

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref.41 /federal/media/2019



Kurdish text

The Federal Supreme Court has been convened on 23/5/2019, 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-Nagshabndi, Abood Salih AL-Tememi, 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 :

The Request:

The presidency of the federal court of the appeal of Dhi Qar had sent in its letter No.(79/2019/Mim) that dated on 18/2/2019, the submitted request, via it to this court, from AL-Nasiriya court of misdemeanors and its text is:

Mim/a Request of decisive in the legitimacy of the text of the article (2) the clause (Beh) from the law of prohibition of toys that motivating the violence No.(2) for 2013, by the criminal case of the accused (Ali Hameed Naeem) that had been tried by this court and according to the provision of the aforementioned article.

The law of prohibition of toys that motivating the violence No.(2) for 2013, was passed on 26/5/2013 and had been published in Iraq gazette No.(4269) on 25/2/2013, the article (2) from the above law included the provision of act violence in the classes (Alif) and (Beh), and from observation of the article (Beh) which its text was listed (Imprisonment or a fine of not less than 3 million dinars shall be imposed on anyone who sells or trades the Games inciting violence in all forms). It is observed that the fine penalty is a basic

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penalty was listed as to be not less than three million dinars and no maximum limit was determined, this violates the law and because of the basic penalties and according to what listed in the penal code in the articles (25, 26 and 27) which grants the legal description for types of crime which are felony, misdemeanor and violation and determined the types of penalties with its minimum and maximum limits including the fine penalty beside to that the law of fines amendment No.(6) for 2008 which is the last amendment of fine penalty. The fines as follows:

Alif. for violations the amount is not less than (50000) fifty thousand dinars and not more than (200000) two hundred thousand dinar.

Beh. For misdemeanors, the amount is not less than (200000) two hundred thousand dinar and not more than (10000000) ten million dinar. What listed in the text of the clause (2) from the above law that didn't determine a maximum limit for the fine penalty and the court can raise the penalty of fine to any amount. This is legislative deficit and violation for the principle (there is no crime or penalty except by text) which was mentioned by the valid Constitution of Republic of Iraq for 2005, in the article (19/2nd) from it, as well as the article (2 ,clause(Jim)) from the above Constitution which mentioned that No law may be enacted that contradicts the rights and basic freedoms. Therefore and for the above, this court (AL-Nasiriya court of misdemeanors) requests from the respected FSC to try in the legitimacy of the penal text that represented by the article (2/Beh) from law of prohibition of toys that motivating violence No.(2) for 2013 and according to the article (3) from the bylaw of the FCS No.(1) for 2005 and the article (92) from the above law of the respected FSC with all gratitude and appreciation. The request was placed under the scrutiny and deliberation by the FSC in its convened session on 23/5/2019 the court after studying and deliberation reached the following decision:

The Decision:

During the scrutiny and deliberation by the FSC, the court found that AL-Nasiriya court of Misdemeanors has challenged the legitimacy of the article (2/Beh) from the law of prohibition of toys that motivating the violence

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No.(2) for 2013 for no maximum limit were determined for the fine that listed in it. The request was placed under scrutiny and deliberation by the FSC and it found that the principle of determination of maximum limit and minimum limit for the fine penalty is a general principle that was listed in the article (91) from the law of the penalties No.(111) whereas it determined the maximum limit and the minimum limit for the amounts that listed in it and it didn't prevent any law to stipulate otherwise, and the amounts of the listed penalty were amended according to the Law No.(6) for 2008, the law fines amendment that listed in the penal code.

The FSC found what listed in the text –the subject of the challenge- even if the text violates with the general principle that listed in the penal code, but the trying in this violation is out of the FSC competence that stipulated in the article (4) from its law No.(30) for 2005, and the article (93) from the constitution, this competence is limit to try in the Constitutionality of valid laws and regulations and doesn't go beyond to try in the contradiction of laws, and reliance of the request on the clause (Jim) from the article (2) and the article (19/2nd) from the Constitution is not corresponding with the shown case because the text –the subject of the challenge- left the choice for the judiciary as long as it doesn't encroach the listed texts in the laws, and the text –the subject of the challenge- didn't incriminate any action without stipulating it in the law. On the basis of this, the FSC decided to reject the case for competence point and the decision was issued unanimously and decisive according to the provision of the article (5) from the law of the FSC No.(30) for 2003, and the article (94) from the constitution on 23/5/2019.