

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.43&61
/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 plaintiffs:

- 1) minister of industry/ being in this capacity- his agent acting general manager of the legal department (Kaf.Ain.Ra)
- 2) the prime minister/ being in this capacity- his agent the counselor (Ain.Yeh.Ain) and the general manager Ph.D.(Ha.Jim)

The defendant: the ICR speaker/ being in this capacity- his two agents the legal officials (Sin.Ta.Yeh.) and (Heh.Mim.Sin)

The Claim:

The agent of the plaintiff the minister of metals and industry/ being in this capacity- claimed that after the ministry have reviewed the law of the federal public budget No.(2) of 2015, it became clear that the article (43) stipulated ((Reinstate the grant of the trademark to the union of Iraqi Industries)). This article contrary to the law of the FSC the article (4/2nd). Because the mentioned legal text is illegal, the plaintiff challenges it and for the following reasons:

- 1)issuing operation of any law requires to take the opinion of the concerned body to clarify its opinion. When the law was legislated, the opinion of the ministry of industry and that violates the law of trademarks and commercial data No.(21) of 1957 which amended by the Law No.(9) of 2010 that stipu-

lated ((it shall be there in the ministry of metals and industry a record that is pledged to the recorder and all the trademarks and commercial data shall be written in it...)).

2)the fees that are collected based on the law of the budget shall be given to the ministry of finance, the incomes of the commercial trademarks section are among these fees that about a hundred million dinars.

(3)the entrance of Iraq and joining the international conventions including Paris convention for protecting the industrial property of 1967 and Singapore convention of the commercial trademarks that Iraq joined it based on the Law No.(9) of 2009 and it leads to financial commitments the Federation of Industries is not able to pay it. Also, the section of the commercial trademarks is within the sections of the commercial and industrial property which are included within the Intellectual property rights. It is supposed to be attached to a governmental body like the rest of the world, especially Iraq submitted to join the World Trade Organization. The law of commercial trademarks has a lot of benefits to country economics. The plaintiff agent requested/ being in this capacity- to annul the article (43) from the law of the federal public budget No.(2) of 2015 before the FSC and registered his challenge by No.(61/federal/2015) against ICR. He clarified that the article (43) wasn't included in the budget law draft of 2015 that was sent to ICR. this addition represents a Constitutional violation formally and subjectively and what the Constitutional judiciary settled on that the cabinet is the only body in charge for the public policy of the state according to the article (80/1st) from the Constitution. also, ICR violates the principle of separation between powers that stipulated by the article (47) from the constitution, because it grants to the Iraqi industries union the authority to grant commercial trademarks instead of the ministry of industry and metals. The enacting of this text leads to financial commitments to the executive authority and forbid it to get the determined fees of registering the commercial trademark, especially the ministry of industry get 10% of these fees to cover the cost of administration and the activity of the commercial trademarks which mean it forbids the ministry an important resource. Also, joining of countries to conventions and international pacts leads to commitments which obliged the state, Iraq joined to the pact of Singapore and this joining leads to commitments that the Iraqi industry union is not able to discharge. The plaintiff requested from the court the decision of the unconstitutionality of the article (43) from the law of the federal public budget No.(2) of 2015. The defendant was informed for the two petitions of cases, so he answered

by his draft date on 12/5/2015 about the case 43/federal/2015 and answered on case No.(61/federal/2015) by his draft dated on 30/6/2015. It included the answering of his legal representative that the enacting of the article (43) from the law of the federal budget of 2015 doesn't contradict with the law of the commercial data and trademarks No.(21) of 1957 which amended by the Law No.(9) of 2010 because the legislative power has the right to change laws and its later law annuls the former law. Also, the court is not competent to try a case when there is a contrary between two laws. Furthermore, there is no evidence for the claim that the Iraqi industries union is not able to discharge the commitments obliged by the convention of Paris and the convention of Singapore. The defendant agent requested in his draft dated 12/5/2015 to make the Iraqi industries union as a third party in the case to clarify. Also, he requested to reject the case. The court called upon the two parties of the case (43/federal/2015) and the case (61/federal/2015), the two agents of the plaintiff repeated the case petition and requested to be decided according to it. Also, the two agents of the defendant repeated the answering draft and requested to reject the case. The court made the end of the argument and issued the next decision.

The Decision:

After the scrutiny and deliberation by the FSC, the court found that the plaintiff the minister of industry and metals challenged in case No.(43/federal/2015) the text of the article (43) from the law of the federal budget no.(2) of 2015 by its unconstitutionality. Also, the plaintiff the prime minister challenged in the case (61/federal/2015) the same article by its unconstitutionality, and both cases are against the ICR speaker. Because both cases have the same subject, the court decided to unify them and to consider the first case (43/federal/2015) the origin. The court finds that the article (43) from the law of the budget which challenged by its unconstitutionality stipulated ((Reinstate the grant of the trademark to the union of Iraqi Industries)). Since provisions of trademarks' registration organized by the law of commercial data and trademarks and gave that competence to the register of the commercial trademarks of the section he manages which was one of the ministry of economy sections according to law No.(21) of 1957. According to the article (3/11th) from the law of Iraqi industries union No.(34) of 2002, this competence was given to the mentioned union, then the power of the temporary coalition issued its order No.(80) of 2004 which stipulated in the article (9) to return the competence of registering the

commercial trademark to the ministry of industry. The law No.(9) of 2010 the law of amending the law of commercial data and trademarks devoted this competence to the ministry of industry and metals. The court finds that the text of the article (43) from the law of the federal budget No.(2) of 2015 that challenged by its unconstitutionality in the original case and the unified case that ICR put when it enacted the law of the federal budget of 2015 No.(2) of 2015 and this article wasn't included in the draft of the mentioned law which sent by the cabinet. This procedure contradicts the basic principle that the Constitution adopts in the article (47) (the separation between the powers). Also, the constitution gave tasks of (planning and execution of the state's public policy, the public plans and supervising o the work of ministries and bodies unrelated to ministry and to set the draft of the public budget and the final account and development plans) as an exclusive competence to the cabinet and this competence devoted by articles (80/1st/4th) and (110/3rd) from the constitution. what ICR mentioned in the cases' petitions are not included and if there something obliged to take this competence from the ministry of industry and give it to Iraq industries union, it shall be done by the constitutional formulated method in articles (60/2nd and 62/2nd) as applying for provisions of articles (47) and (80). Based on that, the matters shall be put in its constitutional quorum. Based on that, the court decided the unconstitutionality of the article (43) from the federal law of the public budget of 2015 No.(2) of 2015 and to burden the defendant all the expenses and fees of the advocacy fro the agents of the two plaintiffs amount of hundred thousand Iraqi dinars. The decision was issued unani- mously on 6/7/2015.

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