

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 59/federal/media /2015



Kurdish text

The Federal Supreme Court (F S C) has been convened on 19.10.2015 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu AL-Temman and Mohammed Rajab Al-Kubaisi who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: Muwaffaq Mahdi Abboud his agent Salman Mektaa Ghwael.

The Defendant: 1- Speaker of House of Representatives/ being in this capacity his Jurists (sin. ta. yeh.) and (ha. mim. sin.).
2- Chairman of the National Pension Authority / being in this capacity his agent the jurists (kha. alif. nun.).

The Claim:

The plaintiffs' agent claimed before the FSC in the case No. (59/federal/2015) that the defendant Speaker of House of Representatives/ being in this capacity, he legislated the Unified Retirement Law No. (9) of 2014, which was enacted under article /35/ item 6th/ to determine the ambassador's salary (80% from the nominal salary+100%) from the allocations which hurt my client because the legislation violated the Constitution and the bylaw of the House of Representatives. The

Constitution adopted a parliamentary system based on the distribution of powers and respect for every authority powers and authority of other the power as approved by article (47) of it and under article (80) of the Constitution, the Council of Ministers has the power to submit drafting bills as one of the two pillars of the Executive Power of the Council of Ministers or the President of the Republic, which under item /1st/ from article (60), submit drafting bills, since the bills differ from the proposals of the laws because the proposal is only an idea and the idea is not legitimate unless it takes its way to one of the executors referred to in the constitutional article above, all laws that do not adopt this constitutional context are unconstitutional. As long as the item in question has added new provisions that have not been adopted by the executive branch, it is contrary to the Constitution in this respect, and this is what the constitutional judiciary in Iraq has settled on many FSC's decisions and since the above clause is contrary to article (130) of the bylaw of the House of Representatives, which had to take the opinion of the Council of Ministers in every proposal to amend the bill and it would result in financial burdens. This was not taken into account by the House of Representatives, which amended the bill submitted by the Council of Ministers without reference to it, so the agent of the plaintiff asked the FSC to the unconstitutionality of item (6) of article (35) of the Unified Retirement Law No. (9) of 2014 for violating the provisions of the Constitution and the bylaw of the House of Representatives and the loading of the defendant litigation expenses and law enforcement fees. After registering the case with this court in accordance with paragraph (3rd) of article (1), of the FSC's bylaw No.(1) of 2005 and after completing the required procedures in accordance with paragraph (2), article (2) of the court's bylaw referred to above. A court date has been set, and the court has been formed, and the plaintiff's agent, (sin. mim. ghain.), was present under his agency tied up in the case file, as did the lawyers of the defendant/ being in this capacity jurists (sin. ta. yeh.) and (heh. mim. sin.) under their own agency tied to the case. The agent of the second defendant/ being in this capacity the jurists (kha. alif. nun.) was also

present in the case under his official agency attached to the case and argument commenced immanence and public. The plaintiff's agent repeats the petition and request under it with the defendant charging the expenses and the fees of the lawyers, the first defendant's agents repeated their answering draft to the petition on 16/6/2015 requested to rule by reject the case with the plaintiff charging the expenses and the fees of the lawyers, the defendant's agent also reiterated the answering draft on 10/6/2015, and requested that the case be rejected from the litigation side, with the plaintiff charging all expenses and fees. The court decided to include the Prime Minister and the Minister of Foreign Affairs a third person in the case to clarify what needs to be resolved and attended for the third person the Prime Minister and his legal agent (alif. ain. ain.) under the official agency (1355) on 6/9/2015 did not attend the third person and did not send his representative despite the notification. Therefore, the argument commenced immanence and public in his absence, and the third-person agent replied to the Prime Minister that the added text does not arrange the financial burdens he missed it to get back to the law and the plaintiff reiterated his previous statement and requested the judgment under it, with the defendant being charged all expenses and fees as repeated by the defendant's agent. The first, the second defendant's agent and the third person's agent, their previous statements, and the decision to reject the case, with the plaintiff charging all expenses and fees 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 his petition of the case of unconstitutional the item (6th) of the article (35) from the Unified Retirement Law No. (9) of 2014 which text on ((an exception to the provisions of article (21/2nd) of this law: **A-** When referred to retirement, the Ambassador is entitled to a pension of (80%) eighty percent of the salary and the allocation (100%).

from the salary) in one of the following situation: 1- If he is referred to retirement because he has completed the legal age and has a service of not less than (25) years. 2- If he is referred to retirement for health reasons due to his inability to perform his duties with a report from a competent official medical committee regardless of the length of his service or his age. **B-** The provisions of paragraph (alif) of this item apply to those referred to retirement before the law comes into force and who have held office after 9/4/2003 and the plaintiff's agent is based on his request because of the failure of the House of Representatives to act when he legislates the mentioned item, the method of fees, because he added this item to the bill without referring to The Cabinet to take his opinion. Because the bill did not include the above-mentioned item, which is contained in the House of Representatives in accordance with the provisions of article (60) of the Constitution, where article (35) of the Unified Retirement Law No. (9) of 2014 states the following: ((- the article 35 – First - The document on which the appointment or age proving in effect shall be applicable for the purpose of proving the real age of the employee or retiree and does not count any judicial or administrative correction issued thereafter. Second - An exception to the provisions of item /1st/ of this article for the minister or head of the non-ministry or governor to adopt the end of the calendar year as a date of birth instead of (1-7) of that year. It appears from the above that article (35) of the Unified Retirement Law No. (9) of 2014 was not in the form of article (35) of the drafting bill contained in the House of Representatives of the Council of Ministers and that the House of Representatives, when it legislates the law, added item (6th) to the law and in the manner mentioned above, despite its financial burden and without reference to the Council of Ministers and without following the path set for it in the constitution in the article (60) of the constitution and also violated the article (130) from the bylaw of the House of Representatives which required article (130) of the mentioned system obtaining the government's approval when suspending the legislation with financial

burdens and since the House of Representatives violated all this when it legislated item (6th) of article (35) of the Unified Retirement Law No. (9) of 2014, therefore, the mentioned item is unconstitutional. Therefore, the FSC decided to rule that item (6th) of article (35) of the Unified Retirement Law (9) of 2014 was unconstitutional and rejected the case against the second defendant, the Head of the National Pension Committee / being in this capacity, because the litigation was not directed to him by a law enforcement authority and not the National Pension Committee. It's not a facility for him and the parties are charged the expenses of the relative case and the defendant the President of the House of Representatives/ being in this capacity is charged the lawyer's fees to the plaintiff's agent the attorney (sin. mim. ghain.) amount of 100,000 dinars and the plaintiff's charge of the attorney's fees to the second defendant's jurist Khalil Ibrahim Nasser a sum of 100,000 dinars the rule was issued in attendance and unanimously a decisively and it had made clear public on 19/10/2015.