

Republic of Iraq  
Federal Supreme Court  
Ref. 36 / federal /2023



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The Federal Supreme Court (F S C) has been convened on 7/5/2023 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 Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiffs:

1. Nouri Farhan Ahmed/ former Minister of Culture.
2. Yarub Nadhim Farman/ former Minister of Agriculture.
3. Abid Thiab Jazaa/ former Minister of Higher Education and Scientific Research.
4. Layla Abdul Lateef Mohammed/ former Minister of Labor and Social Affairs.
5. Fatin Abdul Rahman Mahmood/ former Minister of the State for Women's Affairs.
6. Alaa Habeeb Khadhm/ former Minister of the State for Council of Representatives Affairs.
7. Mahir Dalli Ibrhim/ former Minister of Culture.
8. Sourya Youhanna Esho/ former Minister of Migration and Displaced.
9. Saad Tahir Abid/ former Minister of the State for Governorates Affairs.
10. Saad Naif Mushhin Numan/ former Minister of Tourism and Antiquity.

Their agents were the barristers Abdul Qadir Abdul Jabbar Ali, Ahmed Abdul Hameed Khalifa, and Ula Sami Mukheef.

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The Defendants: 1. the Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Shakoor and the assistant legal counselor Shatha Ashoor Alwan.  
2. Minister of Finance/ being in this capacity.  
3. President of the National Pension Commission/ being in this capacity – his agent the senior legal counselor Hanan Saadoon Jabir.

### **The Claim**

The plaintiffs claimed through their agents that the first defendant issued Resolution No. (333) dated 8/9/2015, which stipulated in item (2<sup>nd</sup>) thereof to stop the payment of pensions granted under previous laws and decisions to those who occupied their positions after the date of 9/4/2003 and included ministers, and decided in paragraph (2) of the same item to recalculate the retirement salary for those covered by paragraph (1) who have a retirement service of not less than (15) years and an age of not less than (50) years following the provisions of Article (21/ first and second). of the Unified Retirement Law No. (9) of 2014, this decision is flawed and incorrect because it violates the Constitution in Article (80/3<sup>rd</sup>) thereof, which specified the powers of the Council of Ministers to issue regulations and instructions with the aim of implementing laws and not violating them, as well as violating the Unified Retirement Law in Articles (21/1<sup>st</sup>) and (35/3<sup>rd</sup>) on calculating the salaries of civil retirees of the first job grade and below according to the arithmetic equation contained in Article (21) of the law, while ministers, and their rank, are not of that category because they are not covered by the provisions of the Civil Service Law No. 24 of 1960 and the Law of Salaries of State Employees No. 22 of 2008, the first defendant had previously issued a decision on 5/4/2016 excluding some categories of the decision - the subject of the appeal - including those who were at the rank of minister or undersecretary or with special

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grades, and they are (judges, the president and members of the High Electoral Commission, university professors, senior officers in the army and the internal security forces) and since this exception is a clear and deliberate violation of the theory of justice, equality and career progression, as previously ruled by the court in its decision No. (36 / Federal / 2014) on 24/6/2014 the unconstitutionality of Articles (37 and 38/3<sup>rd</sup>) of the Unified Retirement Law No. (9) of 2014 for violating Articles (60/1<sup>st</sup>) and (62/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution and Article (130) of the Rules of Procedure of the Council of Representatives, the court indicated in letter No. (40/Ta. Qaf/2014) on 10/7/2014 that the ruling on the unconstitutionality of Article (38) of the Unified Retirement Law means counting it under the canceled ruling, in addition to that the State Shura Council by its decision No. (111/2014) on 30/9/2014 decided ((Item (1<sup>st</sup>) of Article (35) of the Unified Retirement Law No. (9) of 2014 means the continuation of the payment of pensions to the categories stipulated in Article (37), and item (third) of Article (38) of the Law who were referred to retirement, and they were receiving pensions following laws in force prior to the effective date of the aforementioned Unified Retirement Act)), therefore, based on Article (93/3<sup>rd</sup>) of the Constitution, the plaintiffs asked this court to rule that the Council of Ministers Resolution No. (333) dated 8/9/2015 is invalid and canceled, and to cancel all the effects that resulted from it, and harmed them and other categories that were included in it, and to continue to pay their pensions based on Order (9) of 2005, and to rule obliging the defendants, being in their capacity, to pay them cumulative retirement salaries, since the date of its issuance on 8/9/2015 as an effect of the decision to be canceled with them bearing judicial expenses and advocacy fees. The lawsuit was registered with this court in number (36/federal/2023), and the legal fee was collected based on Article (21/1<sup>st</sup>) of the court's internal regulations No. (1) of 2022, and the defendants are informed of their petition and documents in accordance with item (2<sup>nd</sup>) of the same article, the first defendant's agent replied in the answering draft dated 26/3/2023, its conclusion is that the court had previously ruled on the subject matter of the lawsuit in previous decisions, the latest of which was Decision (265/Federal/2022) on 17/1/2023 and ruled to dismiss the appeal against Resolution (333) of 2015, and that the decision - the subject of the appeal - was issued based on the powers vested in the Council of Ministers under Article

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(80) of the Constitution with the aim of implementing the laws and it came in application of Article (21) of the Unified Retirement Law, and did not include a violation of the provisions of Article (61/1<sup>st</sup>) of the Constitution, and is not considered interference shall be the work of the legislative authority, and shall not violate the provisions of Article (21/1<sup>st</sup>) of the Unified Retirement Law, which stipulates in Article (1/7<sup>th</sup>) thereof: (Employee: Any person entrusted with a civil or military job, within the security forces, or a public service officer who receives a salary...) Article 3 stipulates that: "The provisions of this law shall apply to all employees of the state, the public sector, temporary employees and those entrusted with public service..." Since the minister is entrusted with public service, he is subject to the aforementioned law, and to the decision of the Council of Ministers - the subject of the appeal - so he requested a judge to dismiss the plaintiffs' lawsuit and charge them expenses, fees, and advocacy fees. The third defendant's agent replied in the answering draft dated 4/4/2023, summarizing that the decision in question was following the Constitution and that Article (38/1<sup>st</sup>) of the Unified Retirement Law No. (9) of 2014 stipulated: ((All legal texts contained in legislation and orders that determine for the retired or entitled person retirement rights (salary or bonus) contrary to the provisions of this law shall be repealed)) accordingly, the provisions of the decision - subject to appeal - were implemented by the Retirement Authority, and since the provisions of the law and the provisions of the decision - the subject of the appeal - were clear and enforceable, the authority is an executive body whose task is to comply with the implementation of the provisions of the legal texts and decisions in cases that fall within its competences stipulated in article 5/4<sup>th</sup> of the Unified Retirement Law, which stipulated (calculating and disbursing retirement rights in accordance with the law), and therefore it is an implementing body of the law, it is not established for him, and the subject of the appeal is outside the jurisdiction of the Authority, so she requested to dismiss the lawsuit on behalf of her client because the litigation was not directed and the plaintiffs were charged with judicial fees and expenses. After completing the procedures required by the rules of procedure of the court, a date was set for the pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and the parties were informed of it, and on the appointed day, the court was formed, and the plaintiffs' attorneys attended, and the agents of the first and third defendants

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attended, and the second defendant or his agent did not attend despite the notification in accordance with the law, and the public presence pleadings began, the plaintiffs' attorneys repeated what was stated in the lawsuit petition and requested a ruling accordingly, the defendants' agents present answered and requested the dismissal of the lawsuit on behalf of their clients for the reasons stated in their response regulations, and the first defendant's attorney highlighted an attached list that the court saw and provided the plaintiffs' agents with a copy of it, and it was linked within the case papers, and the agents of the parties present repeated their previous statements and requests, and where there is nothing left to be said, the end of the argument has been made clear, and the court issued the following judgment decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs, Nouri Farhan Ahmed, Yarub Nazim Farman, Abed Theyab Jazaa, Laila Abdul Latif Mohamed, Faten Abdul Rahman Mahmoud, Alaa Habib Kazim, Maher Deli Ibrahim, Souriyeh Youhanna Esho, Saad Taher Abed, Saad Nayef Mashhan and Qahtan Abbas Noman, former ministers, filed this lawsuit to claim the invalidity of the Council of Ministers Resolution No. 333 of 8/9/2015, which included in item (2<sup>nd</sup>/1) thereof the suspension of the payment of salaries. Retirement granted to a number of positions, including ministers who held their positions after 9/4/2003 It was stated in paragraph (2) of the same item to recalculate the retirement salaries of those covered in paragraph (1) who have a retirement service of not less than (15) years and an age of not less than (50) years in accordance with the provisions of Article (21 /1<sup>st</sup> and 2<sup>nd</sup>) of the Unified Retirement Law No. (9) of 2014, and they requested the cancellation of all the effects of the aforementioned decision, and the judgment obliging the defendants' Prime Minister, Minister of Finance, and the President of the National Pension Authority, being in their capacity, to pay their accumulated retirement salaries since the issuance of the contested decision on 8/9/2015, claiming that the aforementioned decision violated the provisions of Article (80) of the Constitution, which defined the powers of the Council of Ministers to issue regulations and instructions with the aim of implementing laws exclusively and not issuing

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decisions to that effect and violating the text of Article (35/3<sup>rd</sup>) of the Unified Retirement Law, which required the application of the equation contained in Article (21) of the law. Recalculation of salaries of retirees of the first grade and below, and that the ministers are not within the degree mentioned therein, the agent of the first defendant, the Prime Minister, being in this capacity, paid the lawsuit according to the response regulation dated 26/3/2023, requesting the dismissal of the plaintiff's lawsuit from a formal point of view, as it had previously been decided in multiple decisions, the latest of which was the decision issued by this court No. 265 / Federal / 2022 on 17/1/2023 and also requested the dismissal of the lawsuit from a substantive point of view because the aforementioned decision - the subject of the appeal - came based on the powers vested in the Council of Ministers under Article (80) of the Constitution The plaintiffs are among those to whom the Unified Retirement Law No. (9) of 2014 applies, and the third defendant's agent paid the head of the National Retirement Authority in addition to his position under its response list dated 4/4/2023, in which it requested the dismissal of the lawsuit as the contested decision came based on the powers granted to the Council of Ministers under Article (80) of the Constitution, and in the application of the provisions of Article (21) of the Unified Retirement Law, her client's department is an executive department that has committed to implementing the provisions of the law and the decisions issued by the competent authorities, and requested that the case be dismissed from her client because the litigation was not directed. The Federal Supreme Court finds that the plaintiffs' claim is admissible in terms of litigation for the plaintiffs and the first defendant in addition to his position because they are legal opponents who meet the conditions of litigation, and they have the legal capacity to litigate, and the lawsuit falls within the jurisdiction of this court based on the provisions of item (third) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, and the court also finds that the interest of the plaintiffs is achieved in this lawsuit in accordance with the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, and the provisions of Article (20) of the Rules of Procedure of the Federal Court. Supreme Court No. (1) of 2022 the fact that all plaintiffs are among those to whom the challenged decision

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was applied, the court finds that the plaintiffs' quarrel with the second defendant, the Minister of Finance, and the third the President of the National Pension Authority, being in their capacity, was not valid, since the litigant in the lawsuit is the one whose approval entails a judgment on the imposition of a declaration from him, and since the contested decision was not issued by them, but was issued by the first defendant, the Prime Minister being in this capacity, and it is enforceable by them as long as it is in force unless it is annulled by the authority that issued it, or judged invalid by the judiciary, therefore, the plaintiffs' lawsuit must be dismissed on behalf of the defendants, the Minister of Finance and the President of the National Retirement Authority in addition to their functions, because the litigation is not directed against them, and the payment of the first defendant's agents, the Prime Minister, in addition to his job, to dismiss the lawsuit for a previous adjudication, the court finds that it is a constitutional and legal return, as the judgment of this court has settled on its jurisdiction to consider the validity of decisions issued by the federal authorities in accordance with the provisions of item (3<sup>rd</sup>) of Article (93) of the Constitution of the Republic of Iraq for the year 2005 and item (third) of Article (4) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, objectively, the court finds the following: First: Article (1/7<sup>th</sup>) of the Unified Retirement Law No. (9) of 2014 defines the employee to whom the law applies as (any person entrusted with a civil or military job, within the security forces, or entrusted with public service, and who receives a salary, wage, or remuneration from the state and from whom retirement arrests are deducted), and Article (19) of the Penal Code No. (111) of 1969, as amended, in charge of public service, is defined as (every employee or employee or worker entrusted with a public mission in the service of the government, its official and semi-official departments, and the departments subordinate to it or placed under its control, including the Prime Minister, his deputies, ministers, members of parliamentary, administrative and municipal councils...) Since the plaintiffs are former ministers and have been entrusted with the management of their ministries, they received a salary from the state, and retirement arrests were deducted from them, so they are covered by the provisions of the Unified Retirement Law. Second: This court had previously issued its decision No. (36/Federal/2014) on 24/6/2014, which included the ruling on the

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unconstitutionality of Articles (37 and 38/3<sup>rd</sup>) of the Unified Retirement Law No. (9) of 2014, which had granted some categories, including ministers, an exception to the Unified Retirement Law in terms of age and service, under which ministers became subject to the provision of Article (21) of the Unified Retirement Law. Third: Article (38/1<sup>st</sup>/Alif) of the Unified Retirement Law No. 9 of 2014 stipulates the cancellation of Legislative Order No. 9 of 2005, as amended by Legislative Order No. 31 of 2005, which had granted retirement rights to ministers, and those of their grades, including plaintiffs, and thus there is no legal text that allows granting retirement rights to plaintiffs contrary to the provisions of the Unified Retirement Law. Fourth: The challenged decision came from the incorrect application of the provisions of Article (38/1<sup>st</sup>) of the Unified Retirement Law No. (9) of 2014, which states: All provisions contained in legislation and orders that determine for the retired or entitled to retirement rights, salary or gratuity contrary to the provisions of this law, including Legislative Order No. (9) of 2005 shall be repealed. Fifth: The Unified Retirement Law has equalized all employees assigned to a public service who receive a salary, wage, or remuneration from the State in the matter of retirement rights without discrimination, the plaintiffs' demand for a ruling on the invalidity of the contested decision and the annulment of its effects means a return to an exception (the President of the Republic, his deputies, members of the Presidency Council, the Prime Minister and his deputies, ministers of their rank, those who receive their salaries, the Speaker of the House of Representatives and his deputies, members of the Council of Representatives, members of the Governing Council, members of the Interim National Council, the President and members of the National Assembly, undersecretaries of ministries and their rank, those who receive the salary of an undersecretary, advisers, holders of special degrees, general directors and their rank, those who receive their salaries, the chairman and members of the Board of Commissioners of the Commission. Independent Supreme Electoral Commission, Human Rights Commission, President, and members of the Welfare Council of the Political Prisoners Foundation and the governor, his deputy, the mayor, the district director, the heads of provincial councils and their deputies, members of provincial councils, heads of district councils, districts, municipal councils and their members (districts and neighborhoods)) of the provisions of the Unified Retirement Law and

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the return to the application of the provisions of Articles (37 and 38/3<sup>rd</sup>) of the Unified Retirement Law, which this court has previously ruled unconstitutional and canceled, all of which means distinguishing them from other employees and those entrusted with public service without being legally justified. For all of the above, and by request, the Federal Supreme Court decided the following:

1. Dismissal of plaintiffs Nouri Farhan Ahmed, Yarub Nazim Farman, Abd Diab Jazaa, Laila Abdel Latif Mohamed, Faten Abdel Rahman Mahmoud, Alaa Habib Kazem, Maher Deli Ibrahim, Souriyeh Youhanna Isho, Saad Taher Abed, Saad Nayef Mashhan and Qahtan Abbas Noman on behalf of the second defendant, Minister of Finance and the third defendant, head of the National Pension Authority, in addition to their jobs for not directing the litigation.
2. Dismissing the plaintiffs' lawsuit on behalf of the first defendant, the Prime Minister, in addition to his job, for lack of prejudice to the validity of the Council of Ministers Resolution No. (333) on 8/9/2015 and charging them fees, expenses, and attorney fees for the defendants' agents, the Prime Minister, being in their capacity, the legal adviser Qassim Suhaib Shakour, the assistant legal adviser Shatha Ashour Alwan, and the third defendant, the head of the National Pension Authority, in addition to his position, the senior legal consultant, Hanan Saadoun Jaber, an amount Its amount is (100,000) one hundred thousand dinars distributed between them in accordance with the law.

The decision has been issued unanimously, final, and binding for all authorities according to the provisions of articles (93/3<sup>rd</sup> and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4/3<sup>rd</sup> and 5/2<sup>nd</sup>) 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 16/Shawwal/1444 Hijri coinciding with 7/May/2023 AD.

**Judge**

**Jassim Mohammed Abbood**

**President of the Federal Supreme Court**

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