

The Federal Supreme Court has convened on 14.2.2017, headed by the Judge Medhat Al-Mahomood and the membership of the Justices Farooq Mohamed AlSame, Jaefar Naser Hussain , Akram Taha Mohamed , Akram Ahmed Baban , Mohamed Saeb Al-Naqshabnde , Abood Salih Al-Temimi, Mekaeel Shamshon Qis Qourqis and Hussain Abbass Abo Al-timen who are authorized to judge in the name of the people and it issued the follow decision:

The Plaintiffs:

1. (Alef. Ya'. Alef.).
2. (Aen. Alef. Ha').
3. (Hae'. Khae. Jeem.).

Their agent the attorney (Hae' Sad. Aen.).

The Defendants:

1. The Prime Minister/being in this post/ his agent the legal official (Hae'. Sad.)
2. Secretary Of Health/being in this post/ her agents the legal official (Ra'. Aen. Aen.) & (Fa'. Aen. Meem. Kaf.).

THE CLAIM:

The agent of the plaintiffs claims before the FSC that previously the Health Ministry issued it decisions to increase the fees and wages for the health service to fill the gap happened in the federal budget for year 2016 based on article (25) of Federal Budget Code no.(1) for year 2016. Because the mentioned article is a violation to the constitution and the international laws and pacts. So he impeached it for the following reasons:

1. The Constitution is the top part of the legal pyramid, therefore all the issued laws and instruction and systems should be coincided with it. The impeached article is a violation to article (13/first and second) of 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 impeached article violate article (28) of Constitution stipulated on (No taxes or fees shall be levied, amended, collected, or exempted, except by law).
3. The citizen has the right to have health service, when the Ministry Of Health increased all the fees and wages based on the impeached article (25) of Federal Budget Code is a clear violation to article (31/first clause) of Constitution stipulated on (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 the aforementioned the agent of the plaintiffs request to judge in the unconstitutionally of article (25) of Federal Budget Code year 2016 no.(1) and to cancel it because it violate article (28& 31& 13 first and second clause) of Constitution.

The agent of the first defendant respond on the case petition from two sides litigation and objectivity by his draft no.(Kaf./2/2/68/3932) dated 13.12.2016 attached to the case file in the following: from the litigation side the ICR is specialized in law legislation according to article (61/first) of Constitution, therefore the litigation should be directed to it in this case because his client according to articles (60/first) and (80/second)of Constitution is specialized to present drafts of law, presenting drafts of law is not consider a law legislation. So the litigation against his client is not accomplished.

According to article (80/third) of constitution his client is specialized to issue rules, instructions, and decisions for the purpose of implementing the law. The plaintiffs request is not related to the rules, instructions, and decisions issued by his client therefore the litigation also is not accomplished. And from the objectivity side; the impeached article (25) was legislate according to the provisions of article (28/first) of Constitution. Therefore, the claim is rejected from this side.

Also the agent of the plaintiff claim that the impeached article (25) violate the provisions of article (31) is rejected because the Government did not refrain from providing treatment or stopped providing it and specified the enough financial allotment for it. The principle of (Impose the fees and wages) does not conflict with the principle of (the

Government obligation to provide the means of treatment and health care) where is every serves should have fees in return according to the General Management and General Debt Code no.(95) for year 2004 according to the international standards, the general politics of the Government and all things related to issuing and executing it is within the exclusive authorities of the Ministers Council according to article (80/first) of Constitution.

Therefore granting the ministries the authority of impose fees and wages for the presented services according to the aforementioned impeached article (25) does not consider a violation to the Constitution.

For all the aforementioned the agent of the first defendant request to reject the case.

The agents of the second defendant/ being in this post answered on the case petition by their draft footnoted by this Court in 21.12.2016 attached to the case file the following: the increase in the fees for the presented services by the Government by the Ministry Of Health do not include a violation to the Constitution, because the Constitution gave the Government the Power to make decisions to insure the continuation of work in its institution, the impose of fees and wages by the second defendant was done according to the impeached article (25) of Federal Budget Code and Minister Council decision no.(6) year 2016.

Therefore any violation to the Constitution and the Laws does not exist and the impose of fees and wages came to cover the expenses of the presented services for the drooping of the Oil price that cause decrease in the amount of revenue of the Government thus led to the decrease in the Ministries Financial Allocations. For the aforementioned reasons the agent of the second defendant request to reject the case.

After registration the case in the FSC according to clause (third) of article (1) of FSC Bylaw no.(1) year 2005 and completing the required procedures according to clause (second) of article (2) of the FSC Bylaw the date 14.2.2017 was appointed as a date for proceeding where the Court convened on it the agent of the plaintiffs and the agent of the first defendant attended and started the present public proceeding, the agent of the plaintiffs repeated what in the case petition and request to judge by it; the agent of the first defendant request to reject the case for the reasons mentioned in the answering draft presented to the Court; the agent of the second repeated their saying and requested to reject the case. Where is nothing left to say the decision made clear.

THE DECISION:

In the deliberation and discussion the FSC found that the plaintiffs agent climes that previously the Health Ministry issued it decisions to increase the fees and wages for the health service to fill the gap happened in the federal budget for year 2016 based on article (25) of Federal Budget Code no.(1) for year 2016. His client was not convinced in that decision so he impeached it before the FSC requesting to judge in the unconstitutionally of article (25) mentioned above for the reasons mentioned in the case petition. The FSC finds that:

first: the plaintiffs impeaching the article (25) of Federal Budget Code year 2016 because it came as they claim as a violation to the Constitutional articles provisions that mentioned in their claim petition; according to article (4) provisions of Civil Actions Law (amended) no.(83) year 1969 (the defendant is the party whose confession of a right shall result in a judgment that recognizes such a confession: and if the plaintiff was successful in proving his claim, then the defendant shall be the judgment debtor or shall bear a certain obligation.) where the ICR is specialized in laws legislation according article (61/first) of Constitution and the impeached article (25) is in the Federal Budget Code that issued by the ICR by it power abovementioned therefore the ICR has the power to cancel it or amend it. Therefore the litigation directed to it in this case; so it is rejected by the litigation said.

Second: the impeached article (25) was in the Federal Budget Code no.(1) year 2016, that Code is not valid anymore. Where FSC specialized in supervise the laws in force not the expired laws according to article (93/first) of Constitution, so the hearing in this case is out of the Court competence, so the case will be rejected.

Third: the decision issued by the second defendant (Secretary Of Health/ being in this post) based on article (25) of Federal Budget Code no.(1) year 2016 which is an administration decision, the law determined a specific party to impeach that decision; not among it the FSC. So the case will be rejected formally.

For the aforementioned the FSC decided to reject the case formally for the reasons aforementioned and to burden the plaintiff the expenses of the case and the fees of the agents of the defendants amount of (100000) one hundred thousand Iraqi dinar divided between them in half, the decision was made unanimous agreement according to article (94) of Constitution

(Translated From Arabic)

In The Name Of God The Most Gracious, Most Merciful
Republic Of Iraq
Federal Supreme Court (Emblem) (Kurdish Text)
Ref: 97/Federal/Media/2016

and article (5/second) of FSC Bylaw no.(30) year 2005 and made clear in
14.2.2017.