



The Federal Supreme Court has been convened on 23/1/2019 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 Shamshon 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: finance minister/being in this capacity- his agent the legal official (Waw.Jim.Ha).

The Defendant: the ICR speaker/being in this capacity- his two legal agents, the manager (Sin.Ta.Yeh) and the assistant counselor (Heh.Mim.Sin).

The Claim:

The plaintiff agent claimed that the defendant issued the federal general budget law No.(9) for 2014, ICR speaker touched the rights of the plaintiff in some articles so she initiated to challenge it. The articles are:

First: the clause (5th/Heh) of the article (11), because the officers promotion had been determined by the articles (6) and (7) of the law of salaries of government officers and public sector No.(22) for 2008 and according to the ministry generalization and cabinet generalization for promotion, and it would be according to his legal entitlement and the availability of the promotion condition including the vacant post, the promotion is to be for the continuous officer in service, because of the officer who was referred to the retirement his relationship with the post will be severed, he will earn a new status while he is retired and the conditions of the continuous officer doesn't apply to him.

Second: the clause (2nd) of the article (36) of the law. the promotion of the officers had been determined by the articles (6) and (7) of the law of salaries of government officers and public sector No.(22) for 2008 and the Law No.(103) for 2012 is an exception from the origin which including the expedition of the job title for the officer who got a certificate during the post from his graduation date to the degree who occupied before getting the higher certificate. The legal necessary that the exception shall not be expanded, from this side on the other side the item 2nd of the article (36) includes (the job title shall be expedited for the officer who got a higher certificate or similar during his service which fits the nature of his work with the approval of his department to complete the studying each (two years) from the date of obtaining the certificate). While the law (103) for 2012 be limited to the officer who obtained a certificate during the post. The plaintiff agent requested the decision of the unconstitutionality of the clause (5th/Heh) of the article (11) and the clause (2nd) of the article (36) of the federal budget law and to burden him all the expenses and fees of the advocacy. The defendant was notified by the case petition and its documents so he answered on it by his draft dated on 5/11/2018 which listed in it that the legislation of the federal budget law for 2018 has been done according to the Constitutional authority of the ICR to legislate laws, and what listed in it of texts to decide the officer entitlement during his functional service. What the defendant's agent / being in this capacity depends on financial charges and spendings cut has no more support after increasing of the oil producing and the raising of oil barrel price, he requested to reject the case. A day for the argument had been determined and the court called upon the two parties so the agents of the two parties attended. The plaintiff agent repeated the case petition and requested the decision according to what listed in it. The defendant agents repeated what listed in their answering draft and requested to reject the case. Whereas nothing left to say the end of the argument had been understood and the court issued the following decision publicly.

The Decision:

Federal Supreme Court - Iraq - Baghdad

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During the scrutiny and deliberation by the FSC the court found that the plaintiff agent/being in this capacity challenged the unconstitutionality of the clause (5th/Heh) of the article (11) and the clause (2nd) of the article (36) of the federal budget law No.(9) for 2018 which was considered valid from the date of its publish in the official gazette, it was published in No.(4485) on 2/4/2018 and the work according to it is underway for 2018 which the work according to it has been ended on 31/12/2018. So the two texts that are challenged by its unconstitutionality are no more valid in present. Based on this hearing in this challenge is out of the FCS competences which is competent in oversight on the laws Constitutionality and the valid regulations according to the provisions of the clause (1st) of the article (94) of the Constitution and the article (5) of the FSC law No.(30) for 2005 on 23/1/2019.