

**IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL**

Republic of Iraq  
Federal Supreme Court  
Ref. 37/federal/media/2015



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 29/6/2015 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

**The Plaintiff:** President of the general federation of workers' unions in Iraq/ being in this post -his agent the attorney (ha.ha.ha.mim.).

**The Defendant:** the Speaker of the council of representative (I.C.R.)/ being in this post -his agents the legal officials (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

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## **The Claim:**

The agent of the plaintiff claimed in his case petition that the defendant/ being in this post has issued the Unified Pension Law No.(9) for 2014, paragraph (3<sup>rd</sup>) of article (19) of it stipulated that ((the employee may request the addition of his guaranteed pension services performed for the private sector, for which he did not receive any retirement rights from the department of pension and social security for workers, not more than half of his actual career service performed for the state, the department of pension and social security for workers shall provide the Committee the details of his service and pay the deductions from his salary with the contribution of the employer, the employee shall burden (the difference) between the amounts of the contributions and the amounts of the pension deductions with the contribution of the State calculated on the basis of his salary at the date of submitting the service calculation request)), also paragraph (3<sup>rd</sup>) of article (19) is unconstitutional and violated the text of article (14) of the Iraqi valid constitution which stipulate that ((Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.)), as it discriminate between the received service according to other categories of the citizens. For the mentioned reasons the agent of the plaintiff requested to rule to amend or repeal paragraph (3<sup>rd</sup>) of article (19) of the law of pension and social security for workers No.(9) for 2014. The agent of the defendant/ being in this post respond to the case petition stating that the plaintiff' agent pointed in his claim that paragraph (3<sup>rd</sup>) of article (19) of the Unified Pension Law No.(19) for 2014 violated the principal of

equality between Iraqis on the base that it consider the service performed for the privet sector equal to half the career service in the purpose of (retirement), in fact the mentioned text didn't violate the principal of equality and equal opportunities, because the service for the privet sector don't equal the service for the state' careers, the opportunity of the state employee for the purpose of retirement should not be at the same level of the privet sector worker opportunity, as each of the sectors have it particular procedures and conditions and the responsibility resulted from it, between general and privet utility, there is no reason for equality between the unequal and equal opportunities between the discriminate. As the challenged text is a legislator choice, and don't violate the text of article (14) of the constitution, which is what the F.S.C. has stated in the lawsuit No.(43/federal/2014), as mentioned in the draft of plaintiff agent a request to amend paragraph (3<sup>rd</sup>) of article (19) of the Unified Pension Law, for all that the agent of the plaintiff requested to reject the case. After the case was registered according to paragraph (3<sup>rd</sup>) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedures according to paragraph (2<sup>nd</sup>) of article (2) of the mentioned bylaw, the date 29/6/2015 was scheduled for the argument, the court convened and call upon the parties, the plaintiff' agent and the defendant' agents has attended and continue with the argument in presence and public, the agent of the plaintiff repeated the case petition and requested to judge according to what listed in it, the agent of the defendant repeated the answering draft and requested to reject the case. Whereas nothing left to be said the argument is closed and the decision is issued publicly.

## **The Decision**

During scrutiny and deliberation by the F.S.C. the court found that the President of the general federation of workers' unions in Iraq/ being in this post has challenged the constitutionality of article (19/3<sup>rd</sup>) of the Unified Pension Law No.(9) for 2014, as it granted the employee the right to request the addition of his guaranteed pension services performed for the private sector, for which he did not receive any retirement rights from the department of pension and social security for workers for his pension service resulted from career service, not more than half of his actual career service performed for the State. According to the plaintiff' claim the mentioned article violate the provision of article (19) of the constitution which stipulate ((Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status)), the challenged article discriminate between the performed service according to the law of pension and social security for workers No.(39) for 1979 (the amended) and between the service according to the Pension Law with addition of other categories, for the mentioned reasons the agent of the plaintiff requested to amend or repeal paragraph (3<sup>rd</sup>) of article (19) of the Unified Pension Law No.(9) for 2014. The F.S.C. finds that the intentioned equality in article (19) of the constitution is the equality to be provided between the persons of the same category and not the equality between different categories, as each of the sectors general and privet have it particular procedures and conditions and the responsibility resulted from the service in each of it, as the work hours procedures and discipline are different in both of the mentioned utilities, therefore

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there is no violation for article (19) of the constitution, in addition, what listed in article (19/3<sup>rd</sup>) of the Unified Pension Law No.(9) for 2014 is an legislative choice for the legislator that he chooses for consideration related each utility of the work. Accordingly the court decided to reject the case, and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars divided on them equally. The decision has been issued decisively and unanimously according to article (94) of the constitution and article (5/2<sup>nd</sup>) of the F.S.C. law No.(30) for 2005 on 29/6/2015.