

Republic of Iraq
Federal Supreme Court
Ref. 183/federal/media/2018



Kurdish text

The Federal Supreme Court has been convened on 23.12.2018 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-Nagshabndi,Abood Salih AL-Tememi, Michael Shamsion Qas Georges and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

The Plaintiff : Secretary general of Iraqi national AL-Wafaa coalition/ in addition to his task/ (Ha,Jim,Kaf,Ra) , his agent the barrister (Alif,Feh,Ain).

The Defendant : Health Secretary/ being in this capacity- her agent the legal official (Lam,Alif,Kha).

The Claim :

The Plaintiff agent claimed that the article (31) from Republic of Iraq Constitution for 2005 stipulates that Every citizen has the right to health care. The State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions. The article (28/2nd) from constitution (Low income earners shall be exempted from taxes in a way that guarantees the preservation of the minimum income required for living.). The Defendant made an additional charging fees for government hospitals targeting the lower castes on or income and it relied on the article (25) from law of the general budget for 2016 which empowered the ministries and the government parties which not related with a ministry to increase the taxes and fees to fill the financial deficit for the mentioned budget, also the article (25) from (law of the general budget for 2016) is drafted to fill the lack and the financial deficit for that budget and the Defendant jurisprudence is misplaced and unconstitutional particularly for the article (31) which guaranteed the health care for the citizens, also he didn't take of the content of the article (28/2nd) from the constitution which related to exempt low income and those who don't have social salaries in a way that guarantees the preservation of the minimum income required for living. The objective of

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increasing the fees and taxes to fill the financial deficit as result of entering the country in war situation and oil prices decreasing through increasing the taxes and fees for the foundations which has a Profitability benefit for the targeted such as increasing the customs fess and the taxes on estates and companies and passages guarantees and others. The medical institution isn't profit institution, it is a service institution of general interest and the listed exempts in the health ministry instructions didn't help the poor people or low income people because there is nothing to distinguish between the poor who don't have social care salary and the rich person. Most hospitals has witnessed patients expelling because they can't pay the imposed fees which doesn't consider enough for those who are low income o those who don't have income when they visited the government medical foundations. Also the collecting in the government hospitals effected the citizen as the prices of the hospitals and private clinics and treatment prices in the pharmacies had increases because the government medical foundation is lacking to the most of medical treatments types. Whereas the purpose from the fees imposing and its increasing is to fill the financial deficit and the government announced the lack of needing for this collecting when the country was facing the dirty terrorism attack and the victory announcement with oil prices increasing. For the above the Plaintiff agent requested the decision to annul all collecting fees which the ministry imposed on the medical foundations during the emergency situations because most visitors and lying from low income for its conflict with provisions of both article (28/2nd) and article (31) from constitution, and to burden the Defendant all fees and expenses of the advocacy. After recording the case at this court according to the clause (3rd) from the article (1) of its by law No.(1) for 2005. The health ministry legal representative answering is listed, he requested to reject the case for the reasons that listed in it, and he mentioned that the right of Iraqi people in health care doesn't necessarily deny imposing fees on the medical services and that fees imposed relying on the article (25) from the law of federal budget for 2016, it doesn't target to make a profit and the health ministry seeks to present the medical service to the Iraqi citizen and the imposed fees doesn't fill a small part from the presented service. After the requested procedures has been completed according to the clause (3rd) from the article (2) from the aforementioned system. A day 23.12.2018 appointed as a date for the argument , the court has been convened and the Plaintiff agent attended , the health secretary/being in this capacity- didn't attend then her agent attended during the session. The public present argument has been started and the Plaintiff agent repeated what listed in the case petition and requested the decision according to it. The Plaintiff agent presented an illustrative draft as an answer on the draft that the Defendant agent presented and he summarized it

in the session. The Defendant agent reported that he has no comment on what his fellow statement and he settled for what listed in the answering draft. The court found that the case has been completed for its reasons. The end of the argument has been decided and the decision has been understood publicly on 23/12/2018.

The Decision :

During the scrutiny and deliberation from the FSC, the court found the Plaintiff requests in his case the decision to reject all the collecting fees which imposed by the health ministry on its foundation visitors during the emergency situations because most of its visitors and the lying are from low income and because these fees conflicts with the provisions of both articles (28/2nd) and article (31) from constitution. These fees imposed by the health ministry relying on the article (25) from law of the budget for 2016, because the needing to imposed it is lacked after the oil prices got improved. The FSC found that the Plaintiff case included two challenges, first challenge in the issued decision from health ministry which mentioned above. The second challenge in the article (25) from the law of budget for 2016 which the ministry relying on it in fees imposing and the case in its mentioned both sides, the first which belong to the decision of fees imposing. This decision is one of the administrative decisions which the law made a method to challenge it and it isn't the challenging before the FSC which the constitutions and its law determine its competences in this matter and none of it is hearing the challenges that is presented on the administrative decisions, besides the challenge in a text from the previous law of government budget the health ministry isn't to be the litigant in it but who legislated the text. Based on that the case must to be rejected for competence side and litigation side. The court decided to reject it and to burden the Plaintiff all expenses and fees of the advocacy of the Defendant agent, amount of thousand hundred Iraqi dinar. The decision has been issued decisively, unanimously and has been understood publicly on 23/12/2018.