

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.85 /federal/media/2015



Kurdish text

The Federal Supreme Court has been convened on 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 Plaintiff: (Ain.Mim.Ain)- his agent the barrister (Waw. Ain. Ha. Jim. Zin)

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

The Third Party: the prime minister/ being in this capacity- his agent the legal official (Ghain.Jim.Dal)

The Claim:

The plaintiff agent claimed that the defendant enacted Law No.(19) of 2013 ((the second amendment for the law of the governorates not organized in province No.(21) of 2008)). Because the mentioned decision violated the valid Iraqi Constitution and what the Iraqi Constitutional judiciary settled on, he submitted a challenge for these reasons:

1) he didn't take into consideration the issuance of law No.(19) of 2013 and provisions (47, 48, 80) from the Constitution. also, he didn't consider what the Constitutional judiciary of Iraq settled on which represented by the FSC's decisions such as No.(43/10/2010 and 44/2010 and 25/2012). The mentioned law added a financial burden without stand on the government's opinion and its ability to pay, this is obvious in the article (15) where it treats the members of the regional council of Baghdad (annulled) as members of

Baghdad governorate's council in terms of retirements' rights. This violates provisions of the article (130) from the bylaw of ICR which obliged ICR to take the opinion of the cabinet in all suggestions or an amendment that leads to an additional financial burden. also, the article (4/4th) from the law violates provisions of the article (110) from the Constitution, it gave the governorate's council the authority to formulate the public policy and to determine its priorities in all fields, the article (11/2nd) from the mentioned law, violates provisions of the articles (11/1st&2nd and 28) from the Constitution when it gave the governorate's council the authority to force taxes and fees since it is an exclusive authority for the federal power. Transferring competencies -that acted by ministries- to governorates' councils will burden the governorates with the administration of its departments' affairs and affects the settling of the cases that directly touches the lives of the citizen, therefore the reality of the services in the governorate. The mentioned law violates the principle of the unity of the financial treasury. According to it, all incomes shall be collected in the public treasury then it will be allocated to the concerned bodies. The challenged law leads to take off all tasks of ministries and bodies not related to ministry, therefore it violates the executive task of the government, confiscated the means and tools that let it do tasks that are given according to the article (80) from the Constitution. What indicates the unconstitutionality of the law No.(19) of 2013 that the cabinet challenged before the FSC within its decision No.(495) of 2013 and the plaintiff's agent claimed that his client didn't witness the justice decision of the mentioned court because of reasons he doesn't know yet. Whereas the government was to enact a third amendment for the challenged law, it wants to make a substantial change on what ICR did in the second amendment which violates the Constitution. for the above of reasons, the plaintiff's agent requested from the court to decide the unconstitutionality of the second amendment of the law of the governorates that not related to province No.(21) of 2008 and to annul it for violating provisions of the Constitution and what the constitutional judiciary of Iraq settled on. Also, he requested to issue immediate decision to stop the implementation until the issuance of the final decision. The defendant agent answered on the case petition as following: the plaintiff's agent didn't clarify the legal requirements that he has to initiate this case in terms of current direct interest and affects its legal, financial or social position. Also, he neither provides a piece of evidence for real damage that affected him due to the legislation that he requested from the court to annul nor the conditions the damage should

have based on provisions of the article (6) from the FSC's bylaw No.(1) of 2005. the plaintiff has no official capacity in the case, he just listed his name. the case must be rejected, for not having a current interest. He relies on constitutional texts about the government to challenge the law by its unconstitutionality. He referred to the article (80) from the constitution which about the cabinet's competences and referred to the FSC's decisions No.(43, 44 for 2010 and 25 for 2012), those decisions are about challenges presented by the government and there is no within the case's papers that initiated any power of attorney from the government to the plaintiff so he an initiate the case on behalf of the government for challenging the law – the subject of the case-, so the plaintiff seeks the interest the constitution gave to the government when challenging ICR's laws. This approves that the plaintiff has no interest, the government has already challenged law No.(19) of 2013 then it withdraws its challenge which means it accepted the legislation of the mentioned law by the mechanism that it had been enacted. This is enough to breach the first evidence of the plaintiff, it is not able to rely on the government's Constitutional substantiations in challenging laws while the government withdraw its case and accepted the law's provisions. originally the challenged law was referred to the government after approved by the cabinet in its session according to the letter of the government's ministry for ICR's affairs No.(4Qaf./4012/7449) on 6/9/2012. This revokes the claim of the plaintiff that the challenged law was enacted without been presented to the cabinet and the legislation of the article (15) from the mentioned law contradicts the article (130) from the ICR's bylaw, didn't violate the constitution. the legislation of the article (4/4th) from the above law doesn't violate provisions of the article (110) from the constitution, the Constitutional article stipulated the formulation of the public policy of the state while the article (4/4th) is just for the governorate's council competence of formulating the public policy in the governorate, there is difference between these two matters, The claim of the plaintiff about the violation of the article (10/10th and 4/2nd) of the challenged law to the article (110) from the Constitution is not right, whereas the two legal texts stipulated that the task of the governorate is just for what about the moving of the military units or curfew, these things are not touching the decided competences of the federal powers based on the article (110) of the Constitution which covers all the state. In the clauses (3rd, 4th, 5th) from the case petition, the plaintiff referred to his opinion about some of what included by the above law of provisions such as burden the governorate the administration of the

department affairs which affects the settling of cases, contradiction of the law with the principle of the unity of the financial treasury, take off all tasks of ministries. Presenting such notices against laws without any evidence for contradicting the Constitution is something the FSC doesn't concern about. These clauses that were listed in the case petition are not producing any effect on the constitutionality of the law. Also, the FSC emphasizes in its judiciary that the governorates incorporated into the region shall have many administrative and financial authorities to be able to manage its affairs based on the principle of administrative decentralization according to provisions of the article (122/2nd) from the constitution. the governmental program included (the strategic priorities in the ministries' action plan for the period (2014-2018) to stipulated the distribution of the governmental authorities among the regions and governorates incorporated into the region. This is enough to reject the plaintiff's case in terms of the government's approval on the law.also, the plaintiff referred in his case petition that the cabinet challenged the law according to its decision No.(495 in 2013) and he didn't inform the FSC about this challenge for reasons the plaintiff doesn't know. The plaintiff's agent clarify that this question even if it is directed to the court but challenging the law of the second amendment of the law for governorates incorporated into regions withdrawn by the government based on that it is within its governmental program that passed by ICR and was stipulated in the clause (6th/Jim/5) from the report of the strategic priorities in the ministries' action plan for the period (2014-2018) which required from the court to annul the case in the selected session fr trying. For the above reasons, the two agents of the defendant requested from the court to reject the case. After both the case's registration according to provisions of the clause (3rd) from the article (1) from the bylaw of the FSC No.(1) for 2005 and completion of the required procedures according to the clause (2nd) from the article (2) of the mentioned bylaw, the day 21/10/2015 was selected as the date of the argument. The court had been convened, the barrister (Waw.Ain.Ha) attended as the agent of the plaintiff, the two agents of the defendant (Sin.Ta.Yeh) and (Heh.Mim.Sin) attended. the argument had been started publicly and presently, the plaintiff's agent repeated the case petition and requested from the court to decide based on it the two agents of the defendant repeated their answering draft and requested from the court to reject the case, the plaintiff's agent made a comment that his client (Ain.Mim.Ain) is a representative from Al-Diwaniyah and still a member in ICR for the current term, he requested a delay to resent an answering

draft about what is listed in the defendant draft and to prove interest of initiating this case. The two agents of the defendant answered they don't mind to delay for clarifying the case and completing the formality data according to the law of civil arguments but the draft shall be presented and the content of case petition shall be aimed before the argument's date, the defendant shall be notified before an appropriate period so he could answer. Because of the mentioned reason, the argument had been delayed to 17/11/2015, the court was convened as usual so both the plaintiff agent and the two agents of the defendant attended, the argument started publicly and presently. It is noticed that the plaintiff agent presented an explanatory draft contained reasons for the case, the capacity of the one who initiated as a member of ICR. the two agents of the defendant answered they have nothing to more to say. The court decides to call upon the prime minister as a third person in the case because the subject of the case relates to him, to clarify from him what the case requires to be settled, and to notify him about the case proceedings from the case petition to the mutual drafts. the court decided to delay the argument to 16/12/2015. The court had been convened so the agents of both parties attended. also, the agent of the third party, the prime minister, attended, the legal official (Ghain.Jim.Dal), and the argument started publicly and presently as usual. The third-party agent requested from the court to give him time to study the case, to present an answering draft. The court decided to delay the case to 26/1/2016 because the agents of the defendant didn't object and the request is legal. The court decided to delay the argument to 17/3/2016 because the third-part agent couldn't answer on the case petition. The court decided to select the day 15/3/2016 with the agreement of both parties to try the case. The court had been convened on that day. The court decided to delay the argument to 19/4/2016 because there is a bill for amending the law of governorates which will be presented to ICR in the next session and to review by the plaintiff agents and the court, may it help to settle the case and saving time. If the decision issued, it will require to present a new bill to the cabinet then to ICR. the court had been convened so the two agents of the defendant attended, the third-party agent attended. it was noticed that the plaintiff agent didn't attend but the plaintiff did, he explained that his agent couldn't attend because of illness. He court decided to delay the case to 16/5/2016 so the plaintiff agent can attend. The court had been convened, the two agents of the third party attend but the plaintiff agent didn't despite the notification. The defendant and third-party agents said they have nothing to add.

The court found the case became ready to be settled so it decided to make the end of the argument understood and the decision was understood publicly.

The Decision:

After the scrutiny and deliberation by the FSC, the court found that the plaintiff agent challenged the law No.(19) of 2015 (the law of amending the law of governorates No.(21) of 2008) for violating provisions of the Constitution and what the Iraqi Constitutional judiciary settled on. The legislator didn't take in consider provisions of the articles (47, 80) of the Constitution when he enacted. Also, he didn't consider what the Iraqi Constitutional judiciary settled on which represented by decisions of the FSC such as No.(44/2010 and 25/2012). The mentioned law added financial burdens to the government without taking its opinion, considering its capability to pay. Furthermore, the mentioned law violated provisions of the article (130) from the ICR's bylaw which obliges the mentioned council to approach the cabinet for each proposal or amendment that leads to financial burdens. In addition to this, the article (4/4th) from the law violates provisions of the article (110) from the Constitution, it gave the governorate's council the authority to formulate the public policy and to determine its priorities in all fields, the article (11/2nd) from the mentioned law, violates provisions of the articles (11/1st&2nd and 28) from the Constitution when it gave the governorate's council the authority to force taxes and fees since it is an exclusive authority for the federal power. Transferring competencies -that acted by ministries- to governorates' councils will burden the governorates with the administration of its departments' affairs and affects the settling of the cases that directly touches the lives of the citizen, therefore the reality of the services in the governorate. The mentioned law violates the principle of the unity of the financial treasury. According to it, all incomes shall be collected in the public treasury then it will be allocated to the concerned bodies. The challenged law leads to take off all tasks of ministries and bodies not related to ministry, therefore it violates the executive task of the government, confiscated the means and tools that let it do tasks that are given according to the article (80) from the Constitution. What indicates the unconstitutionality of the aforementioned law that the prime minister challenged before the FSC. He withdrew it, due to reasons the client doesn't know. Based on that, the plaintiff agent requested from the court to decide

the unconstitutionality of the law No.(19) of 2015 (the second amendment for the law of governorates No.(21) of 2008) and to annul it for violating provisions of the Constitution and what the Iraqi constitutional judiciary settled on. Also, to issue an immediate decision to suspend the implementation until the issuance of the final decision. The FSC finding -after reviewing the case petition and the mutual drafts and after returning to the Constitutional articles which the plaintiff claimed it contradicts with the law- the claim of that ((the article (15) from the Law No.(19) of 2013 (the second amendment for the law of governorates incorporated in region No.(21) of 2008 (challenged by its unconstitutionality) which decided to treat the members of the regional council of Baghdad (annulled) as members of Baghdad governorate's council in terms of retirements' rights. This added financial burdens to the state without taking its opinion to know if it is able to pay, This violates provisions of the article (130) from the bylaw of ICR)) is not possible because the retirements' rights mentioned above were included according to the article (38/3rd) from the unified law of civilian retirement No.(9) of 2014, the FSC has already decided based on its decision No.(36/federal/2014) on 24/6/2014 the unconstitutionality of the article (38/3rd) for violating the article (62/2nd) from the Constitution and the article (130) from the ICR's bylaw. So, challenging the article (15) has no more substantiation from the Constitution and Law. Also, claiming that provisions of the article(10/10th) from the law violating the article (110) from the Constitution is not possible because the challenged article included authorities that can only be acted inside governorate's borders without affecting the exclusive authorities of the federal powers which stipulated by the article (110) from the Constitution, it is a legislative option and within the Constitutional contexts. The FSC finds that the cabinet has already initiated the case No.(3/federal/2014) challenging the unconstitutionality of the law No.(19) of 2013 – the challenge subject of this case- and the case was annulled due to a request made by the council. The court concluded an evidence that helped to settle the case. Also, it clarified to the court by the letter of the general secretariat of the cabinet No.(Qaf/2/2/007706) on 14/3/2016 and got attached to the case file that there is a law draft to amend the law of governorates incorporated into a region No.(21) of 2008, it is under studying to be presented to the cabinet. The court got a copy by the agent of the third person (the prime minister) on 30/3/2016 and attached it to the case file that was introduced to the case for knowing what is required to settle the case. Te court concluded from studying the draft of the law, annulling of the

case petition initiated by the cabinet to challenge that law, his non-objection about this law when he was introduced to this case as a third person, this is evidence of the executive power acceptance represented by the cabinet to the law content that was enacted to emphasize and to strength the Constitutional principle stipulated by the article (122/2nd) from the constitution which adobted the administrative dencentralazation system to manage the affairs of governorates incorporated into region. Because it is not proved to the court that provisions of the law no.(19) of 2013 violates the Constitution provisions and after reviewing the defenses of the defendant who relies on the issuance of this law to the legislative options according to his Constitutional authorities stipulated by the article (61/1st), the court decided to reject the case and to burden the plaintiff all the expenses and fees of the defendant agents and the two agents of the third party. The decision was issued decisive and unanimously based on provisions of the article (94) from the constitution and the article (5/2nd) from the law of the FSC No.(30) of 2005. The decision was understood publicly on 16/5/2016.