

Republic of Iraq  
Federal Supreme Court  
Ref 298/ federal/2023



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 16/1/2024 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

Plaintiff: President of the National Board of Pensions / in addition to his position – His agent the Assistant Legal Counsel Hanan Saadoun Abbas.

Defendants: Head of the Council of Representatives / in addition to his position – his agents human rights employees Saman Mohsen Ibrahim and Aseel Samir Rahman.

**The Claim:**

The plaintiff claimed through his agent that the defendant had previously legislated the Unified Retirement Law No. (9) of 2014, which stipulated in Article (35/VIII) stipulates that: ((Managers General in all state departments shall be entitled to a retirement salary not exceeding (80%) of the total last salary and allowances they received in accordance with the provisions of this Law)), this text means excluding retired general managers from being subject to the calculation of their salary in accordance with the retirement equation stipulated in Article (21) of the aforementioned Unified Retirement Law on the calculation of the retirement salary, and that this text contradicts the principle of equality contained in Article (14) of the Constitution, In particular, one of the

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reasons for enacting the law is equality and reducing the differences between retirees, the provisions of which apply to all employees of the State, the public sector, temporary employees, those entrusted with public service, state employees in the mixed sector, and retirees under Article (3) thereof, which contradicts the provisions of Article (35/VIII) of the law, with the presentation that the above article of the Unified Retirement Law was suspended by virtue of the Council of Ministers Resolution No. (333) on 8/9/2015, which came in implementation of the reform package launched by the government and approved by the Council of Representatives, which includes the abolition of salary differences and the reduction of the maximum pension for officials in the state, And subjecting all retirees to a unified equation in calculating the retirement salary in terms of age and service according to a unified salary scale, and canceling all exceptions, which stipulates that: ((Second: The retirement salary of those covered in paragraph (1) above who have a retirement service of not less than (15) years, and an age of not less than (50) years in accordance with the provisions of Article (21/ items first and second) of the Unified Retirement Law No. 9 of 2014)), The Court has already issued several decisions, including its decision (36/Federal/2014) on 24/6/2014, which included a ruling that the two articles are unconstitutional (37 and 38 / III) of the law which had granted some categories, including general managers, an exception to the Unified Retirement Law in terms of age and service, according to which general managers became subject to the provision of Article (21) of the Unified Retirement Law, and its decision (59/federal/2015) dated 19/10/2015, which includes the ruling on the unconstitutionality of Article (35/VI) of the law and its repeal the latest of wich is Resolution (36/Federal/2023) on 7/5/2023, which included that there is nothing that violates the validity of the Council of Ministers' decision No. (333) on

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8/9/2015, Therefore, the prosecutor's deputy requested this court to rule on the unconstitutionality of Article (35/VIII) of the Unified Retirement Law No. (9) of 2014, and after registering the case with this court No.(298/Federal/2023) and collecting the legal fee for it, and informing the defendant of its petition and documents in accordance with Article (21/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, his two agents responded with the answering draft dated 12/12/2023, which included detailed formal and substantive defenses, in which they concluded that the plaintiff was requested to dismiss the lawsuit and charge him fees, expenses and attorney's fees. After completing the procedures required by the Rules of Procedure of the Court a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties shall be informed of it, and the court was formed, and the plaintiff's deputy attended on behalf of the defendant his attorney human rights employee Aseel Samir Rahman, appeared and began to conduct the public presence pleading, after hearing the statements of the parties and nothing remains to be said, the end of the argument has been made clear, and the court issued the following ruling:

**The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff, the head of the National Pension Authority, in addition to his job, filed this lawsuit against the Speaker of the Council of Representatives/ being in this capacity to challenge the constitutionality of the text of Article (35/8<sup>th</sup>) of the Unified Retirement Law No. (9) of 2014, as amended, which stipulates that (general managers in all state departments are entitled to a retirement salary not exceeding 80% of the total last salary and allowances they received in

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accordance with the provisions of this law) This means excluding retired general managers from being subject to the calculation of their salary in accordance with the retirement equation stipulated in Article (21) of the Unified Retirement Law, Because the aforementioned text contradicts the text of Article (14) of the Constitution, which stipulates that ((Iraqis are equal before the law without discrimination as to sex, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status)) That is, the contested text violates the principle of equality stipulated in the aforementioned constitutional text, so he requested to invite the defendant/ being in this capacity to plead and rule on the unconstitutionality of item (eighth) of Article (35) of the Unified Retirement Law No. 9 of 2014, as amended, the defendant's response was received in addition to his position under the regulation of his agent dated 12/12/2023, in which they requested the dismissal of the lawsuit in form because the plaintiff's agent did not indicate the current, direct and influential interest in the position of her client from the contested text, The National Pension Authority is part of the Government, and the unconstitutional text was submitted by the Council of Ministers, it was a legislative choice for the Council of Representatives based on the powers stipulated in Article (61/I) of the Constitution, The principle of equality, which the plaintiff claims in addition to his function to be violated, is applicable only in the same case, and not in various cases and for the public presence pleading and hearing the defenses of the parties to the lawsuit, the court found that the plaintiff's claim/ being in this capacity falls within the jurisdiction of this court provided for in item (first) of Article (93) of the Constitution, Clause (First) of Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended Law No.(25) of 2021, but the lawsuit did not meet the formal conditions for filing, as the Internal

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Regulations of the Federal Supreme Court No. (1) of 2022 specified the procedures, mechanisms and conditions that must be met and followed when submitting the application or institute an action of unconstitutionality, Article 19 of the Code states that (any of the three federal authorities, ministries and independent bodies, the Prime Minister of the Region, entities not associated with a ministry and governors may request the court to rule on the constitutionality of a legal text or a regulation, provided that the request shall be sent to the court by a letter signed by the head of the concerned authority, the competent minister, the head of the independent commission, the prime minister of the region, the head of the entity not associated with a ministry or the governor, provided that the contested text relates to the tasks of those bodies and raises a dispute in application.) Upon verification and scrutiny of the petition, it was found that it was submitted without adhering to the aforementioned text, as the plaintiff is not one of the bodies mentioned in Article (19) of the Rules of Procedure being not an independent body or entity not associated with a ministry, Rather, it is one of the institutions affiliated to the Ministry of Finance the lawsuit or application to challenge the constitutionality of the text - the subject of the lawsuit - must be filed by the Minister of Finance in addition to his position , and to send the application to the court by a letter signed by him personally, however, it should be noted that the lawsuit was filed directly by the prosecutor's deputy, the head of the National Pension Authority, in addition to his position and signed by her, and that the internal regulations in its aforementioned article stated clearly that the lawsuit must be filed by the authorities mentioned in article (19) and sent to the Federal Supreme Court by a letter signed by the Minister personally, and even the special power of attorney for the Minister does not meet the purposes of that article, this

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is what the jurisprudence of this Court has established in many of its decisions, and the plaintiff, in addition to his job, is not one of the persons authorized by article 20 of the Rules of Procedure of the Federal Supreme Court to institute direct action to challenge the constitutionality of a legislative text. Therefore, the lawsuit does not meet the conditions of its formal establishment, and then enter into its content and shall be subject to reply to this party. For all of the above, and by request, the Federal Supreme Court decided to dismiss the plaintiff's lawsuit, the head of the National Retirement Authority, in addition to his job in form, and to charge him fees, expenses, and advocacy fees, the defendant's agent, the Speaker of the Council of Representatives/ being in this capacity, each of the official jurists (Aseel Samir Rahman and Saman Mohsen Ibrahim) an amount of (100,000) one hundred thousand dinars, to be distributed in accordance with 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 of 2005, Articles (4 and 5) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and Articles (19) and (20) of the Bylaw of the Federal Supreme Court No. (1) for the year 2022. The decision has been made clear on 4/Rajab/1445 Hijri which corresponding 16/January/2024 A.D.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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