refuse to pay the end-of-service gratuity to those who have a retirement service of more than 25 years because they are restricted by the provisions of Articles (42 and 18) mentioned above, and for the fee, the plaintiff estimated what results from a financial return achieved by him up to 10 million dinars, Therefore, in order to achieve justice and the principle of the rule of law, the plaintiff requested this court to rule that both Article (42) of Law No. (9) of 2014 and Article (18) of Law No. (26) of 2019 is unconstitutional. The lawsuit was registered with this court No. (27/Federal/2023), and the legal fee was collected for it in accordance with Article (21/First) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, and it informs the defendants of its petition and documents in accordance with the provisions of item (Second) of the same article. The two agents of the first defendant replied with the response list dated 1/3/2023 and requested the dismissal of the lawsuit, as the texts in question are a legislative option based on the provisions of Article (61) of the Constitution of the Republic of Iraq of 2005 and there is no constitutional violation in it, and since the plaintiff requests to be included in legal texts that were legislated after his retirement and applied against him in force at the time, his request has no basis in the Constitution and the law in accordance with the provisions of Article

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(129) of the Constitution. The third defendant's agent responded with the answering draft dated 23/3/2023, which included a repetition of what was stated in the list of the first defendant's agents, regarding the legislative option, and added that the Authority is an executive body whose task is to comply with the implementation of the provisions of the articles under challenge in all cases that fall within its competence stipulated in Article (5/4<sup>th</sup>) of the Unified Retirement Law No. (9) of 2014, as amended, which ruled that retirement rights are calculated and disbursed following the law, in addition to what was stated in Article (40/Fourth) of the same law, which stipulated: (The implementation of the provisions of this law does not entail the disbursement of any financial differences from the period before its entry into force) and therefore the Authority has committed to implementing the provisions of the Unified Retirement Law No. 9 of 2014 and its first amendment No. (26) of 2019 and there is no legal scope to implement its provisions retroactively because this is not stipulated, and the subject of the appeal is outside its jurisdiction, so it requested the dismissal of the plaintiff's lawsuit and charging him judicial fees and expenses. After completing the procedures stipulated in the rules of procedure of the court mentioned above, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the day appointed for the pleading, the court was formed, and the plaintiff attended, and the agent of the first defendant attended, and the official jurist Hanan Saadoun Abbas attended as an agent for the second and third defendants, and the public pleadings began to be conducted in public presence, the plaintiff repeated what was stated in the lawsuit petition and requested judgment according to what was stated in it, the agents of the first defendant answered and requested the dismissal of the lawsuit for the reasons stated in the response list linked within the

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lawsuit papers, the second and third defendants' agents answered and requested the dismissal of the lawsuit for the reasons stated in the response list dated 26/3/2023 and highlighted a list dated 4/4/2023 according to which it requested the dismissal of the lawsuit on behalf of its client, the second defendant, for the reasons stated therein, which the court reviewed and linked within the lawsuit papers, each party repeated its previous statements and requests, and as there was nothing left to be said, the end of the pleading has been made clear, and the court issued the following decision:

### **The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focuses on demanding the unconstitutionality of Article (42) of the Unified Retirement Law No. (9) of 2014, which states: (This law shall be published in the Official Gazette and implemented from 1/1/2014), and Article (18) of Law No. (26) of 2019 the first amendment to the aforementioned Unified Retirement Law, which states: (This law shall be implemented from 31/12/2019 and published in the Official Gazette) due to their violation of the provisions of Articles (2 and 14) of the Constitution of the Republic of Iraq for the year 2005, because the legislator in the two articles under challenge distinguished between two types of retirees, namely those referred to retirement before 1/1/2014 and those referred to retirement on 1/1/2014 and beyond, and because the legislator maintained the same restriction and distinguished between retirees in the First Amendment Law of the Unified Retirement Law, which resulted in depriving him of the end-of-service gratuity following what was stated

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in the Unified Retirement Law No. (9) of 2014 and for the defendants' refusal / in addition to their jobs to pay him the end-of-service gratuity like the rest of the retirees mentioned in the challenged law because they are restricted by the text of the two articles subject to the challenge mentioned above, so he requested a ruling of their unconstitutionality and charging the defendants with judicial fees and expenses, the court finds through its audits that the plaintiff filed the lawsuit against the defendants Minister of Finance and the President of the National Pension Authority / in addition to their functions despite the fact that the first defendant Speaker of the Council of Representatives / in addition to his job is the one who legislated Articles (42) and (18) the subject of the appeal and the second defendants have nothing to do with the Minister of Finance and the third head of the National Pension Authority to legislate laws at all, and thus the litigation of the second and third defendants is not directed in this lawsuit because the Council of Representatives under Article (61/1<sup>st</sup>) of the Constitution The Republic of Iraq for the year 2005 is competent to legislate federal laws, and if the litigation is not directed in the case, the court shall rule on its own motion to dismiss it in accordance with the provisions of Article (80/1) of the Civil Procedure Law No. (83) of 1969, as amended, since the litigation is part of the public order, thus, the plaintiff's lawsuit against the second defendant, the Minister of Finance, in addition to his position, and the third the head of the National Pension Authority, in addition to his position, must be dismissed because the litigation is not directed. As for the plaintiff's request to rule the unconstitutionality of Articles (42) of the Unified Retirement Law No. (9) of 2014 and Article (18) of Law No. (26) of 2019 The First Amendment Law to the Unified Retirement Law, it was found that this court had previously considered the lawsuit numbered (1/Federal/2020) in which the plaintiff Raghad

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Abdul Rahman Jassim and the defendant the Speaker of the Council of Representatives, in addition to his job, requesting a ruling on the unconstitutionality of Law No. (26) of 2019 First Amendment Law to the Unified Retirement Law No. ( 9) of 2014 for violating the provisions of the Constitution, which ruled to dismiss the plaintiff's lawsuit for not violating Law No. (26) of 2019 the provisions of the Constitution in both formal and substantive terms, and thus the plaintiff's lawsuit in this lawsuit must be dismissed because it was previously decided by this court regarding the challenge to the unconstitutionality of Article (18) of Law No. (26) of 2019 First Amendment Law to the Unified Retirement Law No. (9) of 2014, as for the plaintiff's request to rule the unconstitutionality of Article (42) of the Unified Retirement Law No. (9) of 2014, it is also obligatory to respond, because the legislation of the said article was a legislative option for the defendant, the Speaker of the Council of Representatives, in addition to his job, based on the provisions of Article (61) of the Constitution of the Republic of Iraq for the year 2005 and does not conflict with the provisions of the Constitution, on the one hand, and on the other hand, the text of Article (42) does not constitute discrimination and inequality between retirees and therefore does not constitute a violation of Articles (2) and 14) of the Constitution, according to the plaintiff's claim, because equality does not mean that the legal rule applies to everyone, even those who do not meet the conditions for its application, it applies to those who have the conditions and qualifications that apply, and for the foregoing, the Federal Supreme Court decided to rule as follows:

1. Dismissing the plaintiff's lawsuit against the defendants The Minister of Finance / in addition to his job, and the President of the National Pension Authority / being in this capacity, due to the lack of litigation.

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2. Dismissing the plaintiff's lawsuit regarding his request to rule the unconstitutionality of Article (18) of Law No. (26) of 2019, the First Amendment Law to the Unified Retirement Law No. (9) of 2014, as amended, due to the previous adjudication of its subject matter.
3. Dismissing the plaintiff's claim regarding his request to rule on the unconstitutionality of Article (42) of the Unified Retirement Law No. (9) of 2014 due to the absence of a constitutional violation.
4. The plaintiff shall burden the fees, expenses, and fees of the defendants' agents, the Speaker of the Council of Representatives, the Minister of Finance, and the Chairman of the National Retirement Authority, in addition to their functions, an amount of (one hundred thousand) dinars to be distributed among them following the law.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated on 13/Ramadhan/1444 Hijri coinciding 4/April/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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