

Republic of Iraq
Federal Supreme Court
Ref. 118 /federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 16/12/2019 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: Haider Saeed Musa -his agent the attorney Waled Shaial Kdhem.

The defendants:

1. The Prime Minister/ being in this post.
 2. secretary - general of the council of ministers/
being in this post.
- } Their agent the
legal adviser
Haider Alsoffi

The claim:

The agent of the plaintiff claimed in the case petition that (the general secretariat of the Council of Ministers) has issued it circular No.(qaf/2/1/15/3105) dated on 2/11/2018 regard granting risk allocations for the medical, health and nursing personnel as it was granted for the medical personnel on amount of (100%) of the nominal salary, while it was granted on amount of (50%) of the nominal salary health and nursing personnel, he is challenging the mentioned decision according to article (93/1st) of the constitution

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as it contradicts the principle of equality granted by article (14) of the constitution, because all the associates who works in the health services are exposed to the same risks and the amount of exposure to infection. Also not including the supporting health cadres in the mentioned decision consider as discrimination because they are exposed to the same health risks. According to the aforementioned the agent of the plaintiff requested the F.S.C. to (rule to amend the decision of the Council of Ministers general secretariat so it would cover health, nursing and the supporting cadres who work in the health services in the same allocations of the medical cadres). After registering the lawsuit at this court according to paragraph (3rd) of article (1) of its Bylaw No.(1) for 2005, the agent of the defendants responded with the answering draft dated on (27/10/2019) requesting to reject the case from the aspect of jurisdiction as it is out of the F.S.C. jurisdiction which is stipulated in article (93/1st) of the constitution to oversee the constitutionality of the laws and regulations, and it is not allowed to interfere with their constitutional jurisdictions according to the principle of separation of powers that is stipulated in article (47) of the constitution. after completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 16/12/2019 was scheduled for the argument, the court convened and call upon the parties and their agents attended and continue with the argument in presence and public, the agent of the plaintiff repeated the case petition and

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requested to judge according to it and submitted a petition under his client name requesting to correct the word revoke with the word adding or amending the general secretariat decision, the agent of the defendants repeated the answering draft and requested to reject the case for the reasons listed in it. During scrutiny the court found that the case is completed for reasons of judgment and decided to close the argument, and issued the following decision publicly in the session.

The decision:

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff has claimed in his case petition that the general secretariat of the Council of Ministers has issued the circular No.(qaf/2/1/15/3105) dated on 2/11/2018 that included granting risk allocations for the medical, health and nursing personnel, the allocation ratio for the medical personnel is (100%) of the nominal salary, while for the health and nursing personnel it granted (50%) of the nominal salary, he consider this distinction contradicts article (14) of the constitution because all the associates who works in the health services are exposed to the same risks. He requested to amend the decision of the Council of Ministers general secretariat so that the allocation is (100%) of the nominal salary for all the workers in the health services. The F.S.C. finds that trying the request to of amending the general secretariat decision regard the risk allocation granted for the workers on the health service is out of the jurisdiction of this court that are stipulated in article (93) of the

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constitution and article (4) of the F.S.C. No.(30) of 2005, because these allocations was a choice made by a decision and can review the legal challenge method other than challenging it before the F.S.C. for the mentioned reason, accordingly the court decided to reject the case from the point of jurisdiction, and to burden the plaintiff the expenses and the advocacy fees for the agents of the defendants amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) for 2005 and issued publicly on 16/12/2019.