

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 66/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: the managing director of Al-Kindi Company for vaccines and veterinary medicines production.

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 legal drafting of the General Budget Law is an important matter, where if this law intersects with the constitutional principles it will be subject to the control of the constitutional judiciary, which will confront it, and it will be repealed or revoked, as happened in the general budget law No.(9) for 2018 when the F.S.C. rule that the text of article (17) of this law is unconstitutional, and repeal it for violating the

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constitution. Since the main objective of the budget law is to provide public benefit to the general people and the citizen awaits it because it represents the achieving of his economic and living interests it also achieves the desired growth and well-being through equal opportunities among Iraqis, whether they are normal or legal person and that is what the Iraqi constitution of 2005 refer to. The mechanism to achieve this objective is throw the article contained in this law, as the constitution consider the Iraqi people equal before the law without discrimination according to article (14) of it, article (16) of it referred to equal opportunities as a right to be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken, article (25) of the constitution ensure that the State shall guarantee the reform of the Iraqi economy in all its component, article (26) of it confirmed that the State shall encourage investment in the various sectors not just the public sector, in light of the aforementioned the agent of the plaintiff consider that the text of article (24) of the general budget law No.(1) for 2019 violate the constitution, whereas the mentioned article stipulated that ((federal ministries, entities not affiliated with a ministry and the governorates are committed to purchasing their needs from the products of the federal ministries... etc.)), this provision was supposed to be applied to all local products through the purchase of needs from the products of the mixed and private sector as well as the public sector to achieve equal opportunities. For all that the agent of the plaintiff requested to (judge by be repealing or revoking this article for its unconstitutionality and for violating the provision of articles (14, 25, 16, 26) of the constitution). The agent of the defendant (the speaker of the I.C.R./

being in this post) has respond to the case petition with the following: 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. 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- it 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 the subject of the case 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 agent of the defendant repeated the answering draft and requested to reject the case, the agent od the plaintiff commented that we require the inclusion of the private sector, by what the public and mixed sectors has included. 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 (24) of the federal budget law No.(1) for 2019 which stipulate that ((federal ministries, entities not affiliated with a ministry and the governorates are committed to purchasing their needs from the products of the federal ministries... etc.)) and that text must be implemented upon all the local products throw the inclusion of purchasing the needs from the private and mixed sector, in addition to the public sectors, as the limiting in the purchase from public sector products without the other sectors violated the provision of article (14) of the constitution which considered (the Iraqi people equal before the law without discrimination), and also violate article (16) of the constitution which make the equal opportunities guaranteed to all Iraqis, also article (25) of the constitution ensure that the State shall guarantee the reform of the Iraqi economy in all its component, also article (26) of the constitution confirmed that the State shall encourage investment in the various sectors not just the public sector. For all that the agent of the plaintiff requested to (judge by be repealing or revoking article (24) of the general budget law for 2019) for its unconstitutionality and for violating the mentioned constitutional articles. The F.S.C. found that the implement of article (24) of the budget law No.(1) for 2019 which is under challenge for its unconstitutionality, it does not only mean that the ministries and other federal bodies buying their needs from the public sector, and

no other sectors, and that is an legislated option issued by the I.C.R. according to its stipulated jurisdictions in article (61/1st) of the constitution, and it doesn't violate the constitution in the mentioned articles. There are other ways to encourage national industry represented by other sectors. 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.