

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 38/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 24.6. 2014 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (ha. jim. kaf. ain.) his agents (nun. mim.) and (mim. mim.) and (sin. ra.).

The Defendant: Speaker of House of Representatives- being in this capacity- his Jurists (sin. ta. yeh.) and (ha. mim. sin.).

The Claim:

The plaintiff's agent claimed before the FSC in the case No. (38/federal/2014) that the defendant/ being in this capacity legislated the Unified Retirement Law No. (9) of 2014, and since some articles of this law are contrary to the Constitution, he challenges it for the following reasons: First- The House of Representatives has added a provision to the law, which is contained in article (37) of it, which is not included in the origin of the bill prepared by the executive branch as outlined in article (60/1st) of the Constitution, which states (bills submitted by the President of the Republic and the Council of Ministers). This text is a new proposal that has not been sent to the executive branch (presidency

or cabinet) by the House of Representatives and according to the direction of the FSC contained in the rulings issued in many cases, including the numbered case (43/federal/2010) and others, which required the sending of proposals of laws submitted by members of the House of Representatives or one of the competent committees to the executive authority for the judgments based on the articles (60/1st and 80/1st, 2nd) of the Constitution, the application of the provisions of these articles is not aimed at preventing the House of Representatives from having its original right to legislate laws, as this is within its jurisdiction under article (61/1st) of the Constitution, but in order for (law proposals) to take their constitutional contexts in the legislative councils to be drafted in the form of (bills) in coordination with the executive branch, which was tasked with article (80/1st) of the Constitution (planning and implementing the state policy and public plans and supervising the work of ministries and entities not associated with the Ministry) ,the implementation of these tasks needs to be sent (proposals of laws) to the executive branch to study them and make them in the form of bills if they are with constitutional provisions and laws and in line with the general policy of the state and with the plans prepared in all areas, including political, social and financial, in accordance with the specific contexts for preparing draft laws. Second- The text of the article (37) drawn up by the House of Representatives concerning special class privileges and members of the House of Representatives is contrary to the provisions of article (130) of the House of Representatives bylaw, which require the House of Representatives to take the opinion of the ministers in every amendment proposal it proposes if it entails financial burdens. Since the paragraph in question entails a new financial burden, the government has not taken the government's opinion, so he asked the FSC to rule that article (37) of the mentioned law was unconstitutional for the reasons mentioned above, with the defendant charging all fees, expenses and fees to the lawyers. The defendant's agent answered the petition with his answering draft on 30/3/2014, requesting that the case

be rejected, with the plaintiff charging all the expenses for the reasons mentioned in it, including them is that the House of Representatives has added article (37) in the Unified Retirement law as it claims without taking into account the opinion of the government, while article (61/1st) provides for the original competence of the House of Representatives in the legislation of federal laws and not to pass the government's drafts without adding or amending. The provisions of the bylaw of the House of Representatives have indicated the way of the Council in the legislation of federal laws to ensure the amendment or addition of the provisions based on the authority of the Council in the representation of the people and the expression of their will to the will of the executive branch, the House of Representatives should make amendments to the bills without depending on the limits of the limits of the executive branch of the amendment based on the constitutional authority of the Council, which is established under the article (61/1st) of Constitution, and that the amendment made by the House of Representatives on the government bill did not affect its essence and that the amendment made by the House of Representatives on the government bill did not affect its essence but collected its objective diaspora by collecting the scattered provisions on the retirement of the President of the Republic and his deputies and the prime minister or ministers and their degree and those who receive their salaries (article (38) of the government's constitution) members of the Governing Council and their representatives, members of the Interim National Council, president and members of the National Assembly, speaker of the House of Representatives, deputies and members of the House of Representatives (the article (39)/3rd and 5th/alif) from the government project, they are all collected in the text of article (37) of the Unified Retirement Law, based on the provisions of the government bill and the text of Article (63/1st) of the Constitution, which stipulates that the rights and privileges of the Speaker of the House of Representatives and members of the House shall be determined by law. As for the challenge that Article (37) was contrary

to Article (130) of the House of Representatives Bylaw, where the House of Representatives did not take the government's opinion on it before it was approved. This challenge to the prosecutor in direction because his client has no interest in a direct case affecting the legal, financial or social status of his client and the text did not cause any direct factual damage to its elements, which could be removed in the event of a verdict. So he asked for a reject the case formally objectively, the court invited the parties to plead, and the prosecutor, as well as the defendant's agents, were present under their agency tied up in the case file, and the public hearing was started. The plaintiff's agent repeated the petition and requested a verdict, with the defendant charging the costs of the case. The defendant's agents repeated their answering draft and requested the dismissal of the case with the plaintiff loading all expenses and submitted another answering draft on 26/5/2014 in which they also rejected the case, explaining that the president of the General Authority for Retirement was present at all sessions discussing the law in the Finance Committee as he attended the sessions of the House of Representatives discussion, reading and voting the Minister of State for The Affairs of the House of Representatives, who is the minister of finance agency his presence is considered to be the presence of the government opinion and after reviewing the file of the case and the agents of the parties repeated their statements and previous requests and requested the judgment under it and where there is nothing left to say the end of argument has been made clearly, the decision had made clear public.

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff's agent challenge in his petition article (37) of the Unified Retirement Law No. (9) of 2014 is unconstitutional on the grounds that it violated article (60/1st and 80/1st and 2nd) of the Constitution of the Republic of Iraq in 2005 and the article (130) of the House of Representatives' Bylaw. Since this court has already ruled in the (36/federal/2014) numbered case filed before this case in the same time and with the same money ruling that article (37) of the Unified Retirement Law No. (9) of 2014. Therefore, the consideration of this case became unproductive, as the plaintiff's claim was achieved by ruling that article (37) of the Unified Retirement Law No. (9) of 2014 was unconstitutional, which necessitated its dismissal. The FSC decided to dismiss the plaintiff's case with the charge the expenses and charge each party with the lawyers' fees to his agent and the decision was issued decisively in attendance and by unanimously publicly on 24/6/2014.