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Federal Supreme Court
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The Federal Supreme Court (F.S.C.) has been convened on 18.11.2014 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Ade Hatif Jabar whom are authorized in the name of the people to judge, they made the following decision:

The Plaintiffs:

1. (mim.kaf.mim.mim.)/ retired member of the governorate council.
2. (qaf.ain.feh.)/ retired member of the local council.
3. (ha.sad.kaf.)/ retired member of the district council.

Their agents the attorneys (ha.alif.ain.) and (ha.mim.ta.).

The defendant:

the Speaker of the Iraqi council of representatives (I.C.R.)/ being in this post – his agents the legal officials (heh. mim. sin.) and (Sin. ta. yeh.).

The claim:

The agents of the plaintiffs claimed that the defendant/ being in this post issued the unified pension law no.(9) for 2014, article (38/1st/zin) of it revoked the legal texts included in the law of

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governorates not incorporated into a region no.(21) for 2008 which organized the pension rights of the governorates councils members, local councils members, and the districts councils members whom was referred to retire, their pension salary become acquired rights under the law started by the legislation willingness of the I.C.R. as the highest legislation power in the state. In this regard we clear the following:

first: we hope when considering the case that your court while considering this case to give attention to the technical distinction between (the acquired right theory) and (the theory of mere hope), as the retired members of the provincial councils, local councils, district councils and neighborhoods referred to retirement before the issuance of the unified pension law no.(9) of 2014 they acquired an acquired right, which is a legal status whereby the benefit obtained by a person as a result of a law of cancellation or amendment is protected. As for mere hope, it concerns council members who continue to serve in employment and have hope for a retirement salary at the end of their electoral cycle, and therefore this segment does not have an acquired right. It is just a hope they await in the future, accordingly, new legislations can be applied to who are not owners of acquired rights, especially if we carefully consider the nature of the retirement pension, which is defined as (the refuge and protection of retirees from the abuse of time and its conditions), if any constitution includes a recourse to the acquired right, this is a defect, especially if this right is (retirement pension) has been

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assured of those who are entitled to it, and they arranged their personal and family situations on the basis of what resulted in their debts of very large financial and social obligations. here we have to wonder about what is the historical position of a country that concerning the stability of a large segment of its people regard their livelihood and the reasons for their means of living, and they have no fault except for their contentment with the state's law and legislation that granted them the pensions and in turn they arranged bank loans from government and private banks with their exorbitant profits. therefore, we count on the responsible national will of the court and its legal professionalism in a pause to correct the signs of the legislative deviation that the legislative authority was forced under the pressure of the political motive and so that the abolition of previously acquired rights is not defective and flawed with a historical dimension that is labeled by the state authorities, and so that the citizen does not lose his confidence in the credibility of the state and the eligibility of its authorities, especially if we are assured that the abolition or reduction of pension rights strikes the social structures in a country rich in its resources and capabilities while it is not obliged at all to an unjust war against tens of thousands of its sons and their families when it targets their livelihoods, forgetting that they are They faced responsibility in extremely dangerous and complex political and security circumstances.



Second: in addition for the aforementioned, we confirm that repelling the legal texts that stated the pension rights for them has violated several constitutional articles as the following:

1) Article (2/c) of the constitution stated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution.), it is agreed that the general principles of the law that were affirmed by the legislation of all countries, especially in the provisions of the French Council of State, as these principles came from two origins: freedom and justice, and from the legal principles derived from them without the need to stipulate them, namely the principle of non-retroactivity of the law and the principle of respect acquired rights. Among the rulings of the Egyptian Supreme Constitutional Court regarding respect the rights acquired in the lawsuit no. 195 year 20 judicial what stated the following (the legal rule applies from the date of its implementation to the facts under which it is implemented and until it is canceled. If the old rule get replaced with another legal rule, then the new rule is in effect from the time specified for its entry into force and the validity of the old rule stops from the date of its cancellation, thus determining the time range for both rules, the legal centers that were completed and their effects sequenced under the old law remain subject to its rule only).

2) article (5) of the valid constitution stated (the law is sovereign. The people are the source of authority....) the beginning of this constitutional text affirms respect for the law in

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force and adherence to the legal centers and acquired rights arising from it, and that these rights are not violated by cancellation or diminution when the legislation in force is amended or canceled or through new legislation. Thus, the abolition of the legal texts that regulated the retirement rights of the members of provincial councils, local councils, divisions and neighborhoods, after they have acquired these rights, it is a clear violation of the article (5) of the constitution, as the abolition of the effects of the law's validity is a waste of the law's power and a denial of its sovereignty.

3.) article (19/9th) of the constitution states (laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees.) we see that this constitutional article completely excluded taxes and fees from retroactive effect in the past, due to its financial provision, which, if retroactively effects the past, has arranged financial obligations on some, and this is contrary to justice, as the pensions of retired members of councils before the issuance of the retirement law in force are also have financial effect arranged by the beneficiaries in financial and social obligations on themselves after granting the rights acquired as a result of an enforceable and correct Iraqi law in form and subject, and therefore its cancellation or reduction will lead to great injustice to them and their families and weaken their ability to pay the mentioned financial obligations...etc., therefore canceling or reduction of pension salaries for those



mentioned is a constitutional violation of the article (19/9th) because pension salaries are determined in essence with taxes and fees and in terms of legislative wisdom.

4) article (2/c) of the constitution stated (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution), article (23/1st) stated (private property is protected. The owner shall have the right to benefit, exploit and dispose of private property within the limits of the law), the unified pension law no.(9) for 2014 has violated the Iraqi valid constitution as it contradict the basic rights listed in articles (2/c) and (23/1st) of it, the pension salary is an estate of limitation and personal right at the same time, it is estate of limitation on the one hand because the retired has acquired a right of ownership over the retirement pension according to the legal conditions at the time of earning it, and it is a personal right as well because it is a debt arising in the state owed in favor of the creditor who is the retired as a result of retirement deductions from his salary...etc.

5) article (29/1st/a) of the constitution which stated that the family is the foundation of society; the State shall preserve it and its religious, moral, and national values, therefore the act of the I.C.R. of canceling the legal text that regulate the pension salary of thousands of people of the councils members in attempt to repeal it or deductions it, these thousands of people are heads of families and family breadwinners. Therefore, we affirm that this legislative behavior is completely contrary to the spirit of this

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constitutional article and its text as it deprives tens of thousands of Iraqi families the means of subsistence and makes them vulnerable to social, psychological and financial problems that may disintegrate the family and come on its religious, moral and national values in circumstances that the state needs the citizen to feel its proximity to him and its keenness on him so that in turn it is its support and asset against those who want. Therefore, the legislator had to observe this specificity, which the Constitution referred to and affirmed, and the legislator had to be careful in his new legislation not to violate acquired rights in a way that leads to their abolition or diminution in violation of the constitution in article (29/9th).

6) article (37/1st) of the constitution stated that the liberty and dignity of man shall be protected freedom contradicts the waste of acquired rights according to the general principles of the law, as previously explained. Also, we stress that any dignity remains for a person when he cuts off his pension salary, which is the only reason for his and his family's livelihood and is the reason for his social contact and a sole reason for fulfilling his financial obligations that the retiree has arranged on himself relying on his salary. The retirement pension after being satisfied has a right acquired as a result of an Iraqi law in force and correct in form and subject, which is the law of provinces that are not organized in a region no.(21) of 2008, accordingly we confirm that canceling or decreasing the pension salary of the mentioned



councils members who referred to retire before the issuance of the unified pension law no.(9) for 2014 is constitutional violation for article (37).

7) In addition, we affirm that retirement pensions were deducted from the remuneration of members of provincial councils throughout their service period, and this in itself is an obligation for the state, in favor of retired members of provincial councils, to receive the pension and the same amount specified by the law in the governorates that are not organized in a region no.(21) for 2008, therefore canceling or decreasing the pension rate is an explicit violation of the law and principles of justice.

8) we also confirm that the I.C.R. dealt with the issue of pensions with a political dimension without paying attention to the legal aspect, especially since the issue was raised a few months before the general elections, which made it lose its impartiality, objectivity, and legality of his behavior where he was forced to deal with the issue out of the voter's satisfaction, and thus he has acted contrary to his will, as popular pressures have directed towards legislative behavior that is contrary to the goals of the constitution and the spirit of law. Where the legal jurists unanimously agreed to define it as authorizing the legislator for the judge to strive his opinion in the conditions of legislative veto, confusion and ambiguity, inspired by his conscience and the sense of his responsibility. For all that, the I.C.R. issued article (38/1st/zin) of the unified pension law no.(9) for 2014 that

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violated the constitutional articles (2/c), (5), (19/9th), (23/1st, 2nd), (29/1st/alif), (37/1st) by its meaning and content, therefore it violated article (13) of the constitution that stated (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.), it also contradicts the principals of justice and acquired rights and the principle of stability of transactions.

Accordingly he requested the F.S.C. to rule the following:

1. repeal article (38/1st/zin) of the law no.(9) for 2014 and to rule it absolute unconstitutionality for violating the mentioned constitutional texts, as the pension rights of the governorates councils members, local councils members, and the districts councils members whom was referred to retire before the issuance of the unified pension law no.(9) for 2014, their pension salary become acquired rights, it has a financial aspect and has its legal and social specificity, and it must be excluded from the retroactive effect of implementing the new laws or any amendments to the law of the governorates that are not organized in a region no.(21) for 2008 if these amendments include a prejudice to the cancellation or reduction of those salaries as it is a benefit fortified with the acquired right and the principle of stability of transactions and the principle of justice.
2. re-instructing the executive authority to pay the pension salary for the retiree members of councils from the date 1.1.2014 in

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the ratio stated in the law of the governorates that are not organized in a region no.(21) for 2008 permanently and forever.

3. burden the defendant all the expenses and advocacy fees.

Finally, we affirm that the judiciary is a safe haven, a barrier and a lofty defender of the rights of the public from the improvisations of the executive and legislative authorities, as the political motive is the one that draws most of their movements and accommodation, so that the judicial authority confirms its discretionary power and expresses a strong and clear expression of its independence and philosophy its existence is consistent in its position with the text of the article (1) of the F.S.C. law no.(30) for 2005. The defendant agents responded to the case petition by the answering draft dated on 17.8.2014 requesting to dismiss the lawsuit and to burden the plaintiffs the expenses and advocacy fees, as article (38) of the unified pension law no.(9) for 2014 stated on repealing all the provisions and laws that grant pension rights or reward wherever listed in other laws including law no.(21) for 2008 (the law of governorates not organized into region) that the plaintiff requesting to repeal it. As the valid unified pension law includes in article (38/1st/zin) repealing the law no.(21) for 2008 then requesting to repeal what stated in the mentioned article consider as legislative interference, and the request is out of the F.S.C. jurisdictions. The court call upon the parties for argument, the agent of plaintiffs attended, the other plaintiff agent didn't attend, we found that the agent that attended have class (a) authorization but article (20) of



the F.S.C. bylaw no.(1) of 2005 stated that the lawsuits and requests presented to the F.S.C. throw attorney with absolute authorization, the attorney commented that his authorizations is not updated and apologize for his partner who didn't attended despite the inform, the defendant agents has attended and continue with the argument in presence and public with the absence of the plaintiffs, the attendance of the attorney (ha.mim) is irrelevance because his authorization is not updated. The defendant agents requested to dismiss the lawsuit as paragraph (zin) of clause 1st of article (38) of the law (9) for 2014 is nulled as for other requests it require legislative interference. the court found that the case is complete for reasons of judgment then decided to close the argument and issued the following decision.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiffs' request in the case petition to repeal article (38/1st/zin) of the law no.(9) for 2014 (the unified pension law), rule its unconstitutionality for violating the constitutional articles (2/c), (5), (19/9th), (23/1st , 2nd), (29/1st /alif), (37/1st) and (13), reinstructing the executive authority to pay the pension salary for the retiree members of councils from the date 1.1.2014 in the ratio stated in the law of the governorates that are not organized in a region no.(21) for 2008 permanently, and to burden the defendant all the expenses and advocacy fees. As article (38/1st) of the unified

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pension law repealed all the provisions and laws that grant pension rights or reward contrary to this law including the pension rights of the councils members in the law no.(21) for 2008 the law of governorates not organized into region paragraph (zin) article (38/1st) of the law (9) for 2014. As the F.S.C. jurisdictions listed in article (93/1st) specified to monitor the constitutionality of laws and regulation in force not the repealed or the nulled as the subject of this lawsuit, therefore the plaintiffs lawsuit is binding to be dismissed for lack of jurisdiction, the other requests of the plaintiffs is not within the jurisdictions of the F.S.C. that are stipulated in article (93) of the constitution and article (4) of the F.S.C. law no.(30) for 2005, these requests require legislative interference. For all that the F.S.C. decided to dismiss the lawsuit for lacking the jurisdiction and to burden the plaintiffs the expenses and the advocacy fees for the defendant' agents amount of (one hundred thousand) IQ.D. This decision has been issued unanimously, final and publicly on 18.11.2014 .