The In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 48/federal/2019

Kurdish text

The Federal Supreme Court (F S C) has been convened on 31.7.2019 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-nagshabandi, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff :

1- Ahmed Kazem Bedan.
2- Aqeel Latif Abd Al- Hussein.
3- Ammar Abboud Kanbar.
4- Mohammed Fadel Abbas.
5- Ali Hashim Suhail.
6- Walid Washer Farhood.
7- Qasim Abbas Dawood.
8- Jasim Yahya Abd Ali.
9- Mohammed Abd Al- Hussein Jerry.
10- Ihsan Faleh Kataran.

Their agents D. Wael Abd Al- Latif Hussein and Hussein Fahim Al- Samkhi

The Defendants : President of the House of Representatives / being in this capacity his Deputy Legal advisor Haitham Majid.

Marwa

Claim

The plaintiffs' agents claimed before FSC in the case No. (48/federal/2019) that the defendant/ being in this capacity legislate the Budget Law No. (1) of 2013 which is submitted by the article (46) which estimated the rent allowances randomly and there the text that mentioned before give the right to the State Real Estate Service imposing rent amounts on real estate of Green Zone, the Compound of Ministers and Qadisiyah violates provision the law on the sale and lease of state property No. (21) of 2019 in which detailed standards and controls were imposed on the imposition of lease returns to the State by land area date of construction and location of the property. However, the text of article (46) was violate it on the one hand and on the other treated unfairly with real estate spaces for example equated a 1000-m property with a 600-m and also between property 500-meter with the other 500-m in addition to not taking into account the date of construction of the property and location, therefore the duplication of work with the State Real Estate Department imposes amounts on rent allowances for employees makes it violate to the text of article (14) of the Constitution and equal opportunities in article (16) of the Constitution and moreover, the provision of article (127) of the Constitution, so the agent of the plaintiffs from FSC to judge of unconstitutionality of the article (46) Budget Law No. (1) of 2019 restrict the State Real Estate Department to from committees estimated the amounts of rents of State Real Estate in line with its real reality and according to the law of the sale of State property rents No. (21) of 2013 accordance with the Constitutional articles (14 & 16 & 127) and leave the imposing of lease allowances and charging defendant fees, expenses and attorney's fees. The agents of defendant answer on the petition by answering drat date 26/5/2019 as following: 1- The agent of the plaintiffs refer to the text being challenged was violate the provision of article (14 & 16 & 127) of the Constitution and we clarify that the text challenged does not violate or intersects with the judgment of the Constitution because the House of Representatives

inherent jurisdiction in the legislation of federal laws under the article (61/1st) of the Constitution including the Federal Budget Law and the right to amended, delete and add to the laws before accordance with the mechanism of legislation and constitutional authority and the text challenged it is not a financial burden it came as legislative option in order to preserve public money but adds revenue to the budget.

2- The agent of the plaintiffs indicates that the text is subject to challenged violation the provision of the law on the sale and rental of state funds No. (21) of 2013, we point out that this is outside the jurisdiction of the FSC to consider the Constitutionality of the laws valid accordance with the (93) of the Constitution it is not a violation of other laws and for the above reasons a request from the FSC to judge with the reject of the case and charging the plaintiffs' expenses and attorney's fees, after completing the legal procedures the court pointed a date for argument to the case and attended the plaintiffs' agents and the two agents of the defendant argument commenced immanence and public. The plaintiffs' agents repeat what came in the petition and request to judge under it and the two defendants' agent what came in the answering draft and request to judge by reject the case for the reasons contained therein. When scrutiny the FSC fond that the subject of the case regards with the Minister of Finance and State Real Estate Service and the purpose of standing on what helps to resolve the case, the court decided to include a third person in the case to stand them what it takes to resolve the case. The agent of the third person Minister of Finance/ being in this capacity introduced an answering draft date 24/7/2019 about the case it state the following: **1.** The summons draft became in the law on the sale and rental of state funds No. (21) of 2013 (amended) as the law defined by item (1st) from its first article that end with the phrase (unless otherwise provided by law) it us priori that phrase and legal rule which granted (privet restricts general) the law No. (21) of 2013 (amended) though the general Sharia regulates the sale and rental of state funds, another law is the budget law No. (1) of 2019 take up in its article forty

six a (special) situation which payment of rent in Green Zone and Compound of Ministers exclusively so the rule of restricts the privet for the general manifested clearly in such a situation. **2.** The summons draft describe the federal budget as an annual (yearly) while of the Constitution no distinction shall be made between force and law on the basis of its duration of validity even the article (130) of the Constitution it required that all legislation valid unless canceled or amended according to its provision. **3.** Usually the mentioned summons draft that the specific rent with the article (46) of the Federal Budget Law exceeds the provision of law (21) of 2013, omitted the law No. (21) of 2013 (amended) no lump-sum basis or figures or certain numbers as rent.

4. The summons draft alleged by pensions for plaintiffs while this is a matter of constitutional consideration to be seen from your esteemed court that the lease is a consensual contract the plaintiffs can not to ratification that they thought it did not fit with their income it is a personal matter in any case and not a constitutional case.

5. His client's department is an executive body obliged to enforce duly enacted legislation. The plaintiffs repeat the petition and request for judgment under it, the tow agents of the first defendant President of the House of Representatives also repeat what it came in the answering draft and request to reject the case, and agent's answer of the third person the Minister of Finance was repeated of what it came in the answering draft, and added the Director General of State Real Estate has no legal personality enable him to litigate. When scrutiny found that the court included the Minister of Finance and the Director General of State Real Estate in the case to clarify what is necessary to resolve the case, whereas the deputy Minister of Finance reported that the Director General of State Real Estate has on legal personality enable him to litigation and where the Ministry of Finance has responded to what is required to resolve the case, decided to remove the three persons from the case and keep the dispute between the plaintiffs and the defendant President of the House of Representatives. When scrutiny found that the

proceedings had been completed for reasons of judgment decided to end of argument and recited the judgment decided publicly the session.

The Decision:

When scrutiny and deliberation by FSC fond that the plaintiffs have challenge unconstitutional the article (46) of Annual Budget Law No. (1) of 2019 which state on estimation of rental fees for real estate located in the Green Zone and in the Compound of Ministers identify the persons occupying these properties covered by its judgment, as well as persons excluded from its judgment, the plaintiff explained that the provision of this article is violation to the provision of articles (14) , (16) and (127) of the Constitution for he reasons they mentioned in the petition, the defendant President of the House of Representatives/ being in this capacity defenses the case that legislation the article (46) the subject of challenge from the House of Representatives according to the authority of the Council to legislate laws in the amendment of its draft addition provided for in article (61/1st) of the Constitution. Also defended the third person entered by the court to clarify what was necessary to resolve the case that the real estate covered by the article (46) challenge special situation there is no object to determining the rent allowance, violation to the provision of the law of sale and rent of state funds No. (21) of 2013. The FSC returned to the state of article (46) subject of challenge it was examined and analyzed in the light of the appeals raised, found that the state of mentioned article specify the rent fees for the mentioned real estate in determining the area of the real estate only without the rest of the factors to be taken into account in the estimation of allowances these include the location the degree of construction, the time of its construction and the quality of the materials used in the construction of the property. Where set the rent allowance of the property, which is less than (500) m^{2x} is set at minimum of five million dinars per month and ten million per month for a property of more than (500) m^{2x}. The FSC found that the limiting the rent allowance to one factor is the area of the

property without the remaining factors mentioned, as well as the adoption of one number of space at the estimate, which is less than (500)m^{2x} and more than (500)m^{2x}without counting between these two figures in the area violates the principle of equality set in the article (14) of the Constitution, this is one hand and on the other the FSC found the text of article (46) subject of challenge omitted the determination of the rent of the property which has an area (500)m^{2x} it is not covered by judgment of article (46) subject of challenge this is also violates of the principle of equality. The FSC found from the third side that the text of article (46) subject of challenge the occupants of the properties mentioned therein are not equal in the collection of the rent allowances it was excluded from its inclusion by judgment of its preoccupation, if it was a minster, a minister degree, or a special grad, and exempted from this exception (the previous government) although its members of the same addresses of those who excluded them from its judgment and nevertheless obliged it meaning (the members of the previous government) to pay rent allowances in accordance with article (46) subject of challenge this is also a violation of the provisions of article (14) of the Constitution and violation of the principle of equality in one situation. Accordingly the FSC found in the text of article (46) subject of challenge described by the defendant/ being in this capacity what violation the article (14) of the Constitution is either the defendant's defenses in the text subject of challenge came according to the authority of the House of Representatives in legislation laws and in amendment their projects deletion and addition provided for in the article (61/1st) of the Constitution. The FSC find that the exercise of this authority must be in accordance with the provision of the Constitution and not violation to one of its articles. And also find that the defenses of the third person came ineffectively as the FSC stood to scrutiny and analyze article (46) subject of challenge by unconstitutional. Accordingly the judgment is unconstitutional the article (46) from the General Budget Law No. (1) of 2019 for violation the provisions of article (14) of the Constitution.

According to the aforementioned by the FSC, the defenses of the defendant/ being in this capacity and charge him expenses and attorney's fees of the agents of the plaintiff a sum of (100,000 dinars). The decision was issued decisively on the basis of the provisions of article (94) and article (5) of the FSC's Law No. (30) of 2005 with unanimously and the decision had made clear public on 31/7/2019.