

Republic of Iraq
Federal Supreme Court
Ref. 212 / Federal / 2022



The Federal Supreme Court (F.S.C.) convened on 23.11.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Galeb Amer Shneen, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abed Alrahman Sulaiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The plaintiffs: Ahmed Ali Sadeq, Sadeq Othman Aref, Haider Othman Qader, Sardar Abdel Hamid Sultan, Abdullah Fares Muhammad, Yassin Saber Saleh, including Mu Ahmed Hussein, Hoshyar Ahmed Hussein, and Yahya Mustafa Rashid/ their agent the attorneys Mehemed Majed Alsaedy and Beshdar Hasan Esmaeel and Ahmed Mazen Makia.

The defendants:

1. the Prime Minister of Kurdistan Region/ in addition to his post.
2. the Minister of Finance and Economy / in addition to his post.

The claim:

The plaintiffs, through their agents, claimed that the compensation and salaries of retirees from the public service in the Kurdistan region implemented by the Unified Pension Law No. (27)

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for the year 2006, as amended, which was canceled according to Article (40) of the Unified Pension Law No. (9) for the year 2014, as amended, and since Article (130) of the Iraqi constitution stipulates that (the legislation in force remains in effect, unless it is rescinded or amended in accordance with the provisions of this constitution), so the application of a repealed law represents a violation and an explicit violation of the constitution, and the authorities of the region must abide by the Iraqi constitution in accordance with Article (121/First) thereof, which It states (that the authorities of the regions have the right to exercise the legislative, executive and judicial powers in accordance with the provisions of this constitution, with the exception of what is stated therein from the exclusive competences of the federal authorities), and the implementation of the aforementioned law resulted in the defendants evading the implementation and application of the law in force, severe financial damages to the retirees in the region Including the plaintiffs, since the law in force provides a greater degree of justice between the different segments of retirees, as the minimum Pension salary that is paid Uh, the retiree is (500,000) Iraqi dinars according to Article (21

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/ Fourth / B) thereof, while the minimum Pension salary for a retiree in the region according to the canceled Pension law is (220,000) dinars per month, which is inconsistent with the principle of equality between citizens in the Republic of Iraq (9) for the year 2014 is a federal law that falls within the exclusive competence of the federal authorities with regard to (drawing financial policy) according to Article (110/Third) which is practiced by the Constitution. Federal authorities through legislation and issuance of laws, regulations, and instructions regulate everything related to it, including salaries, government compensation, and subsidies, which are at the core of financial policy, in addition to that the defendants apply the Law on Salaries of State and Public Sector Employees No. (22) for the year 2008, as amended, issued by the Iraqi Council of Representatives this is without the issuance of an enforcement law for it by the Parliament of the Kurdistan region, and this is an explicit and clear acknowledgment on their part that issues related to salaries and compensations of employees, as well as Pensions, enter into the essence of (drawing financial policy) and the region's parliament did not issue a law regarding the category of retirees from the public

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office but rather it implemented the federal pension laws under the provision of the article (93/1st) of the constitution. The plaintiffs requested this court to rule the unconstitutionality of implementing law No. (27) of 2006, and obligating the two defendants to apply (Unified Pension Law No. (9) for the year 2014 as amended) in the region, and charging the defendants with fees, expenses, and attorney's fees. The case was registered with this court under the number (212/federal/2022), and the legal fee was collected according to the provisions of Article (21/First) of the Court's internal system No. (1) for the year 2022, and the defendants are notified of their petition and documents in accordance with Clause (Second) of the same article. aforementioned, and because the period stipulated in the aforementioned clause had passed without the answer being received, the court set a date for pleading in accordance with Article (21/Third) thereof, and the parties were notified of it, and on the appointed day the court was formed, and the second plaintiff (Sadiq Othman Aref) attended and the plaintiffs' attorneys attended, but the defendants or Whoever legally represents them despite the notification according to the law, and the public pleading proceeded in the presence of the

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public, the second plaintiff and the attorneys of the plaintiffs repeated what was stated in the lawsuit petition and asked for a judgment according to it, the court decided to introduce the (Ministry of Finance) in the federal government as a third person in the lawsuit for the purpose of clarifying from it what is necessary to resolve it. The human rights employee, Hanan Saadoun Abbas, came on behalf of (Minister of Finance in addition to his job) and explained that the law currently being applied is the Unified Pension Law No. (9) of 2014, according to which Pension Law No. (27) of 2006 was abolished, and Article (3) From Law No. (9) of 2014, it clarified that all retirees affiliated with all state departments are subject to the provisions of the aforementioned law, which means that employees of the Kurdistan Regional Government are subject to the same law, which is the applicable law, and that the minimum pension under the aforementioned law is (400). Four hundred thousand Iraqi dinars, and with the issuance of Amendment Law No. (26) for the year 2019, (100) one hundred thousand dinars were added, and (500) five hundred thousand Iraqi dinars became, and that the pension fund for the Kurdistan region, the second plaintiff replied that there are clear

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and large differences between pension salaries for retirees The Kurdistan region and the retirees of the federal government, and the sums allocated for the end-of-service reward amounting to a full salary for (12) months were not disbursed, but rather a full salary amount is disbursed for (6) months for the end-of-service leave. After the court completed its clarification of the third person, it decided to remove him from the case, and the second plaintiff and the plaintiffs' attorneys repeated their statements and previous requests, and since there was nothing left to say, I understood the conclusion of the pleading, and the court issued the following ruling:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs filed a lawsuit before this court, requesting the ruling on the unconstitutionality of implementing the canceled law ((Unified Pension Law No. (27) of 2006)) in the Kurdistan Region and obligating the two defendants (the Prime Minister of the Kurdistan Region and the Minister Finance and economy in the Kurdistan region, in addition to their posts) to implement (the Unified Pension Law No. (9) for the year 2014 as

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amended), and this is because the application of an annulled law represents a violation and an explicit violation of the Constitution in Articles (14), (110) and (121/first) thereof, and from the court's review of what was stated in the plaintiffs' case and their requests, the constitutional and legal grounds contained therein, and what their attorneys showed during the pleading, the Federal Supreme Court finds the following:

First: The federal system in the Republic of Iraq consists of a decentralized capital, regions, governorates, and local administrations based on the provisions of Article (116) of the Constitution of the Republic of Iraq for the year 2005, and the Constitution recognized and according to the provisions of Article (117/First) thereof that the Kurdistan region and its existing authorities are federal, and required Article (120) of the constitution states that the region draws up a constitution for it, which defines the structure of the region's powers, its powers, and the mechanisms for exercising those powers, provided that it does not conflict with the Iraqi constitution. Federalism is based on the provisions of Article (121) of the Constitution.

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Therefore, the administrative system in Iraq is based on three levels: federal, regional, and governorates which are not organized into a region. The governorates that were not organized in a region were granted broad administrative and financial powers to enable them to manage their affairs according to the principle of administrative decentralization, and thus this created two legislative bodies in Iraq: the first is the Iraqi Council of Representatives, which legislates federal laws and exercises its competences according to what was stated in Article (61). Of the constitution, and the second is the Federation Council, as the constitution defines the components of the federal legislative authority under the provisions of Article (48) thereof, which stipulates that (the federal legislative authority consists of the Council of Representatives and the Council of the Federation.) Articles (49-64) dealt with everything related to the Iraqi Council of Representatives in terms of The number of its members, the method of their election, the terms of reference of the House of Representatives and its duration. The second legislative level in Iraq is

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represented by the Parliament of the Kurdistan Region of Iraq, which legislates laws to regulate the affairs of the region and does not extend the enforcement of the laws it legislates outside the borders of the region and must not conflict with the constitution and the laws regulating the exclusive powers of the federal authorities. And the existence of two legislative bodies raises disputes related to the areas of constitutional jurisdiction for each of them, and it is not possible to avoid overlapping between them, and this means that pluralism and duplication of laws inevitably lead when the authorities exercise the powers granted to them to conflict of laws or interference between governments and that such disputes are in dire need of judicial intervention and this It requires the existence of a constitutional judiciary to set the constitutional boundaries of the federal and regional institutions and not exceeding them and determining the applicable legal rules when needed. The limits of its constitutional powers, and if the majority of federal constitutions have granted their constitutional judiciary the power to settle disputes that occur between the union state and

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between the states or between the states themselves, then the Iraqi constitution of 2005 went even broader than that as it gave the Federal Supreme Court the power to settle disputes or disputes that They arise from the application of federal laws, decisions, or Regulations, instructions and procedures issued by the federal authorities, in addition to adjudicating disputes that occur between the federal government and the governments of the regions, governorates, municipalities and local administrations, as well as adjudicating disputes that occur between the governments of the regions or governorates based on the provisions of Article (93 / Third, Fourth and Fifth) of the Constitution and this The jurisdiction is consistent with the nature of the administrative divisions in Iraq according to the constitution, given that the federal system in the Republic of Iraq consists of a capital, regions, decentralized governorates, and local administrations in accordance with what was stated in Article (116) of the constitution. From oversight: The first is represented by the oversight of the constitutionality of the laws and regulations in force and the extent to which they conform

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to the constitution or not, according to what was stated in Article (93 / first) of the constitution, as the application of constitutional texts is more important than the existence of those texts, as the existence of a higher law that is invoked is a form of Human evolution since these supreme laws began regulating the relationship between the ruler and the ruled, passing through the stage in which these laws became regulated. The authorities in the state and determine the relationship between them, leading to the stage of considering these laws as one of the guarantees of public rights and freedoms that a person should enjoy by stipulating in these laws what the general rights and freedoms of citizens are. Through this oversight, the constitutionality of federal and regional legislation is achieved, through which the course of laws is regulated by imposing constitutional judiciary oversight on laws and regulations, as the generality and abstraction of laws is not sufficient to consider that law as a guarantee for citizens, but that law must be in agreement with the constitution, because the constitution is A legal charter for human rights, and

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since laws are the product of the actions of human beings who are not immune from errors or abuses and violations, especially when they are in the position of the jus cogens, and therefore there is a close interdependence between the consolidation of the principles of democracy and constitutional oversight, as democracy is the goal of man by ensuring freedom, equality and equal opportunities for all Therefore, the existence of democracy in isolation from constitutional oversight cannot give sufficient guarantees for the maintenance of public and private rights and freedoms stipulated in the constitution. From power and democracy, as the goal of constitutional control is to protect the individual with his rights and freedom It comes from the arbitrariness of power, and this is the basis of the starting point of democracy, and that democracy no longer means the rule of the majority only, but rather means achieving justice and guaranteeing public and private rights and freedoms, and the main goal of democracy must be to provide all the conditions through which the members of society can make their own history freely and justly, but The second type of

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oversight exercised by the Federal Supreme Court is oversight over the work of the federal authorities through adjudication of cases that arise from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority in accordance with what was stated in Article (93/Third) of the Constitution and through that oversight The legality of the actions of the federal authorities is achieved, and it cannot be said that the jurisdiction of the Federal Supreme Court mentioned in Article (93/Third) of the Constitution is intended to supervise the constitutionality of laws alone, because Clause (First) of Article (93) of the Constitution gave the Federal Supreme Court jurisdiction to supervise over The constitutionality of the laws and regulations in force, and saying that will make us face two texts in the constitution that bear the same meaning and the same purpose and e This is what the constitutional legislator did not intend. More precisely, the jurisdiction of the court is not limited to the oversight aspect of the constitutionality of laws and regulations in force, but rather includes another oversight aspect, which is the oversight of the

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work of the federal authorities in a manner consistent with the nature of the regime in Iraq and its administrative structure and the basic purpose of the Federal Supreme Court's exercise of this oversight. And the nature of the works issued by the federal authorities that are subject to that control, and thus the subject of the case falls within the jurisdiction of this court.

Second: Pension rights passed through different forms and images, like other social rights, affected by social and cultural ideas and concepts, and sometimes pension systems became a means to achieve political and economic goals through the redistribution of national income and the effects on production, consumption, savings, and development. And that pension rights are an important matter to protect the right of the employee who devoted his life to serving his country and people and gave all his physical and mental capabilities to perform his job duties to the fullest to achieve the general interest of society. With pension rights, the state bases its granting of pension rights on the principle of social solidarity, which is based on the idea of society guaranteeing the rights and freedoms of the individual

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in exchange for the latter's commitment to fully performing his duty towards society. Thus, Article (30/Second) of the Constitution of the Republic of Iraq for the year 2005 stipulates (the state guarantees social and health security For Iraqis in the event of old age, illness, inability to work, homelessness, orphanhood, or Unemployment, works to protect them from ignorance, fear, and poverty, and provides them with housing and special curricula for their rehabilitation and care for them, and this is regulated by law), and since the Unified Pension Law No. (9) of 2014 expanded the concept of pension rights under Clause (Tenth) of Article (1) of the aforementioned law and make it include the Pension salary, Pension reward, or lump sum, which requires providing all means for all retirees enjoying all the pension rights stipulated in the aforementioned law as long as it is the applicable law, given that the goal of the job is to achieve the public interest and build the state with all its institutions.

Third: The law was originally established to regulate the lives of individuals and protect their interests and rights of all kinds. Each

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branch of the law is governed by the regulation and protection of all public and private rights. These laws change and develop and amendments are introduced to suit the development that takes place in society, its needs, and the nature of those needs. Which changes over time and may lead to the complete abolition of the law or a legal text in it by issuing a newer law or legal text that cancels it and replaces it. The work has settled on consolidating an important legal rule based on the fact that the law governs the facts that took place under it, and that rule embodies an important principle, which is the immediate effect of the law. The facts subject to the law are the facts that took place under it, so it is not possible to apply a law that strips an act or conduct of its legitimacy from those actions that took place under the law that was approved for it. With legitimacy, the law is subject to only those addressed by it, and therefore the law that is issued by the competent authority to legislate its provisions apply directly, immediately, and immediately as soon as it enters into force, by publishing in the Official Gazette unless otherwise stipulated based on the provisions of Article (129) of The constitution may

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specify a deferred date for the enforcement of the law, provided that this date is stipulated in the law, and that the Iraqi Council of Representatives adopted another principle in some laws, as they are effective from the date of voting on them, by stipulating this in the same law. Among the most important effects of the immediate application of the law is not only the application of the new law, but there is another effect that is no less important than that, which is the suspension of the implementation of the previous law that was canceled by the new law, and these two results are closely linked and indivisible, as one cannot be without the other. And that failure to achieve this leads to a violation of the principle of the rule of law based on the provisions of Article (5) of the Constitution of the Republic of Iraq for the year 2005, and what is meant here is the sovereignty of the law in force, and this also violates the principle of equality of citizens before the law based on the provisions of Article (14) of the Constitution because those Equality requires that everyone be subject to the same law, because each law has positive reasons for enacting it that are commensurate with the economic, social and political

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circumstances in which it was initiated, as the rule of the immediate effect of the law is an extension of the rule of non-retroactivity of the law or its non-retroactivity, and therefore the application of the two rules combined maintains the stability of conditions and positions. It also maintains the principle of justice and equality in terms of achieving the purpose of legislation and subjecting everyone to the law in force, and this also achieves the public interest of all Members of society, as the issuance of a new law, whether it nullifies or amends the previous one, is a statement from the legislative authority that the canceled previous law is no longer sufficient or useful to control and regulate the conditions that it was issued to regulate in terms of origin, and therefore it has become deficient in achieving its purpose, and thus the public interest achieved through the immediate entry into force of the new law, with reference to the existence of some exceptions to the rule of the immediate effect of the law, as Article (10) of the amended Iraqi Civil Law No. (40) of 1951 stipulates that (the law does not work except the time it becomes effective, so it does not apply to what The facts preceded unless there is a text in the new

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law stipulating otherwise, or the new law is related to public order or morals), given that the rules contained in the new law related to public order or morals are peremptory legal rules, and it is not permissible in any case to agree on what contradicts them, and the article stated (11) of the aforementioned law (1- The new provisions relating to eligibility apply to all persons to whom the conditions outlined in these provisions apply. 2- If a person who had the capacity according to the old texts returns lacking the capacity according to the new texts, this does not affect his previous actions). The old texts are the ones that apply to issues related to the start of the statute of limitation, it is stopping, and its interruption, and that is from the period before the implementation of the new texts If the remainder of the period stipulated by the old law is shorter than the period decided by the new law, then the statute of limitations takes place upon the expiration of this rest) Equal before the law without discrimination because of gender, race, nationality, origin, color, religion, sect, belief, opinion, or economic or social status. Based on the provisions of Article (14) of the Constitution, this principle, in its essence, is a means to

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determine the legal protection provided The scope of its application is not limited to the rights and freedoms stipulated in the constitution, but the scope of its implementation extends to those rights that the legislator has guaranteed to citizens within the limits of his discretionary authority in the light of what he deems appropriate to achieve the public interest. 130) of the constitution, which stipulates (the legislation in force remains in force unless it is canceled or amended in accordance with the provisions of this constitution), accordingly, work according to the provisions of the Unified Pension Law No. (27) of 2006 by the Kurdistan Regional Government, which was canceled under Article (40) First) of the Unified Pension Law No. (9) of 2014 as amended This makes the application lose its constitutional and legal support, especially since Article (3) of the last law stipulates that (the provisions of this law apply to all employees of state departments, the public sector, temporary employees, those assigned to public service, and state employees in the mixed sector appointed before 4/9/2003 and retired in The following cases: First: Pension Second: Illness or disability Third: Old age Fourth: Death) In addition to the

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amended Unified Pension Law No. (9) of 2014 greatly expanding the concept of the employee according to what was stated in item (Seventh) of Article (1) From it in the way that made it includes (every person entrusted with a civil or military job or within the security forces or assigned to public service and who receives a salary, wage or reward from the state and the Pension contributions are deducted from him), and thus the law united between the civil and military employee and those who belong to The security forces, in addition to the fact that its provisions also apply to the temporary employee defined under Clause (Eighth) of the aforementioned article, which is ((every person who has been contracted with and fulfills the terms of employment stipulated in Civil Service Law No. (24) of 1960 as amended))), and therefore For me, all segments covered by the provisions of the Unified Pension Law No. (9) of 2014 must benefit from all the advantages of the law regardless of the geographical location of work because pension rights are granted in accordance with the provisions of the effective Pension law without discrimination based on gender, race, nationality, origin, or color. Religion, sect, belief, opinion,

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economic or social status, regardless of the place of work of the retired employee, whether it is within the state departments affiliated to the federal authority or within the state departments affiliated to the Kurdistan Regional Government, due to the failure to legislate a Pension law for the employees of the regional government by Parliament, On the other hand, the authority of the region's authority to amend the application of federal law in the region in the event of a contradiction or conflict between the federal law and the law of the region regarding an issue that does not fall within the exclusive competence of the federal authorities based on the provisions of Clause (Second) of Article (121) of the Constitution includes Laws are in force, not repealed laws. Accordingly, the Federal Supreme Court decided the following:

1. ruling the invalidity of applying the canceled Unified Pension Law No. (27) of 2006 by the two defendants, the Prime Minister of the Kurdistan Region and the Minister of Finance and Economy in the Kurdistan Region, in addition to their jobs.
2. ruling obligating the two defendants, the Prime Minister of the Kurdistan Region and the Minister of Finance and Economy in the

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Kurdistan Region, in addition to their jobs, to implement the Unified Pension Law No. (9) of 2014 as amended.

3. Charging the defendants, in addition to their jobs, the costs of the case, and the attorney's fees of the plaintiffs' attorneys, an amount of one hundred thousand dinars, to be distributed according to the law.

the decision was issued by a majority absolute and binding on all authorities based on the provisions of Articles (93/Third and 94) of the Constitution of the Republic of Iraq for the year 2005 and (4 and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and I understand Publicly on 28/ Rabi` al-Akhar/ 1444 AH corresponding to 11/23/2022 AD.

Signature of
The president
Jasem Mohammad Abboud

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