

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.41 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 6/7/2015, 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: ICR speaker/ being in this capacity- his general agent Ph.D.(Sad.Jim.Beh.) the director manager of the legal department of ICR/ being in this capacity.

The Defendant: the prime minister/ being in this capacity- his agent Ph.D.(Ha.Jim).

The Claim:

The plaintiff agent claimed on 17/3/2015 in the eleventh regular session of the cabinet in 2015 the defendant issued a decision to hold up the work of the clauses -under objection- of the federal public budget of 2015 until the case is settled the concerned ministries shall not issue clauses' instructions – under objection- and to suspend in case of issuance until the case is settled). since this decision violated the Constitution, the law, the bylaw of the cabinet, and according to provisions of the article (93/2nd) of the constitution, The plaintiff submitted a challenge for the following reasons:

1) the constitution of the Iraq republic for 2005 established a democratic parliamentary system based on a system of separation between the authorities according to the article (47) from the constitution. he determined the act of each authority of the government public authorities and formulated

its competence. It's known that the laws' implementation is one of the most important acts of the executive authority- if it is not the only reason for being exist-the article 980) from the constitution determined the cabinet authorities and it doesn't include the hold up in the law's text implementation. The article (2/13th) from the cabinet's bylaw No.(8) of 2014 made clear that the acts of the cabinet are (monitor the applying of legislation and to issue the required decision to make.). the clause (15th) of the same article gave the council the act to monitor the applying of the public budget.). so the challenged decision of cabinet is lacking for substantiation from the constitution and has a contradiction with the basic commitment of the executive authority which represented by the implementation of las. Als, it contradicts the bylaw of the cabinet which made the cabinet.

2) the article (129) from the Constitution ((Laws shall be published in the Official Gazette and shall take effect on the date of their publication unless stipulated otherwise.)). It is known that this text is an implementation of the general laws of the law. Such as instancy of law implementation as soon as s it been published in the gazette. Considering, it had been delivered to all the authorities and addressed persons by the law. Since the law of the federal public budget for the Republic of Iraq, the fiscal year 2015 was published in the gazette by No.(4352) on 16/2/2015. In addition, the article (59) from the law stipulated that the law must be published in the gazette and be valid from 5/1/2015, so the cabinet challenged decision violated text which has a final evidently among the Constitution texts. Also, it violated its constitutional acts of law implementation from the date of been published in the gazette.

3)the text of the challenged decision of the cabinet is ((hold up the work of the clauses – under objection- from the law of the federal public budget of 2015 until the case is decided. This supposed to be by not issuing any instructions relating to the clauses –under objection- by the concerned ministries, and to suspend in case of issuance until the case is decided.)). It's known that laws are obliged and must be applied by the executive authority, although it is challenged by its unconstitutionality because the constitutional provisions of the FSC competence of trying in the laws' constitutionality are not limited by the implementation pending of the legal texts –under challenge-, because it must be applied from the date of issuance in the gazette or the date that determined by itself, considering it issued by the people according to provisions of the article (128) of the constitution. the sovereignty is for the law for being the source of the authorities and its legitimacy

according to the article (5) from the constitution. the concept of violation referred to that the non-implementation of laws will take legitimacy basic from authority and break its presence's substantiation. It doesn't affect the reality that some laws' articles challenged by its unconstitutionality at the FSC because the corresponding laws to the constitution are the origin and the challenger is just claimed the opposite of that. The article (58) from the law of the public budget of 2015 stipulated ((the federal minister of finance associating with the federal ministry of planning shall set the required instructions of this law's provisions implementation in case of being decided. Since the text is a legitimate delegation from the ICR to two ministries for issuing the instructions of the implementation of the budget for 2015 as an introduction for the implementation of the public budget law. the issuance of these instructions is an obliged thing based on ((if the duty is not done except by something, then it is also a duty.)). Whereas the cabinet decision - to hold up issuing instructions or pending it In case of issuing- violated the constitution texts and the cabinet commitments according to the article (2/13th) from its bylaw which stipulated are (monitor the applying of legislation and to issue the required decision to make.). so the cabinet decision has clear violence to concepts of challenging the Constitutionality of laws and provisions of that. Furthermore, it refers to the government delay to apply its origin Constitutional acts which represent the reason for its legitimacy and existing.

The law of the budget is very important, its effects touch the different groups of people and government foundations. Holding up the implementation of some its texts for being challenged because of unconstitutional - which has no substantiation and violated the Constitution, the law, and the bylaw of the cabinet- will affect badly the basics that Iraq parliamentary system stands on, affects the principle of the law sovereignty, the legitimacy of the government decisions, the work of the public departments, it affected the public trust in the work of the constitutional foundations of the government and could be a way to apply the law for many reasons which will make ICR's decisions under the will of the government, either be applied it or hold up and challenged. The judicial supervision of laws' Constitutionality is an important basis of the law government's basis and the foundations. It shall not be a reason for law implementation in the state's foundations. For the above reasons, the plaintiff agent requested from the court to decide the unconstitutionality of the aforementioned decision and to decide a principle that has judicial origin and constitutional effect ((challenging law's

texts by its Constitutionality can't be an evidence to not apply by the public powers. The origin is the Constitutionality of law unless the FSC decided the opposite.)). The defendant agent answered on the case petition by the following: the request of the plaintiff is not within the FSC's competences which determined by the article (93) of the Constitution and the article (4) from the FSC Law No.(30) of 2005 because the challenged decision -which requested to be annulled- is a decision that violates the federal public budget law No.(2) of 2015 as the plaintiff claiming. Since the decision is an administrative decision not legislative decision, so the challenge of whether it is valid or not is a competence of the administrative judiciary court as stipulated by provisions of articles (7, 4) of the government shura council No.(65) of 1979 (amended). This what the FSC settled on many cases such as decision No.(2/federal/2008) issued on 10/3/2008. For the above, the defendant agent requested from the court to reject the case. The plaintiff's agent answered on the answering draft "the defendant agent claiming -that the challenged decision of the cabinet violated the federal law of the public budget of 2015 and it is administrative decision not legislative so it is out of the FSC competence- is not right for the following reasons:

Alif. the challenged decision of the cabinet violated the Constitutional articles (47, 80, 129), it is what the defendant disregard. The decision of holding up laws implementation violates the principle of separation between the authorities and it has no substantiation from the cabinet's competences. Also, it violates the principle of law validity. The aforementioned Constitutional texts broached to these things as it was mentioned in the draft presented on 16/4/2015.

Beh) what is mentioned in the case petition -that the federal cabinet decision violated provisions of article (58) of the public budget law of 2015- doesn't count as a violation of the law, but this violation looks like a violation of the aforementioned constitutional principles. Article (58) from the law of the public budget explained the following:

1) the aforementioned law shall be valid from 1/1/2015, but the federal cabinet violation represented by violating article (129) of the constitution which obliges the work of laws since the date of been published unless something unlike is stipulated.

2) the FSC has the competence to try the case according to provisions of article (93/3rd) of the Constitution which made it competent to decide in the case that raises from the applying of decisions, regulations, instructions, and procedures which issued by the executive authority. It exactly fits the cabi-

net decision which violates the Constitution, the law, and the cabinet bylaw. After the registration of the case according to provisions of the clause (3rd) from the article (1) from the FSC bylaw No.(1) of 2005. After the completion of the requested procedures according to the clause (2nd) from the article (2) of the aforementioned bylaw. The day 6/7/2015 was selected to be the date of the argument and the court convened so the plaintiff agent attended as well as the defendant agent and the argument started publicly and presently. The plaintiff's agents answered that they repeated the case petition and requested to decide according to it. The defendant agent repeated his previous sayings and requested to reject the case. Both parties repeated their sayings. whereas nothing left to say the court made the end of the argument and the decision was understood publicly.

The Decision:

During the scrutiny and deliberation by the FSC in its session on 6/7/2015, the court found that the cabinet has already issued in its eleventh regular session on 17/3/2015 a decision No.((hold up the work of the clauses - under objection- of the federal public budget of 2015 until the case is settled the concerned ministries shall not issue clauses' instructions – under objection- and to suspend in case of issuance until the case is settled). For convincing, the plaintiff challenged the decision at the FSC due to the reasons listed in the case petition. The FSC finds that decision N.(122) issued by the defendant on 17/3/2015 held up the work of the clauses -under objection- of the federal public budget of 2015 until the case is settled at the FSC by not issuing clauses' instructions -under objection- by the concerned ministries and to suspend in case of issuance until the case is settled. Since the initiated case about the challenged clauses No.(34/19/federal/2015) settled by the court, the trying of this case being unproductive because the holding up decision will be annulled by the final decision of the clauses –under challenged-(19/34/federal/2015). The court decided to reject the case and to burden the plaintiff with all the expenses and fees of the advocacy amount of a hundred thousand Iraqi dinars. The decision was issued unanimously and decisive according to provisions of article (94) from the Constitution of Iraq republic for 2005 and the article (5/2nd) from the FSC Law No.(30) of 2005. The decision was understood publicly on 6/7/2015.