

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 97/federal/media/ 2016



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 14/2/2017 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:

1. (alif. yeh. alif.)
2. (Ain. alif. heh.)
3. (Ha. Kha. Jim.)

The Defendants:

1. The prime ministers/ being in this post, his agent (ha. Ain. Sad.).
2. Minister of Health/ being in this post, her agents the legal official (ra. Ain. Ain.) and (feh. Ain. mim. Kaf.).

The Claim

The agent of the plaintiffs claimed that the ministry of health has issued decisions to increase the imposition of fees and wages for health services in order to fill the shortfall in the federal budget of (2016) based on article (25) of the federal budget law No.(1) for

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2016. As this article violates the constitution, law, and the international pacts, he challenged it for the following reasons:

1. The constitution is the top of the legal pyramid, therefore the issued laws, regulations, and instructions must be in accordance with it, the challenged article violate the text of article (13/1st, 2nd) of the constitution (no law that contradicts this Constitution shall be enacted. any text in any regional constitutions or any other legal text that contradicts this Constitution shall be considered void).
2. The challenged article violate the provision of article (28) of the constitution which stipulated that (no taxes or fees shall be levied, amended, collected, or exempted, except by law).
3. The agent of the plaintiffs claimed that the citizens have the right to enjoy health services, and that the act of the ministry of health to implement the increase upon all fees and wages based on the challenged article (25) of the budget law, is explicit violation to article (31) of the constitution that stipulated in paragraph (1st) of it (every citizen has the right to health care. The State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions).

For all that the agent of the plaintiffs request (to judge that article (25) of the federal budget law No.(1) for 2016 is unconstitutional, and to revoke it, as it violated the provision of articles (13/1st and 2nd, 28, 31) of the constitution). The agent of the first defendant/ being in this post has respond to the case petition from the point of litigation and the point of objectivity by his draft No.(qaf/2/2/68/3932) dated on 13/12/2016 that is linked to the case files, which stated the following: from the point of litigation the Iraqi council of representative (I.C.R.) is competent to legislate law according to

article (61/1st) of the constitution, therefore the litigation in this case is directed to it, because according to articles (60/1st) and (80/2nd) of constitution, his client is competent to submit the law bill, as the law bill submitting does not consider as law legislation, therefore the litigation is not accomplished against his client, also according to the provision of article (80/3rd) of the constitution his client is competent to issue the regulations, instructions and decisions in order to implement the laws, the plaintiff request is not related to regulations, instructions and decisions issued by his client, therefore the litigation is not achieved. As for the objectivity, the challenged article (25) was legislated according to the provision of article (28/1st) of the constitution, accordingly the claim is rejected from this point, as for the claim of the plaintiff's agent that the text of the challenged article (25) violated the provision of article (31) of the constitution, is also rejected, were the government did not refrain from providing means of treatment, and did not stop providing it by monitoring the financial allocations sufficient for it, the principal of (imposing the fees and wages) does not contradict with the principal (the obligation of the State to cover the means of treatment and health care) were every service must be equivalent with fees according to the law of public administration and public debt No.(95) for 2004, and the international standards. The general policies of the State and its outlining, implementation and follow-up are exclusive jurisdictions of the Council of Ministers according to article (80/1st) of the constitution. Accordingly granting the ministries the jurisdiction to imposing fees and wages for the provided services under the provisions of the challenged article (25) does not consider as violation to the constitution. For all that the

agent of first defendant requested to reject the case. The agents of the second defendant/ being in this post replied to the case petition by their marginalized draft by this court on 21/12/2016 and linked to the case files which stated the following: the increase in the nominal fees for the services provided by the State through the Ministry of Health don't include violation of the Constitution, because the constitution authorizes the state management to make decisions to insure continued work of its institutions, the imposing of the fees and wages by the second defendant was under article (25) of the challenged budget law and the council of ministers decision No.96) for 2016, therefore there is no violation to the constitution and valid laws. And the imposing of the excess fees and wages is to cover the fee for service provided to the citizen and its continues, due to lower in oil prices and the accompanying decrease in the revenues of the state and the reduction of allocations of the ministries accordingly. For all the mentioned reasons the agent of the second defendant requested to reject the case. After the case was registered before this court according to paragraph (3rd) of article (1) of its Bylaw No.(1) for 2005, and completing the required procedure according to paragraph (2nd) of article (2) of the mentioned bylaw, the date 14/2/2017 was set to proceed with the argument, the court convened and the agent of the plaintiffs has attend, also the agent of first defendant has attend and continued with the argument in present and publicly , the agent of the plaintiffs repeated the case petition and requested to judge for what listed in it, the agent of the first defendant replied that he request to reject the case for the reasons listed in their answering draft, the agents of the second defendant the minister of health repeated what listed in the

answering draft and requested to reject the case, both parties repeated their statement. Where nothing left to be said the argument has been closed and the court issued the following decision.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the agent of the plaintiffs claimed that the ministry of health has issued a decision to increase the fees and wages for health services in order to fill the shortfall in the federal budget of 2016 based on article (25) of the federal budget law No.(1) for 2016, because his clients were not satisfied with that decision, so h challenged it before this court requesting to judge that (the mentioned article (25) is unconstitutional for the reasons listed in the case petition). The F.S.C. found that:

First: The plaintiffs has challenged the text of article (25) of the federal budget law for 2016, as according to what they claimed it violate the provisions of the mentioned constitutional articles in the case petition. According to article (4) of Civil Procedure law No.(83) for 1969 (the amended) its required that (the defendant must be a litigant. His admission lead to a judgment by assessing issuing an admission from him, and he also must be convicted or obliged by something if the case was approved, whereas the I.C.R. according to the provisions of article (61/1st) of the constitution is the party that is responsible for legislating laws, and the challenged article (25) is part of the federal budget law which was issued by the I.C.R. according to his mentioned jurisdictions, therefore he is the party who have the right to revoke it or to amend it, so the litigation must be directed to him

in this case, and that obligate its formally rejection from the point of litigation.

Second: The challenged article (25) is part of the federal budget law No.(1) for 2016, that law is not valid anymore, as the F.S.C. according to the provisions of article (93/1st) of the constitution is competent to monitor the constitutionality of the valid laws and regulations, not the expired, accordingly the consideration of the challenge against article (25) is out of the jurisdictions of this court that stipulated in article (93/1st) of the constitution, and that obligate its formally rejection from the point of jurisdictions also.

Third: The decision of the second defendant (the minister of health)/ being in this post is based on the subject that article (25) of the federal budget law No.(1) for 2016 is administrative decision, and the law has determine the party to challenge before it other than the F.S.C. therefore the consideration of the challenge is out of the jurisdictions of the F.S.C. which obligate its formally rejection from the point of jurisdictions also.

For all that, the F.S.C. decided to reject the case formally for the mentioned reasons and to burden the plaintiffs the expenses and the advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars shared between them. The decision has been issued decisively according to the provisions of article (94) of the constitution, and article (5/2nd) of the F.S.C. law No.(30) for 2005, unanimously and issued publicly on 14/2/2017.