

Republic of Iraq
Federal Supreme Court
Ref. 74 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 17/12/2019 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 who are authorized in the name of the people to judge and they made the following decision:

The plaintiff:

Mansor Husain Manee/ former member in Babel council - his agent the attorney Hassan Mehreeg Altofan.

The defendant:

The Prime Minister/ being in this post - his agent the legal adviser Haider Alsoffi.

The claim:

The agent of the plaintiff claimed in the case petition that the defendant/ being in this post has issued the decision No.(333/2015) which repealed the legal texts that granted his client a pension salary, accordingly he repealed the pension salary which he was receiving according to the provision of article (18/3rd/1/alif) of the amended law of governorates that are not incorporated in a region

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No.(21) for 2008, after annulling this text by article (38/1st/7) of the unified pension law No.(9) for 2014, the article (35/1st) of it has ruled to grant the pension salary for his client as an acquired right, which stipulate that (the provisions stipulated in this law shall be apply to all matters that arise in the conditions of retirees and their dependents from the date of its enforcement, the rights granted or due to those who are referred to retirement and abstain from a retirement job or given to his family before the entry into force of this law are final, unless a special provision provides in this law stipulate otherwise that), by that the mentioned decision No.(333) represent clear violation to the legislation jurisdiction of the legislation power (the council of representatives I.C.R.) –according to his claim- because he has repealed a legislation of the I.C.R. legislations that can't be annulled or amended unless by legislation of the same level or the same legal power according to the legislations sequences (constitution- law- regulations and instructions- decisions), according to article (93/3rd) of the constitution which stipulates the jurisdiction of the F.S.C. to settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority, and also according to the text of article (4/2nd) of the F.S.C. Law No.(30) for 2005 which stipulates the adjudicate the conflicts related to the legitimacy of the laws, decisions, regulations, instructions and orders issued from any party that have the right to

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issues it, and to annul the one that contradicts the provision of the law, therefore he challenged the unconstitutionality of the decision No.(333/2015) requesting the F.S.C. to judge the (annulling of clause (2nd/1, 2, 3) of the decision (333/ of 2015)). After informing the defendant with the case petition, his agent responded with the answering draft dated on 25/8/2019 requesting to reject the lawsuit for not basing on constitutional substantiation, and because the F.S.C. is not competent to consider it as its jurisdictions are listed in article (93/1st) of the constitution to oversee the constitutionality of the laws and regulations in force, he also stated that the challenged decision is an administrative decision issued by his client according to his stipulated constitutional jurisdiction in article (80/3rd) of the constitution which can't be interfere according to the principle of separation of powers stated in article (47) of the constitution, he added that the subject of the pension rights of whom are covered with the provision of the unified pension law No.(9) for 2014 is a competent of the retirement cases audit council. After completing the required procedures according to the F.S.C. Bylaw the date 17/12/2019 was scheduled for the argument, the court convened and call upon the parties, the agent of the defendant has attended, the agent of the plaintiff didn't attended despite the notification by the law, or submitting legal excuse for his failure to attend, and decided to consider his lawsuit according to the provision of the F.S.C. Bylaw No.(1) for 2005. During scrutiny the court inquired from the



defendant agent the Prime minister if he has anything to add to the answering draft, he replied no. During scrutiny the court found that the case is completed for reasons of judgment and decided to close the argument, and issued the following decision publicly in the session.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff challenged in his case (74/federal/2019) the annulling of clause (2nd/1, 2, 3) of the decision issued by the defendant the prime minister No.(333) of (2015) requesting to return the pension rights to him, which is stipulated in the laws in force under the claim that the defendant/ being inn this post decision do not annulled or amend the texts of these laws, the defendant being in this post has responded throw his agent that the challenged decision issued according to his constitutional jurisdiction stipulated in article (80/3rd) of the constitution and it is an administrative decision that the F.S.C. is not competent to consider, and that the subject of the pension rights of whom are covered with the provision of the unified pension law No.(9) for 2014 is a competent of the retirement cases audit council, therefore he requested to reject the lawsuit from the point of jurisdiction. The F.S.C. finds that the decision the subject of challenge is an administrative decision that the F.S.C. is not competent to consider the challenge against it, as it has decided in several of it judgments including (59/federal/2018), (65/federal /2015) and (115/federal/2015). Accordingly the plaintiff lawsuit is

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binding to be rejected from the aspect of jurisdiction, the court decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the defendants' agent amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 17/12/2019.