

**In The Name Of God, Most Gracious, Most Merciful**

**Republic of Iraq  
Federal Supreme Court  
Ref.47 /Federal/Media/2014**



**Kurdish text**

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The Federal Supreme Court has been convened on 13/7/2014, 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-Nagshabndi, Abood Salih AL-Tememi, Michael Shamshon Qas Georges, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

**The Plaintiff:** (Ain.Jim.Mim.) his barrister (Ain.Kha.Mim.)

**The Defendants:**

- 1) ICR speaker- being in this capacity- his two legal officials (Sin.Ta.Yeh.) and (Heh.Mim.Sin.)
- 2) The prime minister- being in this capacity- his legal counselor (Ain.Sin.ALif.)

**The Claim:**

The plaintiff agent claimed that his client is a manager of a sub-district and an employee based on the article (23) from the law of governorates No.21 in 2008. He is a permanent employee and subject to the law of civil service but the law of retirement No.(9) of 2014 (unified) put him-based on the article (38/3<sup>rd</sup>) with the people mentioned in item (3<sup>rd</sup>) of the aforementioned article due to the different certificates they hold and the conditions of appointment. Especially, those who are not employees and charged for public service because they got bounces not salaries. So, the organizing of the plaintiff's retirement rights with (the members of local councils, districts, sub-districts, and the municipal councils of (districts and sub-districts)) vio-

lated the article (14) from the Constitution ((principle of equality before the law) and the article (16) from the Constitution ((Equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken.)) based on that, the plaintiff's retirement rights shall be organized according to the provisions of the article (21) from the unified law of retirement No.(9) in 2014. Giving the plaintiff a tenure while he is director manager assistant -according to the article (39/4<sup>th</sup>) from the of governorates not related to region No.(21) in 2008 in the first stage of the second degree- as like as the aforementioned employees will decrease his salary. According to the schedule of salaries attached to the law for employees of government and public salaries No.(22) in 2008 (Amended), the plaintiff is in the first degree/ stage seven and the decreasing of the degree will lead to a decrease in his salary while the article (21) from the law of retirement (unified) No.(9) in 2014 clarified the retirement salary that the employee deserves when referred to retirement and has served not less than 15 years according to what contained in the article (1/17<sup>th</sup>).whereas the plaintiff is an employee, the standard applied on all the employees shall be applied on him. Also, the unconstitutionality of the sub-district manager job presence – in the item (3<sup>rd</sup>) from the article (38) of the law of retirement No.(9) in 2014 (unified)- has been proved. In addition to that, his claim that the word (sub-district manager) was removed from the item and the article aforementioned above and the addition of the mentioned job to the article (21) from the law of retirement (9) in 2014 (unified) and the paragraph (12<sup>th</sup>) according to what the plaintiff and his department see. The agent of the first defendant answered on the case petition that the plaintiff agent didn't present any evidence to prove the contradiction between what he claims and the Constitution. His claim is just a perception. Based on this, he asked to reject the case. The second defendant agent answered on the case petition that the litigation is not directed to is client because the challenged article included with a law issued by the first defendant and the article (38/3/1) from the law of governorates not related to region No.(21) in 2008 had put what grant to the departments' heads a monthly bonus, not salary. The article (39/4<sup>th</sup>) from the mentioned law had put the head of sub-district in only a (degree) of director manager deputy, not a director manager deputy post. the FSC

had no competence to change or edit these legislative terms. Based on this, he requested to reject the case. The case was registered based on the item (3<sup>rd</sup>) from the article (1) of the FSC bylaw No.(1) in 2005. The requested procedures were completed according to the item (2<sup>nd</sup>) of the article (2) from the mentioned regulation. Then, the day 13/7/2014 was selected to be the day of the argument. The court had been convened so the agent of the plaintiff attended. Also, both agents of the defendants attended and the argument started presently and publicly. The plaintiff agent repeated the case petition and requested to decide according to it. The agents of the defendants answered that they requested to reject the case because its subject was decided previously in case No.(36/Fed/2014). The plaintiff agent requested from the court to warrant the ICR to determine the legal position of his client so he can enjoy the job advantages. Both parties repeated their sayings and whereas nothing left to say. The court made both the argument and the decision understood publicly.

#### **The Decision:**

During scrutiny and deliberation, the court found that the plaintiff agent challenges the constitutionality of the item (3<sup>rd</sup>) of the article (38) from the law of retirement (unified) No.(9) in 2014 for violating the articles (14, 16) from the constitution. Whereas the court has already decided in case No.(36/Fed/2014) for the same subject. The case became non-productive, where the plaintiff had what he claimed of deciding the unconstitutionality of the item (3) from the article (38). The FSC decided to reject the case and to burden the plaintiff with all the expenses of the advocacy for the defendants' agents. The decision was issued decisive and unanimously based on provisions of the article (5/2<sup>nd</sup>) of the FSC Law No.(30) in 2005 and the article (94) from the Constitution. The decision was understood publicly on 13/7/2014.