

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 62/federal/media/2018



Kurdish text

The Federal Supreme Court (F S C) has been convened on 28/5/2018 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-nagshabandi, Aboud Salih Al-temimi, 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:

Plaintiffs / 1. (alif. dal. alif.)
2. (alif. shin. kha.)
3. (waw. jim. beh.)

} their agent (ha. ain. ha.)

Defendant / Head of the House of Representative / being in this capacity
his agents human rights officers (heh. mim. sin.).

Claim:

The agents of the plaintiff's claimed in front of the FSC in the petition of the case No. (62/federal/2018) that the defendant (Head of the House of Representative/ being in this capacity) already initiated the Federal Budget Law of the Republic of Iraq for the fiscal year 2018 was published in the Iraqi Gazette No. 4485 on 2/4/2018 it has included in the article (17/5th) to impose a fine on alcoholic beverages and by 200% two hundred percent of the value of imported goods to be met at the border port. Because the imposition of fine in Iraqi law is committed at the time

of the commission of an offense by the actor and that the crime is provided for in the Iraqi laws in force. Article (19/2nd) of the constitution stipulates that there shall be no crime or punishment except by text; therefore, imposing a penalty of fine in the federal budget law is not punishable by a text or an act that is forbidden by law to punish him with a fine. Therefore, the imposition of a fine in the import of alcoholic beverages as stipulated in the budget law is contrary to the Iraqi Constitution in force, especially that the import of alcoholic beverages is to meet the amount of 30% of the value of imported goods at the border port. For the aforementioned reasons, the plaintiff's agent asked the FSC to judgment on the unconstitutionality of article (17/5th) of the Federal Budget Law for the year 2018. The agent of defendant (Head of the House of Representative / being in this capacity) replied to the petition of the case by the pleading of 29/4/2018 that the plaintiffs did not show the interest the direct situation affecting the legal, financial or social status to them the direct independent damage to its elements shall not be proved or demonstrated when it is removed if a judgment is rendered in this case in accordance with the provisions of article (6/1st) of the bylaw of the FSC No.(1) of 2005. As article (61/1st) of the Constitution singled out the House of Representatives legislation of the federal laws and that the text of the appeal is a legislative option for the purposes of the budget by additional revenue and deficit in expenditure, so the defendant's agents asked the Head of the House of Representatives to dismiss the case and to charge the plaintiffs with the judicial expenses, after the registration of the case with this court and the completion of the proceedings required by the provisions of the bylaw of the FSC No. (1) of 2005, the date 28/5/2018 was set as of the pleadings in which the court was formed and the agents of both parties were present under the agencies associated with the case file. The plaintiff's agent repeated the petition and requested the judgment under it; the defendant's agents repeated what was stated in the pleading and asked to reject the case for the reasons stated therein. Where nothing was said, the conclusion of the pleadings was understood and the verdict was read out in public.

The Decision :

For scrutiny and deliberated by FSC found that claim of the plaintiffs was based on the appeal of the unconstitutionality of the article (17/5th) of the General Budget Law for the fiscal year, which reads: "A fine shall be imposed on imported alcoholic beverages at a rate of 200% of the value of the imported goods, provided that it is met at the border port". Plaintiffs have described this provision as contrary to the provisions of article (19/2nd) of the constitution, which stipulates that a crime or penalty shall be imposed only by law and that the imposition of a fine on the importation of alcoholic beverages shall not be subject to a provision that criminalizes that act. The FSC finds reading article (17/5th) of the General Budget Law that its text has imposed a fine on imported alcoholic beverages and that this fine is collected at the border crossing through which the imported alcoholic beverages. The fine, as described in article (85/6) of the Penal Law No. (111) of the year 1969 of the original penalties imposed on the perpetrator of the crime of law and the process of importing alcoholic beverages is not one of the acts that were criminalized in the Penal Law or other penal laws, Therefore, the imposition of a fine for this act is contrary to the provisions of article (19/2nd) of the constitution. Accordingly, the ruling on the unconstitutionality of article (17/5th) of the General Budget Law for the fiscal year 2018 and its elimination. The defendant / being in this capacity charged with the costs and fees of the plaintiff's agent, amounting to 100,000 dinars. The ruling was issued by binding agreement based on the provisions of article (94) of the constitution and article (5) of the Law of the FSC No. (30) of the year 2005 and the judgment was understood publicly on 28/5/2018.