

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 51/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 the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Wared Najim Abed Allah – his agent the attorney Mustafa Khamis Dawood.

The Defendant: The speaker of the parliament/ being in this post - his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

The Claim

The agent of the Plaintiff claimed that the defendant/ being in this post has already issued the General Budget law No.(1) for 2019 which included (71) articles, article (43) of it stipulate that (productive public sector companies are exempted from paying customs duties for raw materials or imported components... etc.) this is a step from the legislator to reform the Iraqi economy and to facilitate the obstacles to the public sector to help it rise, neglecting

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the mixed sector and private sector to rely on himself without help under difficult economic conditions, leaving it in a state of deficit in front of economic obstacles, as the article (43) has injustice the right of the mixed and the private sectors from the privilege of exemption that it limited to the public sector companies, and it violated the text of article (25) of the Iraqi constitution which stipulate that (the State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of its sources, and the encouragement and development of the private sector), the mentioned article (43) also violated the text of article (26) of the constitution which state that (the State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law), whereas the constitution has vouch the reform of the Iraqi economy throw encourage the investment of the mixed sectors without discrimination unlike the budget law specially article (43) of it that limited it to the public sector only. For all that the agent of the plaintiff requested to: (judge by the unconstitutionality of article (43) of the budget law No.(1) for 2019, and its invalidity for violating the basic principal of the Iraqi constitution). The agents of the defendant (the speaker of the I.C.R./ being in this post) has respond to the case petition with the following:

1. the agent of the plaintiff didn't clear the current, direct and effective interest in the legal, financial or social position of his client in his case, he has not establish or show the actual direct damage independent by its elements upon removal if a judgment is issued in this case, as stated in article (6/1st) of the F.S.C. Bylaw No.(1) for 2005.

2. the jurisdictions of the I.C.R. in enacting the laws is stipulated in article (61/1st) of the constitution, whereas the text (under challenge) was set as legislative option consistent with the (related) laws of protect and support the Iraqi national products and government programs in this regard, as well as national development plans and annual budget targets announced by the government, the text (under challenge) does not consider as violation to the constitutional texts.

For all that the agents of the defendant requested to reject the case. After the case was registered according to paragraph (3rd) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2nd) of article (2) of the mentioned bylaw, the date 31/7/2017 was set to proceed with the argument, the court convened and the agent of the plaintiff and the agents of the defendant has attended, and continue with the argument in presence and publicly, the agent of the plaintiff repeated what listed in the case petition and requested to judge according to it, the agents of the defendant repeated the answering draft and requested to reject the case, the agent of the plaintiff commented requesting to amend article (43) of the general budget law No.(1) for 2019 so that would leads to repeal this article because it does not equal between the public sector and private sector companies, and disturb the principle of economic reform, the agents of the defendant stated that "we don't have comment on the plaintiff's agent statement". The court scrutinized the case petition and found that its judgment reasons are completed so the argument has closed and issued the following decision.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff agent has challenged article (43) of the federal budget law No.(1) for 2019 which stipulate that (productive public sector companies are exempted from paying customs duties for raw materials or imported components... etc.) and that consider as neglecting to the mixed sector and private sector in relying on themselves under difficult economic conditions, and also consider as injustice to the mentioned sectors by not to be included in the exemption stated in the mentioned article (43), that is violation to article (25) of the constitution which stipulate that (the State shall guarantee the reform of the Iraqi economy in accordance with modern economic principles to insure the full investment of its resources, diversification of it sources, and the encouragement and development of the private sector), the mentioned article (43) also violated the text of article (26) of the constitution which state that (the State shall guarantee the encouragement of investment in the various sectors, and this shall be regulated by law). For all that the agent of the plaintiff requested to judge by the unconstitutionality of article (43) of the federal budget law No.(1) for 2019, and its invalidity for violating the basic principal of the Iraqi constitution. The F.S.C. found that the exemption of the productive public sector companies from paying customs duties for raw materials or imported components according to article (43) of the federal budget law No.(1) for 2019 -which is under challenge- exclusively from other sectors is proper implementation to the provisions of articles (25, 26) of the constitution, as making procedures steps in this field for one of the productive sectors don't necessary means lack of

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attention to other sectors and neglect it, because each sectors has specific procedures for it to develop and encourage it, as the implement of article (43) of the general budget law don't affect these procedures or stand against it. And that the enacting of the challenged article (43) is a legislation option practiced by the I.C.R. according to its stipulated jurisdictions in article (61/1st) of the constitution, and therefore it doesn't consider as violate to the mentioned constitutional articles (25, 26). Accordingly the F.S.C. decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued decisively and unanimously according to the provisions of article (94) of the constitution, and article (5/2nd) of the F.S.C. law No.(30) for 2005, and issued publicly on 31/7/2019.