

# IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq  
Federal Supreme Court  
Ref. 67/federal/2019



Kurdish text

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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- his agent the attorney Adnan Hassan Jebur.

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principles it will be subject to the control of the constitutional judiciary, which will confront it, and it will be repealed or revoked, as happened in the general budget law No.(9) for 2018 when the F.S.C. rule that the text of article (17) of

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this law is unconstitutional, and repealed it for violating the constitution.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 articles 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, the agent of the plaintiff consider the text of article (43) of the general budget law No.(1) for 2019 violate the constitution, as this article stipulated that (productive public sector companies are exempted directly or through contracts of participation, rehabilitation or operation from paying customs duties for raw materials or imported components... etc.), this article has discriminate between Iraqis by prejudice the right of the mixed sector and private sector from the privilege of exemption that it limited to the productive public sector companies only. For the aforementioned the agent of the plaintiff requested to (judge by repealing or revoking the text of article (43) of the general budget law for 2019 for violating the provision of articles (14, 25, 16, 26)

of the 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 (6/1<sup>st</sup>) 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 (61/1<sup>st</sup>) 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 (3<sup>rd</sup>) of article (1) of the F.S.C. Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2<sup>nd</sup>) 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 of the plaintiff commented

that "we request 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

After 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 directly or through contracts of participation, rehabilitation or operation from paying customs duties for raw materials or imported components... etc.) this article has discriminate between Iraqis by prejudice the right of the mixed sector and private sector from the privilege of exemption that it limited to the productive public sector companies only, and that violated the provision of article (14) of the constitution which consider the two parties equal before the law without discrimination, the challenged article also violate the provision of article (16) of the constitution which aim for 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. 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 (14, 16, 25, 26) of the constitution as making procedures in this field for one of the productive sectors don't necessary means lack of 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 –under challenge- don't stand against any such procedure of the other productive sectors. The F.S.C. found that the enacting of article (43) of the general budget law No.(1) for 2019 is an legislation option practiced by the I.C.R. according to its stipulated jurisdictions in article (61/1<sup>st</sup>) of the constitution, and therefore it doesn't consider as violate to the mentioned constitutional articles (14, 16, 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 (5/2<sup>nd</sup>) of the F.S.C. law No.(30) for 2005, and issued publicly on 31/7/2019.