



The Federal Supreme Court (F S C) has been convened on 24.2.2015 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs:

The case (42/federal/2014)

1. (heh.alif.kha)
2. (ain.ain.ta.ha)
3. (ta.sin.feh)

} their agent the barrister (kha.alif.shin)

The case (46/federal/2014)

4. (ghain.ra.kha)
5. (mim.ra.dal)
6. (ain.ain.ain)
7. The heirs of the Judge (mim.ain.ha)
(ra.ha.ain)
8. (jim.heh.mim)
9. (sin.mim.ain.ta)
10. (alif.nun.ha)

} on his own behalf
and on that of the rest
of the plaintiffs with
his cooleagues barristers
(jim.kaf.jim) and
(alif.mim.shin.jim)
either singly or in
combination

The case (48/federal/2014)

11. (kaf.shin.kha) – his agent the barrister (ain.ha.ain).

The case (49/federal/2014)

12. (ain.ha.ain) – his agent the barrister (kaf.shin.kha).

The case (51/federal/2014)

13. (mim.ain.ain..ha.sin) – retiree judge – barrister.

The case (52/federal/2014)

14. (ain.mim.ain).

15. (kaf.ha.sin).

16. (ain.alif.shin.ha).

17. (ra.shin.mim.ain) spouse of the judge (ghain.waw).

18. (ha.ha.mim).

19. (nun.sin.ta).

20. (nun.dhad.beh).

21. (kha.nun.shin.alif)

22. (ra.jim.ain).

23. (feh.jim.mim).

} their agent the
barrister
(jim.kaf.jim)
and (alif.mim.shin.jim)
and (ghain.ra.ha).

The case (54/federal/2014)

24. (ain.mim.yeh.feh) – his agent the barrister (kha.alif.ain).

The case (55/federal/2014)

25. (jim.yeh.mim.jim) – his agent the barrister (dhad.ha.mim.sin).

The case (56/federal/2014)

26. (alif.ha.ain) – his agent the barrister (ain.mim.nun).

The case (71/federal/2014)

27. (ain.mim.kha.dal) – the deputy of the public prosecutor and the retiree judge.

The case (75/federal/2014)

28. (ain.ain.ain) – his agent the barrister (ain.ain.beh).

The defendant: the Speaker of the ICR/ being in this capacity- his agents the jurist officials (sin.heh.yeh) and (heh.mim.sin).

The third-party: the Prime Minister/ being in this capacity – his agent the counselor official jurist (ain.sin.ain).

The claim

The agent of the plaintiffs before the FSC had claimed in case No. (42/federal/2014) that his clients were members in the federal cassation Court, whom retirees now. Each one of them has a judicial service not less than fifty years, and each one of them receives a pension salary of (80%) from what his colleagues whom still in service receive according to the decisions of revolutionary leadership Council (dissolved) No. (1021) for 1983 and (120) for 1997 and (145) for 2011 and the previous pension law No. (27) For 2006, but law No. (9) For 2014 and in the article (35/4th) had stipulated that the retiree judge salary (80%) from the last salary and allowances he received after referral on retirement. It's also ordered to apply this matter to the judges who retired before the issuance of the aforementioned law by nine years, and it annulled the revolutionary leadership Council (dissolved) decisions abovementioned, as well as the previous unified pension law. The mentioned text is unconstitutional and requires to challenge and annulling it, their salaries shall remain on the same status before (1.1.2014) which is it the date of the new pension law became in effect because the salaries of his clients had been decided and determined according to the revolutionary leadership Council (dissolved) decisions and the previous Unified Retirement LawNo. (27) for 2006 when it was in effect, based on (80%) of what their colleagues in service receive. This point had been affixed and received by them officially since they were referred to retirement and till the date of the law No. (9) for 2014 issuance, if the new enLawment of the pension law legally can annul the decisions of the revolutionary leadership Council (dissolved) and the previous pension law, as well as ending its effects since its issuance and executing it. This means legally it can't remove its effects which is the pension salary decided according to it. These salaries became acquired rights and it can't be faced or annulled, and the Unified Retirement LawNo. (9) for 2014 had admitted the gained right under the sentence of the final rights in the article (35/1st) of it, while it supported the remaining of retirees' rights which existed before it becomes in effect because these are final rights, but he said again and in the same text (if no text listed may contradict it) and this exception forms a contradiction with the first attitude which approved the gained right. The

pension salary comes from the occupation service which legally determined and the deducted amounts from the employee during this period, these amounts are saved to be paid latterly as monthly salaries after his referral to retirement. Therefore, it can't be withheld, confiscate, lessens, or reducing it, saying contrariwise will form again for the state without a reason. The last salary for the judges referred to retirement before the issuance of law No. (9) for 2014 is unstable, and changes whenever an increase occurs on their colleagues' salaries who are still in service. Therefore, the pension salary of the judge is unstable, and the legislator in the new law should clarify the method of implementing the law in this case when calculating the pension salary of the judge, and the pension law No. (9) for 2014 and in the article (35/4th-alif-beh) of it had reduced retroLawively the salaries of retirees judges before its issuance and becomes in effect and (80%) of the last salary they received when referred to retirement instead of their salaries they were receiving before the issuance of that law (80%) of what their colleagues receive for these reasons and other reasons listed in the petition of the case. The agent of the plaintiffs requested from the FSC to judge by unconstitutionality of the article (35/1st) and the article (35/4th-beh) of the Unified Retirement LawNo. (9) for 2014 and to annulling it because it's violating the articles (23/3rd & 19/10th % 130) of the constitution in content and the purpose from the constitution which represented by guaranteeing the citizens' rights, and it's also violating what Iraqi judiciary decided and settled on of respecting and not to infringe the acquired rights, as well as to keep the pension salaries of his clients as they were before the issuance of the new pension law. The agent of the defendant answered the petition of the case with an answering draft dated (22.4.2014), he requested from the FSC to reject the case because it's not specialized in trying the gained employment rights, and for other reasons he listed in the draft. On the scheduled day of the argument, the agent of the plaintiffs the barrister (kha.shin) attended, as well as the agents of the defendant the official jurists (sin.ta.yeh) and (heh.mim.sin) attended according to the power of attorney attached to the case's dossier. The public in the presence of both parties argument proceeded, the agent of the plaintiffs repeated what was listed in the petition of the case and he requested to judge according to it. Also, the agents of the defendant repeated what was listed in the answering draft and they requested to reject the case. The agent of the plaintiffs added that the defendant is responsible for changing the law bill which referred to him

from the Cabinet, and he requested to introduce the Prime Minister as a third party to inquire him about this body. According to the article (69/4) of civil procedure law, the court decided to introduce the Prime Minister as a third party in the case to inquire about what requires to decide the case. The agents of the defendant presented an answering draft of the defends of the defendants' agent according to the draft dated (4.6.2014) and (29.6.2014) and they challenged that the law bill, when received by the ICR from the Cabinet, didn't include a diminishing of the judges' salaries, but the ICR enLawed the law in its current form, and it violated what listed in the government law bill. This matter is considered a constitutional violation which requires to annul the text. The agent of the third party the Prime Minister presented his sayings in a written draft dated (11.11.2014) and he indicated that the provisions of article (36/4th) of the law bill relied on calculating the pension rights of the judge and the public prosecution member based on the salaries stated for them according to the law No. (27) for 2008 (amended), not based on the last salary and allowances they received when referred to retirement. While item (4th) of article (35) of the law No. (9) for (2014) which is similar to the article (36) of the law bill (research topic), this article had calculated the pension salary of the judge and the public prosecution members based on the last salary and allowances received by the judges and the public prosecution member or their successor when referred to retirement. The court reviewed the government law bill sent to the ICR by the Cabinet and displayed by the agent of the third party, and it found that there are other cases initiated before this court by the plaintiffs who their names are listed in the preface of the decision. Worthy to mention the cases numbers (46, 48, 49,51,52,54,55,56,71, 75/federal/2014). The purpose of initiating these cases is one, which is the re-expend the pension salaries to them before the issuance and validity of the Unified Retirement LawNo. (9) For 2014, even the substantiations were different which they relied on in this case to return to the previous pension salaries, and according to the relation between these cases and the article (75 & 76/2nd) of the civil procedure law No. (83) for 1969 (amended). The court decided to unify these cases with case No. (42/federal/2014) and to regard the last case is the original because it was the first in initiating, and the defendant is the same body in all cases. The agents of the case's parties have attended, as well as the agents of the defendant and the third party, have attended too. The public in presence

argument proceeded, the agents of the plaintiffs repeated what listed in their case petition and requested to judge according to it and to burden the defendant the expenses and the advocacy fees. As well, the agents of the defendant repeated their sayings and what listed in their presented drafts abovementioned, and the draft dated (8.12.2014). The court found that the plaintiffs in their initiated cases had challenged the articles that changed the route of their pension, they relied on many reasons which indicate the unconstitutionality of the challenged articles. Among these challenges that there is a change has taken place in the law bill prepared by the Cabinet when enLawing it by the ICR, and by reviewing the draft of the agents of the defendant and the draft presented by the agent of the third party the Prime Minister. The amendment made by the defendant had concentrated on the article (35/4th) which had the series (36) in the law bill, the agent of the plaintiffs stated that this amendment is violating article (60) of the Constitution. The agents of the case's parties repeated their sayings, requests, and what listed in their written drafts. They requested to judge according to it. The Court reviewed their sayings and the written drafts exchanged between them, whereas the Court completed its scrutinizes in the case, it decided to make the end of the argument clear, and the decision has been made clear.

The decision

During the scrutiny and deliberation by the FSC, the court had found in the case (42/federal/2014) and the cases unified with it and mentioned above that the plaintiffs had requested to judge by unconstitutionality of article (35/1st, 4th/Beh) of the Unified Retirement Law No. (9) for 2014 and to annul it because it violating the provisions of the articles (19/10th) (23/3rd) and (130) of the Republic of Iraq Constitution for 2005 in content and the target which represented by not exposing to the gained rights, in addition to what the Iraqi judiciary settled on by respecting these rights and not to expose it. Among these rights is the pension salary of the judges and the public prosecution members who referred to retirement before the Unified Retirement Law aforementioned becomes in effect, they added for the reasons mentioned that enLawing the Unified Retirement Law as much as related to the article (35) of it was violating what listed in its law bill received from the Cabinet and the ICR took a decision without returns to the Cabinet which presented the law bill. This procedure had aggrieved their

pension salary and their living conditions, as well as their families. By returns to the substantiations listed by the claim in the mentioned cases, we find that the provision of the article (19/10th) of the constitution stipulated that the criminal laws shall not have retroLawive effect, unless it is to the benefit of the accused. Therefore, the FSC finds that this substantiation from the constitution is not valid to issues a judge for the benefit of the plaintiffs because the Unified Retirement Law No. (9) for 2014 is not criminal law. As for the second substantiation of their case is the article (23/3rd) of the constitution, and by returns to it, we found it's concerned private property rights and could only be removed for public benefit purposes and in exchange for fair compensation, in addition to giving it the right to own property for an Iraqi anywhere in Iraq. The Federal Supreme Court also finds that the substantiation is not valid for the plaintiffs as they have requested because pensions are not one of those rights mentioned in article 23/3rd of the constitution. The third substantiation, the text of article 130 of the constitution, is also not valid for the plaintiffs' claims because it concerns whether legislation remains in force unless it is repealed or amended in accordance with the provisions of the constitution. The fourth substantiation mentioned by the plaintiffs, which is the "acquired right" to them in the pension they received before the entry into force of the common pension law referred to and may not be infringed as an acquired right, is found by the Federal Supreme Court to find that the doctrinal definition of the acquired right, as described in one of the explanations of the law, is "a legal status that protects the benefit received by the person as a result of a law or administrative decision". The Federal Supreme Court finds that the pension is in fLaw an acquired right of the employee when the conditions of his grant are available from the state and may not be withheld from the employee except in the circumstances stipulated by law, but the right in terms of increase or decrease is not considered an acquired right because this quorum is governed by the financial situation of the state and the social status of the retirees. Therefore, this substantiation is also not valid for the plaintiffs as they requested. The Federal Supreme Court stands on the last substantiation on which the plaintiffs based the unconstitutionality, namely, that the ICR legislates article (35/4th/Beh) of the Unified Retirement Law other than what is contained in the draft sent by the Council of Ministers without reference to it and has its consent to change it in terms of wording and content. The provision of this article concerning the salaries of judges

and prosecutors referred to retirement before the entry into force of the Retirement Law No. 9 of 2014 was mentioned in the draft Cabinet and was in sequence (36/4th) of the draft as follows (the retirement pensions of retired judges and prosecutors are recalculated). The president, vice-presidents and members of the Federal Court of Cassation who are referred to retirement before this law comes into force or their successors under the terms of the calculation of the pension stipulated in article 22 of this law and based on salaries established under Law No. 27 of 2008 amendment or any law that replaces it). The ICR amended this provision on how to calculate the salaries of judges and prosecutors who were referred to retirement before the implementation of the Unified Retirement Law No. 9 of 2014 on 1 January 2014 in terms of content and drafting without referring to the Council of Ministers, which sent the original of the draft. Contrary to constitutional contexts, the article concerning judges and prosecutors who are referred to retirement before the retirement law aforementioned becomes in force has a financial benefit affecting the budget, and the Council of Ministers is concerned with its preparation and is required to implement it by articles (78) and (80) of the Constitution. The text adopted by the ICR as an alternative to the aforementioned text of the draft, which was in sequence (36/4th) is the text of article (35/4th/Beh) of the law in force, which included judges and prosecutors who were referred to retirement before the law came into force with the same rules for calculating the retirement of judges and prosecutors who would be referred after it came into force (80%). Eighty percent of the last salary and allowances they receive in service when they retire. The change in the text has seriously aggrieved judges and prosecutors who are referred to retirement before it takes effect and their families, particularly those who were referred to retirement before law 27 of 2008, which raised the retirement of judges. By calculating the percentage set by their salaries when they were retired, the extent of the damage to them and their families is clear, noting that before article 35/4th/Beh of the Unified Retirement Law came into force, they received a pension of 80 percent before the article (35/4th/Beh) of the Unified Retirement Law was passed. Eighty percent of the salaries of their peers who continue to serve. When submitted, article 35/4th/Beh of the Unified Retirement Law was initiated by the ICR in a different form, content and without reference to it, contrary to the provisions of articles (60/1), 78 and 80/2nd of the Constitution. Accordingly, it was decided that

article (35/4th/Beh) of the Unified Retirement Law No. 9 of 2014 for the retirement of judges and prosecutors referred to retirement before it entered into force and cancelled it, and the requests of the other plaintiffs in the case (42/Federal/2014) and consolidated cases with them for lack of a substantiation from the Constitution and the law, and to burden the Speaker of the ICR/ being in this capacity all the expenses and the advocacy fees of the plaintiffs' agents in the cases and the amount of 100,000 dinars to be divided according to the law. The decision has been issued unanimously and decisively after its issuance on 24.2.2015.