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The Federal Supreme Court (F.S.C.) has been convened on 24.6.2014 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 Abbas Abu Al-Temmen whom are authorized in the name of the people to judge, they made the following decision:

**The Plaintiff:**

The parliament member Dr.(ha.sin.mim.), her agent the attorney (qaf.ain.).

**The defendant:**

The Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

**The claim:**

The agent of the plaintiff claimed that articles (37, 38) of the unified pension law no.(9) for 2014 violated the constitution as the I.C.R. has exceeded his competences that are listed in article (61/1<sup>st</sup>) of the constitution to enacting federal laws submitted by the governorate as stated in the two articles, also the constitution doesn't authorizes it to add to the laws bills or amend it or both under the



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provision of article (80/2<sup>nd</sup>) of the constitution, it was supposed to return the addition to the governorate to list it within the law bill if it approved it after considering its aspects especially the financial and its effect to the Federal Budget Law bill that also within the competence of the executive authority. the inconsistency of the pensions of those covered by these two articles with the role played by a member of the House of Representatives or a member of the provincial council or other groups included in it and who is considered assigned to a public service and not an employee and is a representative of the people, who must be the first to sacrifice and the last to benefit, that responsible texts must be based on the voters' secretariat that they deposit in his neck, not from the extent of his personal benefit from his representative seat. The F.S.C. has issued a decision to cancel the pension salary of the I.C.R. members and the governorates councils members (paragraph 1<sup>st</sup> /7) article (38) and other categories included in the unified pension law, and it was final, conclusive, irrevocable decision as binding on all, but returning this law for the second time is rotation on the F.S.C decision that is binding to be implemented. Therefore he request the F.S.C. to repeal the text of articles (37, 38) of the unified pension law to achieve justice and equity for the Iraqi people. The defendant agent responded to the case petition with the answering draft dated on 30.3.2014 requesting to dismiss the case for the reasons listed in it and to burden the defendant the expenses and advocacy fees. The court call upon the parties for argument and started the in presents



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public hearing, the plaintiff agent submitted request to specify the paragraph of article (38) of the unified pension law no.(9) for 2014 he challenged for unconstitutionality, he request in the editorial draft submitted to the court on 2.6.2014 to rule the unconstitutionality of clause (3<sup>rd</sup>) of article (38) of that law. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

**The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs' request in her case petition to repeal articles (37 and 38) of the law no.(9) for 2014 the unified pension law for violating the constitutional articles (61/1<sup>st</sup>) and (80/2<sup>nd</sup>), when referred to article (37) of that law we found that it included 4 clauses, clause 1<sup>st</sup> stated ((exception of the article (21) of this law, the pension salary of the president, the speaker of the I.C.R., the prime minister, their deputies, the I.C.R. members, the ministers and whom in their degree, the governing council and their alternates, the temporary national council members, chef and members of the national committee, the acting ministers and whom in their degree, who receive salary of acting minister, consultants, special degree holder, whom in general director degree, and who receive general director salary) in cases of retirement, death, resignation under the approval of competent authorities as following:



1. (25%) of the last (salary, bonus or wage) with the allocations received during service.
2. Adding (2.5%) of the last (salary, bonus or wage) with the allocations for each year of the service years, not to exceed (80%).

Second: The provision of clause 1<sup>st</sup> of this article is implemented on judges and the general prosecution members in the supreme Iraqi criminal court who referred to retirement.

Third: who are included with the provision of clause (1<sup>st</sup>, 2<sup>nd</sup>) of this article that has been employees for the state to return to their original job, the resignation consider canceled, their service duration above mentioned calculated for the purpose of addition, elevation, promotion and retirement, the competent authority obliged to provide the require degrees for them, they shall have the choice between the pension salary stated in clause 1<sup>st</sup> or the salary of the job he returned to.

Forth: the provisions of clause (1<sup>st</sup> and 2<sup>nd</sup>) of this article shall be implemented on who referred to retirement before the validity of this law, who occupy their post after (9.4.2003).

Article (37) of the law bill stated in clause 1<sup>st</sup> of it ((under decision of the council of ministers the pension salary shall be increased when the annual inflation rate increases, this increase shall not be more than the inflation)), it stated in clause 2<sup>nd</sup> that ((the annual inflation rate less than (5%) shall not be inconsiderable)). From the above we noticed that article (37) of the unified pension



law bill submitted to the I.C.R. by the council of ministers is not related to article (37) of the unified pension law no.(9) for 2014, the I.C.R. has amended the mentioned article by adding paragraph (1, 2) to clause 1<sup>st</sup> when enacted the law, under paragraph (1) of clause 1<sup>st</sup> of the law he granted pension salary to those mentioned in clause 1<sup>st</sup> of article (37) by the ratio (25%) of the last salary, bonus or wage with the allocations he received during service, paragraph (2) of that clause stipulate adding (2.5%) of the last salary, bonus or wage with the allocations for each year of the service not more than (80%) as all that is financial burden on the treasury, so the I.C.R. should have obtained the approval of the council of ministers on that increase according to final part of article (62/2<sup>nd</sup>) of the constitution, because the state participate in the imports of the employees' pension account (15%) of the employee monthly salary under article (9/1<sup>st</sup>/b) of the unified pension law no.(9) for 2014 and article (130) of the I.C.R. bylaw. For the aforementioned reasons article (37) of the unified pension law no.(9) for 2014 violates article (60/1<sup>st</sup>), article (62/2<sup>nd</sup>) of the constitution, and article (130) of the I.C.R. bylaw which require to rule its unconstitutionality. as for article (38) of the unified pension law no.(9) for 2014 challenged to be unconstitutional and requested to be repealed, the plaintiff agent limits his request in his draft submitted to the court on (2.6.2014) to clause 3<sup>rd</sup> of the mentioned articles that states ((the director of the district, members of local councils, districts, sub-districts, and municipal councils (sectors and neighborhoods) who have a pension



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service of no less than (15) years, are entitled to a pension salary calculated on the basis of the (first-stage) salary of the second degree according to the salary scale attached to the state and public sector employee salaries law no.(22) for 2008 the amended or any law to replace it on the basis of the stipulated percentage in clause 2<sup>nd</sup> of article (21) of this law without affecting without prejudice to their right to receive a more retirement pension in light of their job service and their position in the public service for those whose service exceeds four years, the minimum salary determined under the provisions of this law shall be paid to him and this does not apply to subsequent courses for the enforcement of this law)), article (38) of the unified pension law includes clauses as article (38/1<sup>st</sup>) stated that ((the president, his deposes, the prime minister, his deputies, ministers and who in their degree of their salary according to law, the pension rights calculated on the base of the last salary and the stipulated ratio in clause (2<sup>nd</sup>) of article (22) of this law, the ministers service during their occupy count as double service for all purposes)), clause 2<sup>nd</sup> stated that ((the President of the Republic and the Prime Minister are exempt from the service and age condition, their service count as (15) years if it is less than that)) we noticed that what listed in article (38) of the unified pension law no.(9) for 2014 is not related to what listed in article (38) of the unified pension law bill, article (39) stated in paragraph (b,c) of the bill that the pension rights of the governorates councils members, the governor deputies, the caretaker, and the district manager who have



service not less than (15) years of first degree according to the salary chart attached to the state and public sector employee' salaries law no.(22) for 2008 the amended, paragraph (c) of clause 5<sup>th</sup> mentioned the pension rights of the local council members who have service not less than (15) years to earn pension salary calculated on the base of first stage salary of second degree according to the salary chart attached to the amended state and public sector employee salaries law no.(22) for 2008 or any other law to replace this law without affecting their right of receiving higher pension salary in light of their service and job post in public service)). From the aforementioned, the I.C.R. when legislated article (38) of the unified pension law no.(9) for 2014 clause 3<sup>rd</sup> has made some amendment on the law bill articles and changed the articles related to the pension rights of some posts as in article (38/3<sup>rd</sup>) of the law, as it changed the pension rights related to the district director and others mentioned in article (39/5<sup>th</sup>/beh) of the law bill, it have the jurisdiction to do so but not to cause financial implications on the state treasury, in this case he could refer to the council of ministers to obtain the approval on the increase according to article (62/2<sup>nd</sup>) of the constitution and article (130) of the I.C.R. bylaw. The I.C.R. when enacted article (38/3<sup>rd</sup>) of the law didn't do that therefore article (38/3<sup>rd</sup>) is violating article (62/2<sup>nd</sup>) of the constitution and article (130) of the I.C.R. bylaw, therefore the F.S.C. decided that article (37) and clause (3<sup>rd</sup>) of article (38) of the unified pension law no.(9) for 2014 is unconstitutional for violating

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article (60/1<sup>st</sup>) and (62/1<sup>st</sup> ,2<sup>nd</sup>) of the constitution and article (130) of the I.C.R. bylaw , and to notify the I.C.R. to legislate the mentioned articles according to the path stipulated in the constitution in articles (60/1st) and (62/1st ,2nd) of the constitution, and to burden the defendant/ being in his post the expenses and the advocacy fees for the plaintiffs agent amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final and publicly on 24.6.2014 .