

Republic of Iraq
Federal Supreme Court
Ref. 265 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 17/1/2023 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 Sulayman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mazin Abdul Wahid Khalaf Makkiya – his agents the barristers Mohammed Majeed Al-Saidi and Ahmed Mazin Makkiya.

The Defendant: The Prime Minister/ being in this capacity – his agent the legal counselor Hayder Ali Jaber.

The Claim

The plaintiff claimed through his agent that as a former member of the Baghdad Provincial Council, he suffered damage as a result of the Federal Authority, represented by the Council of Ministers, issuing the Council of Ministers Resolution No. (333) on 8/9/2015, which stated in paragraph (Second) thereof (Pensions: 1. The payment of pensions granted under previous laws and decisions to those who held their positions after 9/4/2003 shall be suspended...) As a result of this decision, the retirement rights of members of provincial councils that had been granted to them based on the law were withheld. Governorates that are not organized in a region, which included in its details the organization of the financial and retirement rights of this segment, Thus, the executive authority exceeded the limits of legality in issuing its decisions based on Article (80/3rd) of the Constitution, which indicated

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the authority of the Council of Ministers to issue regulations, instructions, and decisions to implement laws and not suspending and suspending them, which is also contrary to what was stated in Court Decision No. (198/Federal/2022), which included that (the administration has only a limited role from which it cannot deviate, otherwise its work will be described as illegal), knowing that the Governorates Law preceded the issuance and enforcement of the challenged decision, Moreover, the competence of the House of Representatives to legislate and monitor government performance cannot be abandoned by the legislative authority, nor can it delegate to the federal government the exercise of any of its legislative powers under the pretext of achieving the reform package, as the government claimed at the time to justify its violation of the laws in force and the withholding of the rights resulting from it. Therefore, based on the provisions of Article (93/3rd) of the Constitution, the plaintiff requested this court to rule that the Council of Ministers Resolution No. (333 of 2015) is incorrect as far as the matter concerns members of provincial councils and obliges the defendant to apply Law No. (21) of 2008, as amended, which regulated their retirement and financial rights, knowing that it is a previous law in the issuance and enforcement of the decision in question, with the defendant charging fees, expenses, and attorney's fees. The lawsuit was registered with the number (265/federal/2022) and the legal fee for it was collected based on the provisions of Article (21/1st) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022 and the defendant shall be informed of its petition and documents in accordance with item (2nd) of the same article, his agent replied in the answering draft dated 26/12/2022, concluding that the subject matter of the lawsuit had previously been considered and decided by this court in its decisions numbered (65/federal/2017), (37,

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40, 59/federal/2018), (74/federal/2019) and (131/federal/2021) to dismiss the lawsuit, and that the paragraph subject of the appeal came in the application of Article (21/1st and 2nd) of the Unified Retirement Law No. (9) of 2014, and that the decision subject to the appeal was issued based on the constitutional powers of the Council of Ministers, so he requested the ruling to dismiss the lawsuit with the plaintiff bearing the expenses and advocacy fees. After completing the procedures required by the court's rules of procedure, a date was set for the pleading in accordance with Article (21/3rd) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiff's attorney, lawyer Ahmed Mazen Abdel Wahed, attended, and the defendant's attorney attended and began to conduct the public adversarial pleading, the plaintiff's attorney repeated what was stated in the lawsuit petition and requested a ruling thereon, and added, highlighting a reply list dated 16/1/2023 with accompanying the original link within the lawsuit papers, the defendant's attorney answered requesting the dismissal of the lawsuit for reasons Mentioned in the answering draft linked to the case papers, the agent of each party repeated its previous statements and requests, and where nothing remained to be said, the end of the argument has been made clear and the court issued the following judgment:

The decision:

Upon scrutiny and deliberation by this court, it was noted that the summary of the plaintiff's lawsuit is a request for a ruling that Resolution No. (333) issued on 8/9/2015 by the Council of Ministers is invalid for the reasons detailed in the lawsuit petition and previously simplified in the preamble of the decision, and it was noted that the subject of this lawsuit has already been submitted to this court in more

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than one lawsuit, and the court has decided on this by virtue of the provisions numbered (115/federal/2015) on 15/3/2016 and (59/federal/media/2018) on 15/5/2018 and (74/Federal/2019) on 17/12/2019 and (131/Federal/2021) on 24/11/2021, where these provisions dismissed the lawsuits regarding the appeal against the decision of the Council of Ministers subject to this lawsuit, whereas the rulings of the Federal Supreme Court are final and binding on all authorities based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005, and that the constitutional lawsuit is considered a lawsuit in kind, and that the bits of its provisions apply to everyone, whether they are represented in the lawsuits filed or not, and the subject matter of the lawsuit may not be raised again, even if the parties to the lawsuit differ, so this lawsuit must be dismissed because it has already been adjudicated. Accordingly, the Federal Supreme Court decided to dismiss the lawsuit of the plaintiff Mazen Abdul Wahed Khalaf Makiya and to charge him the judicial expenses, including attorney's fees, the defendant's agent, in addition to his position, the legal counselor, Haidar Ali Jaber, the amount of one hundred thousand dinars. The decision has been issued unanimously according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and articles (5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on dated 24/Jamada Al-Akhir/1444 Hijri coinciding 17/January/2023 AD.

Judge

Jassim Mohammed Abbood

President of the Federal Supreme Court

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