

Republic of Iraq
Federal Supreme Court
Ref. 149 /federal/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 18/12/2019 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 plaintiffs:

1. The attorney Alaa Shoon Husain AlMashaikhy.
2. The attorney Muhamad Shehab Ahmed -acting for himself and as agent of the plaintiffs.
3. Rafah Husain Shalal.

The defendant:

The speaker of the Iraqi council of representatives (I.C.R.)/ being in this post- his agents the legal officials the director Salim Taha Yasein and the legal advisor Haytham Majid Salim.

The claim:

The agent of the plaintiffs claimed in the case petition that the defendant has issued the law No.(19) for 2019 (the law of stamp duty of the national campaign to build schools and kindergartens)

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which was published in the Iraqi official Gazette No.(4559) on 21/10/2019 as the law has stipulated four articles included the imposing of stamp duty of the national campaign to build schools and kindergartens (deducted amount of 1000) dinars, the obligated reasons of it mentioned that the purpose of it is to save the required amount of funds to build schools and kindergartens in order that all the sections of society will participate in providing the required financial funds for this purpose, as this law contradicts the constitution and what listed in it of guarantees and rights of people stated in article (34) of it which stipulates that the state guarantee the right of education and the right of combat illiteracy and also stated the free education in it deferent stages, and the state shall encourage scientific research for peaceful purposes and shall support excellence, creativity, invention, and different aspects of ingenuity, also private and public education shall be guaranteed..., throw all that it clear that education is guaranteed by the constitution freely, and it is right of all Iraqi and is mandatory, as long as it is like that it is not logical to impose it by force with certain amount, the second defendant has signed and approved the law, for all that the agent of the plaintiffs requested the F.S.C. to rule the annulling of the law No.(19) for 2019 for it unconstitutionality and for contradicting the principles stated in the constitution. After informing the defendants with the case petition the agents of first defendant (the speaker of the I.C.R./ being in this



post) has responded with the answering draft dated on 2/12/2019 with the following:

1. The I.C.R. according to article (61/1st) of the constitution is competent in enacting federal laws, and as the law subject of the lawsuit is among them so there is no constitutional violation in that and it is legislation option.
2. The law subject of challenge was issued to impose the stamp duty of the national campaign to build schools in addition to the amount of the fees imposed by the law of stamp duty No.(17) for 2012, and the judicial fees law No.(114) for 1989 which stated the categories that should pay the fees and didn't imposed it on whom are covered with the free or mandatory education.

For the aforementioned, the agents of first defendant requested to reject the lawsuit. The agent of second defendant (the president of the republic/ being in this post) responded with the answering draft requesting to reject the lawsuit from the aspect of litigation according to article (80) of the civil procedures law. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 18/12/2019 was scheduled for the argument, the court convened and call upon the parties, the attorney Muhamad Shehab attended acting for himself and as agent of the plaintiffs, the director Salim Taha attended for first defendant the speaker of the I.C.R./ being in this post, the chief of the legal experts Gazy AlJanaby attended as agent of the second defendant

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the president of the republic being in this post and continue with the argument in presence and public, the plaintiffs' agent repeated the case petition and requested to judge according to it and submitted draft included an answer for the defendants agents' drafts, his answer stated that there is an allocated funds in the ministry of education to build schools and it is not allowed to impose stamp duty on citizen, the agent of the first defendant requested to reject the lawsuit for the reasons listed in his answering draft, the agent of second defendant submitted answering draft dated on 18/12/2019 included his response to the case petition. During scrutiny, the court found that the case is complete for reasons of judgment then 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 plaintiffs challenged in their case petition the unconstitutionality of Law No.(19) for 2019 for contradicting the principles stipulated in the constitution in article (34) of it, the first defendant the speaker of the I.C.R. being in this post responded stating that the I.C.R. has issued the Law according to it stipulated jurisdictions in article (61/1st) of the constitution, and it didn't imposed on whom are covered with the free or mandatory education but on who is covered with the provision of stamp duty law No.(71) for 2012, and the law

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of judicial fees No.(114) for 1981, as for the second defendant the president of the republic he also requested to reject the lawsuit because the litigation is not directed to him because he is not the party that enacted the law, he based his request on the provision of article (4) of the civil procedure law – in addition to objective defenses regard the claim that was submitted under the draft dated on 18/12/2019, the F.S.C. found from reading the lawsuit, its substantiations and the answers of the defendants that the challenged law doesn't affect the education procedure and its freeness as the participation of the mentioned categories in the two laws of stamp duty and the judicial duty in building schools and kindergartens as places where the procedure of free education takes place and doesn't mean seizure of the right stipulated in article (34) of the constitution, but it is directed to the participation of the society categories covered by the provision of the stamp duty law and the judicial fees law on providing the required financial resources for building schools and kindergartens, instead, this serves the procedure of free education, therefore the plaintiffs' lawsuit is not based on a constitutional substantiation, therefore the court decided to reject it for the first defendant the speaker of the I.C.R. being in this post for that reason, and to reject it for the second defendant the president of the republic being in this post because the litigation is not directed to him according to article (4) of the civil procedure law No.(83) for 1969. This decision has been issued unanimously and final

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

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according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 18/12/2019.

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