

Republic of Iraq  
Federal Supreme Court  
Ref. 50 / federal /media/ 2014



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 8.7.2014 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:

(sad.ain.ain.) his agent the attorney (mim.feh.sin.).

The defendants:

1. the Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post.
2. the Prime Minister/ being in this post, his agent the consultant (ain.sin.ain.).

The claim:

The agent of the plaintiff claimed in the case petition that the unified pension law no.(9) for 2014 in article 38/3 of it stated that ((the director of the district and the members of local, district, sub-district councils and the municipality council (sectors and neighbors) whom have service not less than (15) years shall deserve pension salary counted on the base of the salary of first stage of level two according to the salaries chart attached to the amended

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law of the state' employees and public sector salary no.(22) for 2008 or any other law replace it according to the stipulated ratio in clause 2<sup>nd</sup> of article (21) of this law without affecting their right of higher pension salary in light of their service and post in the general function, for who have more than (4) years shall receive the minimum salary stated by the provision of this law, this law shall not be affected except for the coming cycles)). As this article is unfair for the plaintiff' rights and the rights of all members of local councils therefore he challenged it for the following reasons: there is no member in these councils who achieved (15) years of actual service as these councils was formed after the regime fallen in 2003. Also that article didn't treat who have service less than (4) years for any reason of ending his membership. The mentioned article stated that who is covered by it shall deserve salary on the base of first stage of second level, but now they receive salary on the base of first stage of first level according to the salary chart attached to the amended law of the state' employees and public sector salary no.(22) for 2008, and who to calculate the last salary for whom are covered with the provision of paragraph (3<sup>rd</sup>) of article (38) above. In addition, the salary of whom are covered with the provision of the mentioned article on the base of first stage of first level in the main time, also calculating the pension salary according to the mentioned article on the base of first stage of second level is degree reduction, which is administrative punishment that require specific procedures stipulated in article (8- 6<sup>th</sup>) of the law of discipline of

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state employees and the socialist sector no.(14) for 1991. This article didn't treat the case of who don't have job service in the public service to take advantage of the service in order to activate the provision of this article. For all that the plaintiff agent requested to repeal article (38/3<sup>rd</sup>) of the unified pension law no.(9) for 2014, and to rule that the pension salary to be on the base of first stage of first level instead of second level, and the pension salary to be on the term of the electoral council period which is four years. The agent of first defendant/ being in his post responded to the case petition stating that the plaintiff agent didn't based her challenge on constitutional provision, and that the arguments she listed are related to opinion, and that is out of the F.S.C. jurisdictions accordingly he requested to dismiss the case. the agent of second defendant responded to the case petition stating that the litigation is not directed to his client because the unified pension law no.(9) for 2014 was issued first defendant /being in his post, also the plaintiff requests are out of the F.S.C. jurisdictions, objecting on the legislative provisions must be throw amendment by the competent party , therefore there is no violation to the constitution, he requested to dismiss the lawsuit. After registering the lawsuit before the court according to paragraph (3<sup>rd</sup>) of article (1) of the F.S.C. bylaw no.(1) for 2005 and completing the required procedure according to paragraph (2<sup>nd</sup>) of article (2) of the mentioned bylaw, a date for the argument was set, the agents of the defendants has attended, the plaintiff agent didn't attend despite the inform.the

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court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

**The decision:**

after scrutiny and deliberation by the F.S.C. the court found that the plaintiff agent requested to repeal article (38/3rd) of the unified pension law no.(9) for 2014, and to rule that the pension salary to be on the base of first stage of first level instead of second level, and the pension salary to be on the term of the electoral council period which is four years for the reasons listed in the case petition. As this court has decided in the lawsuit no.(36/federal/2014) which was submitted before this case in the same regard (to rule the unconstitutionality of paragraph 3<sup>rd</sup> of article 38 of the unified pension law no.9 for 2014) therefore considering this lawsuit subject is irrelevant, as what the plaintiff requested was achieved by ruling ((that paragraph (3<sup>rd</sup>) of article (38) is unconstitutional)) that obligate to dismiss the lawsuit. Therefore the court decided to dismiss the lawsuit and to burden the plaintiff the expenses and the advocacy fees for the defendant's agents amount of (one hundred thousand) IQ.D. This decision has been issued according to article (5/2<sup>nd</sup>) of the F.S.C. bylaw no (3) for 2005 and article (94) of the constitution unanimously and publicly on 8.7.2014 .