

Republic of Iraq
Federal Supreme Court
Ref. 169 /federal /2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27/1/2020 headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohamed Rajab Al-Kubaisy who are authorized in the name of the people to judge and they made the following decision:

The plaintiff: the attorney Khalid Wahid Ali AlGezi.

The defendants: 1. The President of the Republic/ being in this post – his agent chief of the legal experts Gazy Alganaby.
2. the Speaker of the Iraqi Council of Representatives (I.C.R.)/ being in this post- his agent the legal advisor Haytham Majid Salim.

The claim :

The plaintiff claimed in the case petition that the second-defendant the speaker of the I.C.R./ being in this post has enacted the Law No.(19) of 2019, the Stamp charge Law for building schools and kindergartens, which impose additional charge on the citizens' proceedings in all state offices, in addition to the imposed charge under the stamp charge law No.(71) for 2012 and the judicial charges law No.(114) for 1981, which was ratified by first-

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defendant (President of the Republic), published on the Iraqi Gazette issue (4559) on 21.10.2019. the plaintiff is challenging it before this court under the claim of violating article (34) of the constitution which stipulates the right of education, he sees that the Law didn't limits the campaign with defined term. For the foregoing he requested the F.S.C. to rule the unconstitutionality of the Law No.(19) for 2019 for violating article (34/2nd) of the constitution. after informing the defendants with the case petition, the agent of first-defendant the president of the republic/ being in this post has responded with the answering draft dated on 2.1.2020 requesting to reject the lawsuit because it subject has been considered and adjudicated on the issued F.S.C.s ruling Ref.(149/federal/2019) dated on 18.12.2019. The agent of second-defendant the speaker of the I.C.R./ being in this post has responded with the answering draft dated on 5.1.2020 requesting to reject the lawsuit because it subject has been adjudicated within the mentioned ruling, the challenged law doesn't means confiscating the stipulated right in article (31) of the constitution, but it leads to the participation of the society categories with that, it also feeds into the interest of the education process and its free of charge. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005, the date 27.1.2020 was scheduled for the argument, the court convened, the plaintiff himself has attended, the agent of second-defendant also attended, the agent of first-defendant didn't attend despite the informing, the court decided to continue with the argument with his

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absence, the plaintiff repeated the case petition and requested to rule according to it, the agent of second defendant repeated the answering draft and requested to reject the lawsuit for the reasons listed in it, the plaintiff commented that this lawsuit differ from the previous lawsuit mentioned by the defendant/ being in this post, in addition to that, the agreement that was signed recently remove the necessity to collect the charge to build schools for citizens. The agent of defendant has no comment on what the plaintiff mentioned in his draft. 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 plaintiff has challenged the unconstitutionality of the Law No.(19) of 2019 (the Stamp charge Law for building schools and kindergartens) under the claim of violating article (34/2nd) of the constitution which stipulate (free education in all its stages is a right for all Iraqis), first-defendant the president of republic/ being in this post responded requesting to reject the lawsuit for him because the litigation is not directed to him in this lawsuit according to the provisions of article (4) of the civil procedures law No.(83) for 1969. As for the second-defendant the speaker of the I.C.R./ being in this post stated that the law under challenge for being unconstitutional doesn't affects the principle of free education. The

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F.S.C. finds that there is obligation to distinguish between the process of building schools and kindergartens, and between the process of education within these schools and kindergartens, the participation of the society categories with the stamp charge under the mentioned law to build school or kindergarten, doesn't means confiscating the process of free of charge education, but it serve it interest. The F.S.C. has decided that in previous ruling regard the same subject Ref. (149/federal/2019) on 18.12.2019. accordingly, the plaintiff lawsuit is not based on authentic reason of the constitution. the court decided to reject the lawsuit and to burden the plaintiff the expenses and the advocacy fees for the second-defendant' agent amount of IQ.D (one hundred thousand). This 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) of 2005 and issued publicly on 27/1/2020.