

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 36/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 29/6/2015 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 Abas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Minister of higher education and scientific research/ being in this post -his agent the legal official (alif.jim.shin.).

The Defendant: the Speaker of the council of representative (I.C.R.)/ being in this post -his agents the legal officials (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

The Claim:

The agent of the plaintiff claimed that the law No.(3) first amendment law to the law of repealing the legal texts that prevent the courts from hearing the cases No.(17) for 2015, as this law violate the constitution, he challenge it for being unconstitutional because it violate the formality and mechanism that is stipulated in the constitution, the defendant has violated what the F.S.C. decided

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about the law bills that the executive authority are competent to submit through the President of the republic and the council of ministers, if it was submitted by another party it is considered as constitutional violation, on the other hand, as article (38) of the Ministry of higher education and scientific research' law prevent the courts from hearing the cases, it is a burden on the ministry for the large number of objections in the subject of admissions, promotions, equivalence of diplomas, failure, students restraining and other issues, the Iraqi constitution has stated a parliamentary system based on the principle of distributing of powers, the constitution has specified the jurisdictions of the I.C.R. in article (61) of it which authorize the I.C.R. to enact laws that are submitted by the council of ministers as laws bills according to article (80) of the constitution, which are limited authorities granted to the President of republic and the Council of ministers. And the constitution has differentiated between the law bill and law draft, the agent of the plaintiff commented that the I.C.R. has violated the constitution when exceed the powers of the executive authority, the F.S.C. in its decision No.(43/federal/2010) has cleared that the law bills are submitted by one of the two parties stipulated in the constitution. The agent of the plaintiff requested to call upon the defendant for argument, and to repeal the mentioned first amendment law. The defendant/ being in this post was notified by the case petition and he responded with answering draft dated on 19/4/2015 stating that the law No.(3) for 2015 (first amendment law to the law of repealing the legal texts that prevent the courts from hearing the cases No.(17) for 2005) was originally law bill submitted by the government of former term therefore the pleas that

the plaintiff listed are rejected, and the I.C.R. has process that law bill under its constitutional jurisdictions, the F.S.C. has issued it decision No.(21/29/federal/2015) stating in it standards for the legislations that are issued by the I.C.R. according to it stipulated powers so that it doesn't affect the principal of powers separation, as the challenged law is an implement for the mentioned standards, the mentioned law is an implement for the principal of powers separation, because other party than the independent judicial consider the litigation of the ministry of higher education, ministry of education, Taxes, and others, which means that the administration is the party to adjudicate the litigation throw administrative committee. The challenged law didn't leads to financial obligations upon the executive authority, it is also proper implementation for the ministerial agenda that was approved by the I.C.R., also article (100) of the constitution prohibited the stipulation within the laws on immunize any administrative activity or decision from being challenge, this prevention of the court makes the enacting the challenged law binding constitutionally, and revoke all the exclusions, and expanse the custody of the judicial to facilitate all disputes without exclusions as insurance for the right of litigation, and requested to reject the case. the court call upon the parties, the plaintiff' agent and the defendant' agents has attended, the agent of the plaintiff repeated the case petition and submitted answering draft to the draft of the defendant agents and requested to judge according to it, the agents of the defendant repeated the answering draft and requested to reject the case. Whereas nothing left to be said the argument is closed and the decision is issued publicly.

The Decision

During scrutiny and deliberation by the F.S.C., the court found that the plaintiff has challenged the constitutionality of the law No.(3) for 2015 ((the first amendment law for the law of repealing the legal texts that prevent the court from hearing the cases No.(17) for 2005)) for the claim of violating the constitution, and contradict the procedures of the F.S.C. by not submitting it through the executive authority. The F.S.C. finds that the challenged law for being unconstitutional doesn't violate the constitution provisions but it was proper implementation for it, as the origin in disputes resolution are conducted by the judicial according to its public custody stipulated in article (19/3rd), article (87) of the Iraqi republic constitution for 2005, and article (29) of the civil procedures law No.(83) for 1969, for the challenges submitted to, or that are binding to be submitted to the judicial on any conflict, or any challenge against any decision as implementing for the provision of article (100) of the constitution that prohibited the stipulation within the laws on immunize any administrative activity or decision from being challenge, also the legislation of the challenged law for being unconstitutional by the I.C.R. is in accordance with the guidelines of the F.S.C. in its decision that issued on 14/4/2015 No.(21/29/federal/2015) because it is not related to financial policy of the state, and don't contradict the ministerial agenda that is approved by the I.C.R., and doesn't affect the independency of the judicial authority but it is pillar for this independency, by that the case has lost its legal substantiation, accordingly the court decided to reject the case, and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars divided on them equally. The decision has been issued unanimously on 29/6/2015.