



The Federal Supreme Court (F S C) has been convened on 11.6.2018 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-Nagshabandi, Aboud Salih Al-Temimi, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. (mim.jim.mim))
2. (kaf.kaf.jim).)
3. (ain.alif.dal).)
4. (jim.qaf.zin).)
5. (ra.heh.ain).)
6. (alif.fa.ain).) Their agents- the barristers
7. (ain.sin.ra).) (waw.ain.lam) and (ain.ra.kaf)
8. (nun.ain.ain).)
9. (nun.jim.shin).)
10. (ain.ra.sin).)
11. (sad.kaf.ain).)

The Defendants: 1. The Prime Minister/ being in this capacity – his agent the assistant legal advisor (ha.sad).
2. The Speaker of the ICR / being in this capacity – his agents the jurist officials, the director (sin.ta.yeh) and the assistant legal advisor (ha.mim.sin).

The Claim

The agents of the plaintiff claimed in the petition of the case that the first defendant had amended pension law No. (9) For 2014 by its divan order No. (333) for 2015. While the law shall not be amended but with a law issued by the legislative power (second defendant), and according to your honorable Court decision No. (29/federal/2017) on 29.5.2017, the agent of the second defendant has approved that his client didn't authorize his legislative jurisdiction to the first defendant. As well as, the first defendant and by his representative has approved this matter by the same case above-mentioned. He pretended that he worked by his jurisdictions, and he didn't work by the authorization issued to him from the first defendant. As long as the divan decision No. (33) For 2015 is not immunized, legally and constitutionally according to provisions of articles (60/61/73/80) of the Constitution. Whereas the system of government in Iraq based on distributing constitutional jurisdictions to three federal powers (legislative – executive – judicial). These powers working according to the principle of separation between powers. Also, the Constitution didn't grant or authorize the legislative power to authorize its constitutional legislative jurisdiction to the executive power, and vice versa. While the first defendant's decision is and always has been trespassing gained rights which article (35/1st) of pension law No. (9) For 2014 stipulated. This decision was also approved by the Council of the State (State consultative Council) and supported by the Ministry of finance which both parties decided to maintain gained and granted rights to the plaintiffs according to the article (35/1st) of valid pension law No. (333) for 2015 which is not immunized. This decision had greatly touched the rights of two hundreds aggrieved including the plaintiffs, and others. It also deprived majority from pension salary, and it reduced the salaries of many unfairly, especially that the salaries of employees around the world are untouchable. The agents of the plaintiff requested to inform the defendants by the petition of the case, and to judge by annulling the decision (333) for 2015) with all its results and outcomes. The Court called upon all parties, and it notified the defendants by the petition of the case and substantiations. Therefore, the agent of the first defendant answered according to

his draft dated on 15.3.2018, and he clarified that article (93/1st) of the Constitution had determined the jurisdictions of the FSC, including these jurisdiction is overseeing the constitutionality of valid laws and regulations, while his client's decision considered an administrative decision issued by him according to his constitutional authorities stipulated in article (80/3rd) of the Constitution. Therefore, trying this challenge is out of the FSC jurisdiction, and this is what its judiciary settled on, in the decisions (65/federal/2017) and (63/federal/2017) and (38/federal/2017) and (24/federal/2017). He added that the decision of his client has been issued according to its constitutional competences, and his client has the right to issues a decision to execute laws, it is not allowed to interfere his constitutional competences according to principle of separation between powers which article (47) of the Constitution stipulated. It also didn't includes any violation to its provisions, and the challenge has no substantiation in the Constitution and the Court of cassation had solved this matter in many of its cases. They requested to reject the case for incompetence, and to reject it because there is not a constitutional substantiation for the challenge draft. The agents of the second defendant answered the petition of the case by their draft dated on 20.3.2018 which they listed in that the challenge decision No. (333) for 2015 is issued by the defendant the Prime Minister, therefore, the litigation is not against the Speaker of the ICR. While there was a decision issued by the FSC in number (65/federal/2017) dated on 3.8.2017 for incompetence of the Court, especially that the ICR decision No. (15) On 16.8.2018 was conditioned by corresponding of the Cabinet's decision for the Constitution and the law. This matter doesn't meaning an authorization to any of its legislative jurisdictions to the Cabinet, and on set day of argument, the agent of the plaintiffs and the agents of first and second defendants/ being in this capacity attended. The agent of the plaintiffs repeated what listed in the petition of the case, and they requested to judge according to what listed in it. The agent of the first defendant answered and repeated what listed in the answering draft, and he requested to reject the case. The agents of the second defendant answered and they repeated what listed in the answering draft, and they requested to reject the case. Whereas nothing left to be said,

the end of the argument has been made clear, and the Court issued the following decision publicly.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiffs were a members in the (National assembly), and they were referred to pension. The salaries of some of them were reduced, and some others had been deprived from pension rights. This procedure token according to the order issued by the Cabinet No. (333) for 2015, and their case is concentrating on challenging aforementioned decision. The first defendant (the Prime Minister/ being in this capacity) defended that the decision (challenge subject) is an administrative decision, and the FSC is incompetent to try the challenge against it. As for the second defendant (Speaker of the ICR/ being in this capacity) the agents defended that the litigation is not against their client, because the decision (challenge subject) issued by the Cabinet. The FSC finds that the decision (challenge subject) No. (333) for 2015 is one of the administrative decisions, and the law set another method to challenge it, not among these methods is to challenge it before the FSC. The FSC competences are specified in the article (93) of the Constitution and article (4) of its law No. (30) For 2005. This matter is what the Court adjudged in previous Decisions and in the same subject, including the judgment in case No. (115/federal/2015) and (65/federal/2017) dated on 5.3.2016 and 3.8.2017. Accordingly, the Court decided to reject the case of the plaintiffs for incompetence, and to burden them the expenses and advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars divided between them according to the law. The decision has been issued decisively, unanimously and obliging according to the article (94) of the Constitution, and article (5) of the FSC's law No. (30) For 2005. The decision has been made clear publicly on 11.6.2018.