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The Federal Supreme Court (F.S.C.) has been convened on 6.5.2013 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:

(sin.kaf.sad) / his agent the attorney (sin.mim.sin.).

The defendant:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post – his agents the manager (Sin. ta. yeh.) and (heh.mim.sin.).

**The claim:**

The agent of the plaintiff claimed that the Unified Pension Law no.(27) of 2006 granted a committee linked to the administration to undertakes procedures and issues judicial decisions in contravention of the constitution and the principle of separation of powers stipulated in the article (47) of the constitution and for the following reasons:

First: article (20/1<sup>st</sup>/alif) of the unified pension law no.(27) of 2006 stated the formation of a committee named (audit of

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pensioners cases) headed by a judge of class two assigned by the Judicial Council and two members of the legal employees with rank not less than manager, one from the Ministry of finance and the other is from Ministry of Defense, it takes its decisions by the majority, it considers all contested retirement cases arising from the implementation of the provisions of this law. (b- Those that are related may appeal before the committee within ninety days from the date of notification or knowledge of the decision of the minister or the head of the department or the body), as article (29) of the Civil Procedures Law no.(83) of 1969 stated that (the jurisdiction of civil courts applies to all natural and legal persons, including the government, and it is competent to adjudicate all disputes, except for what is exempted in a special text), article (7) of the Administrative Judicial Law no.(106) for 1989 stated that (the Administrative Judicial Court is competent to examine the validity of orders and administrative decisions issued by the employee and bodies in the departments of the state and the public sector that no reference has been appointed to challenge it, based on the appeal of a person who has a known interest and a possible situation. Nevertheless, the potential interest is sufficient if there is reason to fear that the related persons will be harmed), what stated in the end of article (29) of the civil procedures law no.(83) of 1969 the statement (except what was excluded by special text) as what was stated in the text of article 7<sup>th</sup> of the

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administrative judicial court' law no. (106) for 1989 the statement ((no reference for challenge it was appointed)), these two articles was nullified by the Constitution throw the text of article (95) ((the establishment of special or extraordinary courts is prohibited.)) and article (100) of it (It is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision) by that we see that the Iraqi Constitution of 2005 made the authority of the Iraqi judicial full without exceptions on all normal and legal persons including the governorate, as the Iraqi judicial is competent in all despots, whatever contradicts this is unconstitutional and not legitimate. The meaning in the work practiced by the retiree cases audit committee regardless from its name as committee or else, it work stipulated in last part of paragraph (3- 1<sup>st</sup>) of article (20) of the unified pension law no.(27) for 2006 as the following (it shall consider all the retirement cases under objections arises from the implementation of this law), paragraph (b-of 1<sup>st</sup>) of article (20) of the mentioned law stated (the relative persons could challenge before the committee in 90 days of the informing date or the knowing of the decision of the Minister or the department manager) which means that there is a prior grievance before the department with an objection committee, as for the committee to audit retired cases -the decision of the retirees cases audit committee has been under cassation before the federal court of cassation, the procedures of the retirees

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cases audit committee is the same of the Administrative Judicial Court, it's a committee associated with the management, its procedures and decisions are judicial, by that it become the management and the judge as the theory of the judge minister that the administrative judicial has neglected since (1872). When we review the letter of the Ministry of Finance/ legality/ general function/ department (802/18) no. (16486) on 15.5.2006 which stated that the retirees cases audit committee, therefore it considered as administrative committee, and that its decisions are administrative decisions and not judicial, for the reasons cleared by the plaintiff's agent in the case petition, article (20/1<sup>st</sup>/alif-beh) of the unified pension law no.(27) of 2006 and article (24/2<sup>nd</sup>) of the same law violates the Constitution, because article (20/1<sup>st</sup>/alif- beh) violates the principle of separation of powers, article (24/2<sup>nd</sup>) violates the social and finance rights stipulated in the Constitution, as article (13) of the Constitution of 2005 stated that ((first: this Constitution is the preeminent and supreme law in Iraq and shall be binding in all parts of Iraq without exception.

Second: no law that contradicts this Constitution shall be enacted. Any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void.)), according to what stated in draft above, article (20/alif – beh) of the unified pension law no.(27) of 2006 and article (24/2<sup>nd</sup>) of the same law are unconstitutional, it should be

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repealed and amend the law so that the administrative judicial court is the one that competent to consider the retirees cases in first place, as it name is the administrative judicial court and it is authorized to judge in the name of people), the administrative judicial court in the present time as first instant court is better than the retirees cases audit committee, also the rules of the administrative judicial court are submit to challenge before the Federal Supreme Court according to the text of article (4/3<sup>rd</sup>) of the F.S.C. law no.(30) for 2005, we hope for in future the independency of the administrative judicial from the Ministry of justice, as the judicial is the most justice and telling the right for citizens. After completing the required procedures according to paragraph (2<sup>nd</sup>) of article (2) of the F.S.C. bylaw no.(1) for 2005, a date for argument has been set, the agent of plaintiff and the agents of defendant all has attended and started in presence public session, the plaintiff agent repeated the answering draft requesting to rule according to it and to burden the defendant all expenses and advocacy fees, the defendant agents repeated the answering draft submitted on (7.2.2013) requesting to dismiss the lawsuit and to burden the plaintiff expenses and advocacy fees because the committee of auditing the retirees cases that is been challenge for been unconstitutional is privet committee, its decisions are with special nature that are in most characterized with the administrative character and not judicial decisions, as clause

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(3<sup>rd</sup>/alif) of article (20) of the unified pension law has specified a reference to challenge the decisions of the mentioned committee which is the Federal Court of Cassation during period of (60) days from the date of the inform with the committee decision, therefore article (20) of the unified pension law doesn't contradicts the principle of powers separation and the principle of judiciary independency, and doesn't represent interfering in the affairs of the judicial authority by the executive authority, for that and other reasons listed in answering draft he repeated his requests. whereas nothing left to be said, the argument is closed, the decision issued publicly.

### **The decision:**

During scrutiny and deliberation by the F.S.C., it found that the agent of the plaintiff initiated this lawsuit requesting to repeal the articles (20/1<sup>st</sup>/alif-beh) and (24/2<sup>nd</sup>) of the unified pension law no.(27) for 2006 for being unconstitutional, and requested to amend the law of Administrative Judicial Court to make it the one competent to consider the retirees cases in first place for the reasons he listed in the case petition. When reviewed article (20/1<sup>st</sup>/alif-beh) of the amended unified pension law no.(27) for 2006 we find that it stated on (the formation of a committee named (audit of pensioners cases) headed by a judge of class two assigned by the Judicial Council and two members of the legal employees with rank not less than

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manager, one from the Ministry of finance and the other is from Ministry of Defense, it takes its decisions by the majority, it considers all contested retirement cases arising from the implementation of the provisions of this law), paragraph (beh) of 1<sup>st</sup> of article (20) of the mentioned law stated ((those that are related may appeal before the committee within ninety days from the date of notification or knowledge of the decision of the minister or the head of the department or the body)), also found that article (24/2<sup>nd</sup>) of the mentioned law stated that (if the retired person or his legal representative did not submit a request to grant him the retirement pension within one year from the date of the end of his service from the position and referred to retirement, or he did not receive his pension during the mentioned period, his retirement pension shall be payed from the date of submitting the application unless the reason for not submitting the application or receiving his retirement pension was with a legitimate excuse. The minor and whoever governs him are excluded), from that we finds that the formed committee under the amended Unified Pension Law no.(27) of 2006 is privet committee formed by the mentioned law, its decisions are with special nature that are in most characterized with the administrative character although the committee is headed by judge of second class assigned by the Judicial Council, as clause (3<sup>rd</sup>/alif) of article (20) of the unified pension law has specified a reference to challenge the decisions of the

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mentioned committee before the Federal Court of Cassation during period of (60) days from the date of the inform, the decision of the cassation court is final, article (95) of the constitution stated (the establishment of special or extraordinary courts is prohibited) it didn't stipulate the prohibition of establishing special or temporary committees, therefore the formation of the aforementioned committee under the amended unified pension law no.(27) for 2006 does not contradict the text of the mentioned constitutional article, also doesn't contradicts article (100) of the Constitution which stated that (it is prohibited to stipulate in the law the immunity from appeal for any administrative action or decision) because the decision of the retirees cases audit committee submits to challenge before the federal court of cassation under clause (3<sup>rd</sup>/alif) of article (20) of the unified pension law, therefore the text of the mentioned article doesn't contradicts with the principle of judiciary independency or the interfering of the executive power with the work of the judiciary. Also article (24/2<sup>nd</sup>) of the unified pension law no.(27) of 2006 (amended) doesn't contradicts with article (30) of the Constitution because this article is not related to article (24/2<sup>nd</sup>) of the unified pension law, the legislator stipulated the text of article (24/2<sup>nd</sup>) of the unified pension law no.(27) of 2006 (amended) for organizing purpose and for stable transactions and wasn't stipulated for confiscating the pension rights of employees or denial it, with

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that, the law excluded the minor and whoever in the same governs from its provisions, also granting the Administrative Judicial Court the authority to consider the retirees cases of employees is not within the jurisdictions of this court and fall within the jurisdiction of the executive power. For all that the plaintiff lawsuit is not based on constitutional or legal substantiation, therefore the F.S.C. decided to dismiss the lawsuit and to burden the plaintiff the expenses and advocacy fees for the defendant agent amount of (ten thousand) IQ.D. this decision has been issued in presence, unanimously, and final according to article (94) of the Constitution, issued publicly on 6.5.2013.

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