



The Federal Supreme Court (F S C) has been convened on 8/6/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Ghalib Amir Shunayen, Hayder Jabir Abid, Hayder Ali Noori, Khalaf Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: the Dean of Al-Rafidain College/ being in this capacity
His agents the barristers Ph.D. Uda Yousef Salman and
Ghazi Tuma Yousef to be litigated together or alone.

The defendant: the Minister of Finance/ being in this capacity – his
Agent the official jurist Ala'a Alwan Humaidi.

The Claim

The plaintiff's agent claimed in the petition that the defendant, the Minister of Finance/ being in this capacity issued an order number (29 Sin/2316) on 1/12/2019 to seize the movable funds belonging to the College of Rafidain University for non-payment of income tax and taxes achieved on the salaries of its personnel since 2004 to date above. Because of the unconstitutional procedure involved in this matter, it constitutes a violation of the provisions of the Constitution in articles (19/9) of it and its text (laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees and (28/1st) which stipulated (no taxes or fees shall be levied, amended, collected, or exempted, except by law) because the Private colleges and universities law No. (13) For 1996 stipulated in the article (29) of it that: (first: the Private colleges and universities shall be exempted from the income tax, second: the collected incomes

of the Private college or university for the education personnel shall be exempted from the income tax). The amended Income Tax Law No. (113) of 1982 stipulated in article (7/10) that (tax-exempt from the following income: 10 - any tax-free income by special law or international agreement) and that the instructions for deduction Direct Deduction Tax No. (1) For 2007 - issued based on section (61) of the Income Tax Law No. (113) of 1982 and the Orders of the Coalition Authority No. (49 and 84) for the year 2004, article 6/15 of it stipulates (6. The following income is tax-free: 15: amounts exempted under any special law, or an international agreement to which Iraq is a party). Since the exemption is planned under a special provision, which is the text of the article (29) of the Private Colleges and Universities Law No. (13) Of 1996, which was repealed by the Private Education Law No. (25) on 19 September 2016 article (29) of it stipulates (first- exempting the university or college from income tax - second - exempting the collected incomes from the university or college to the members of the education committee or its employees are subject to income tax) the admission of the college's members - professors and employees - should be from the date of the cancellation of the tax exemption provision in 2016 and not retroactively from 2004. The constitutional violation is highlighted in the procedure followed by the Minister of Finance/ being in this capacity, the Constitution had elevated the tax affair and its importance because of the seriousness of its effects and therefore stipulated that the tax may not be levied or exempted from it except by law, and the benefit of this and constitutionally, it is only the legislature that has the reins of the tax in its hands without interference from the executive power, it regulates its situation by law, as only the legislator has the discretion to levy the tax in line with his legislative policy, which he adopts at a certain time and in line with the economic and social conditions that the country is going through. Therefore, the legislator may exempt some persons and groups from taxes for vital purposes associated with the exemption, whether or not those purposes are denied, he may amend the exemption, which is what has already happened in the Law of Universities and Private Colleges No. (13) Of 1996 in the article (29) of which he mentioned, this law considered in effect until 2016. Constitutionally, its levying must be direct and retroactive to tax legislation in view of the dangerous effects of reactionary in erasing

legal relations and the violation of the concept of social justice, which is supposed to be achieved by taxation, if this is the case, it is indeed the executive power to levy a retroactive tax and this measure violates the provisions of articles (19/9th) and (28/1st) of the constitution above-mentioned. The plaintiff requested from the Federal Supreme Court to judge that the order and the procedure of levying a tax without law and retroactively contrary to the provisions of articles (19/9) and (28/1st) of the Constitution are unconstitutional, based on the provisions of article (93/3) of the Constitution and article (4/2nd) of the Federal Supreme Court Law No. (30) Of 2005. Under the explanatory draft attached to the petition dated 9 February 2020, the plaintiff added that the appeal was due to the lack of constitutional basis for commissioning the tax because his client was not constitutionally mandated to do so because it was not levied by law in accordance with article (28/1st) of the Constitution of the Republic of Iraq, and there is no other way to remove it but to appeal to your esteemed court on a direct claim because there is no other legal way to challenge this procedure because the administrative judiciary does not consider challenging any decision and action taken by the administration if there is a special law that draws and defines the methods of appeal, which is income tax law No. (113) of 1982, which limited the right to appeal to the taxpayer with taxable income. Moreover, description of the taxpayer is not achieved constitutionally unless the tax is levied by law out of respect for the constitutional principle stipulated in the article (28/1st) of the Constitution, and the appeal to the administrative committees specified in the income tax law is done only by the taxpayer and after he has paid it based on the provisions of the articles (33-40) of it, which means accepting the violation of the Constitution and jurisdiction of the Federal Supreme Court to protect constitutional principles, including the principle of tax law, is inherent and is not disputed by any party, and this protection is its purpose, purpose and *raison d'être*, especially those where the constitutional violation cannot be removed by any other means. For all of the above, the prosecutor repeated his request in the petition. After informing the defendant the Minister of Finance/ being in this capacity with the petition and its attachments, his agent answered by the two answering drafts dated (10 and 18 February 2020) its conclusion: First: the case is due to be rejected formally for the following reasons: 1- The reserve detention

mentioned in the petition was issued based on the provisions of article (52) of the Income Tax Law No. (113) of 1982 amended chapter (24/ reserve detention) which provided (to the minister or who authorizes him to withhold the money that the owner tries to hide or smuggle from the tax and does not lift the detention except by estimating the tax and its taxation or providing a full sponsor vows to pay it). This decision regarded an administrative decision issued by a legally empowered financial authority, and the appeal against its abolition falls within the jurisdiction of the administrative judiciary. 2- Article (130) of the Constitution stipulates that the legislation in force will remain in force unless it is repealed or amended and that his client's department has implemented an explicit legal provision stipulated in true and effective law, the income tax law above-mentioned. 3- The plaintiff's claim/ in addition to his job is to request a ruling that the decision to place (reserve detention) unconstitutional and unconstitutional to tax him without a law (as he claims) while his client's department is authorized to do so based on the provisions of the Income Tax Law. 4- The subject of the case is one of the topics that the Income Tax Law has charted the way to follow concerning decisions issued by the financial authority under articles (33 to 40) of it, so the case is out the jurisdiction of the Federal Supreme Court as it is not permissible to create appeal methods or durations or new entities as long as they are determined by a special law and the private restricts the public, and thus the plaintiff's case is missing its legal basis and it must be rejected. 5. The Federal Supreme Court Law No. (30) Of 2005 stated in article (4/2nd) that the court is responsible for adjudicating disputes relating to the legality of laws, decisions, regulations, instructions, and orders that conflict with the laws. Second- The case must be rejected objectively because it has lost its legal substantiation for the following reasons: 1. The client's department has asked the plaintiff/ being in this capacity and other universities and private colleges since 2004 based on the Order of the Coalition Provisional Authority No. (49) Of 2004 under which article (2) paragraph (5) of the Income Tax Law was amended and salaries, wages, and allowances received by workers (non-state, public and mixed sectors) were taxable to ensure that all sectors of Iraqi society participated in the tax burden. 2. The order of the Coalition Authority No. (84) For 2004 (amended order) No. (49) for the year (2004)

stipulated in section (5) of it (suspend any provision in Iraqi law contrary to the provisions of this order) and that one of their structures and reasons is to increase the groups participating in the burden of taxation because these revenues benefit the Iraqi people and find appropriate conditions for rebuilding the Iraqi economy and this can only be achieved after the taxation has affected all members of society without specifying a particular category, and the Ministry of Higher Education and Scientific Research/ private study department which supported by its letter Numbered (2085) on 22 June 2015 that private colleges are subject to income tax in a direct deduction manner based on the item (1) of Section (22) of coalition authority order No. (49) for 2004, and it directed them to attend for paying the tax as soon as possible, or it will take the legal procedures against them as they considered obliged to pay it. For the reasons mentioned, the defendant's agent requested that the case must be dismissed and that the plaintiff shall burden the fees and expenses. The plaintiff answered the defendant's agent arguments and stated that the answering draft dated 18 February 2020 was summarized as follows: The administrative judiciary is not concerned with appeals against administrative decisions to which a reference has been set for appeal under a special law, and the incomes of the college and its personnel enjoy tax exemption in accordance with the text of the article (29) of the Law of Universities and Private Colleges No. (13) of 1996, which remains in force until the issuance of the National Higher Education Law No. (25) of 2016 and there is no legal provision Includes the abolition of the tax exemption prescribed to the college and its personnel and if there is a duty of the defendant's agent to explain it, in addition to not being taxable retroactively. The plaintiff also reiterated that his client is not considered costly and is exempt under article (7/10) of the Tax Code, which defined the taxpayer in the article (1/8) as every person taxed under this Law and that the description of the taxpayer - whose income is the functional vessel - is not achieved constitutionally unless the tax is levied by law out of respect for the constitutional principle contained in the article (28/first) of the Constitution, but to say otherwise and accept the addition of the description of the taxpayer The person charged with taxing natural or moral persons by the administration without a law means acknowledging and allowing the constitutional violation and his client

may not constitutionally appeal following the income tax law because he is exempt for the reasons mentioned. Moreover, appeal before the administrative committees which are determined by the income tax law shall be achieved by the taxpayer himself only, and after he pays the tax. The procedure unconstitutionality of the Finance Minister shall not be challenged before an administrative committee not judicial, while the Constitution prohibiting the tax levying according to the true texts which approved the legality of the income tax law (article 28/1st) without retroactivity (article 19/9th). The authenticity of the constitutional texts and the constitutional principles approved by it shall be guarded by the Federal Supreme Court, not any other body else. The tax income rationale had indicated that the problem of determining the challenge bodies is all about the committees which trying the administrative challenges that specialized in technical and financial sides, its works become later of levying the tax by law according to the texts of the Constitution. Moreover, the appeal relates to a constitutional, rather than a legal, violation of a tax without law and retroactively contrary to the provisions of the Constitution. Moreover, the action of the minister of finance/ being in this capacity is not an effective individual decision in an individual legal position or specific legal positions, but rather a general decision that affects different and wide legal positions in private colleges and universities whose all transferred assets have been seized and it has become difficult for them to meet their obligations and affects the legal centers of all employees of private colleges and universities who are currently not paid for the same reason above. The preamble to order (49) of 2004 is not a legal basis for the repeal of the provisions that included the tax exemption contained in a special law and the two orders did not include an explicit provision to abolish the tax exemption by abolishing the tax exemption and if there is such a provision, the defendant's agent must prove it. The demand for payment of the tax was obtained more than 10 years after the issuance of the orders of the coalition authority mentioned above, and if the abolition of the tax exemption was legally fixed, the Ministry of Finance would not have waited for this period, and that the taxation of the college and its personnel shall be from the date (2016), the date of the issuance of the Private Education Law No. (25) of 2016. For all of the above, the plaintiff repeated his request in the petition. After completing the

required procedures following the Bylaw of the Federal Supreme Court No. (1) of 2005, the Court appointed on 30 May 2020 a date for the case, and on the scheduled date of the case, the agents of the parties attended and be consulted to hear the case publicly. The agent of the plaintiff/ being in this capacity repeated what was listed in the petition and the explanatory drafts he submitted and requested to judge according to it. The agent of the defendant/ being in this capacity also reiterated the answering drafts submitted by him. Whereas nothing is left to be said, the end of the argument has been made clear and the Court scheduled 8/June/2021 as a date for issuing the decision. On the scheduled date, the agents of both parties attended and the Court recited the decision publicly.

The Decision

Upon scrutiny and deliberation by the Federal Supreme Court and reviewing to the plaintiff/ being in this capacity case and mutual drafts between the parties to the case and what their agents stated in the hearing, the Court found that the agent of the plaintiff the dean of Rafidain College/ being in this capacity challenges the unconstitutionality of the procedure taken by the defendant and the Minister of Finance/ being in this capacity issued by the number 29 Sin/2316 on 29 December 2019, which includes the seizure of movable and immovable funds belonging to his client's department due to non-payment of taxes due to the college and the salaries of its members from 2004 until the date of the placement of the above-mentioned detention on the grounds that the said procedure violated the provisions of articles (19/9 and 28/first) of the Constitution. The court found that the plaintiff/ being in this capacity had relied on his claim that he enjoyed exemption from income tax, as well as exemption of the incomes, earned to faculty members or college workers from tax under article (29) of the Universities and Private Colleges Law No. (23) of 1996 which repealed by the 2016 Private Education Law No. (25), and the defendant's levying of such taxes on him as of 2004 was contrary to the article (19/9) of the Constitution of the Republic of Iraq of 2005, which stipulates that laws, particularly tax and fee laws, are not retroactive, as well as violate article (28/first) of the Constitution which stipulates that no taxes or fees shall be

levied, amended, collected, or exempted, except by law. His client was tax-exempt until the passage of the Private Education Law No. 25 of 2016, which repealed the Law on Universities and Private Colleges, which exempted him from those taxes. While the agent of the defendant/ being in this capacity arguments summarized that the contested procedure was following the powers granted to his client under article 52 of the income tax Law No. (113) for 1982 (amended) which stipulated (to the minister or who authorizes him to withhold the money that the owner is trying to hide or smuggle from the tax and does not raise the reservation except by estimating the tax and its collecting or providing a full sponsor who pledges to pay it). The aforementioned procedure is an administrative decision that the legislator has drawn ways to challenge in articles (33) to (40) of the same law, so the subject matter of the case is outside the jurisdiction of the Federal Supreme Court, and the exemption enjoyed by the defendant/ being in this capacity ended with the issuance of the Order of the Coalition Authority No. 49 of 2004 amended by order of the same authority No. 84 of 2004 which included the same philosophy by providing for the collection of taxes from all public and private institutions and even public and private sector employees and that the defendant/ being in this capacity was relying on the taxation referred to in the plaintiff/ being in this capacity case as of the effective date of the two orders mentioned in 2004, so the decision of reservation issued against the defendant is not legislative that provided for retroactive taxes but rather a procedure based on individual cases rather, it is a procedure based on individual cases of persons (special moral) who have refrained from paying their taxes, and the amended Income Tax Law No. 113 of 1982 provided for the planned appeal methods to challenge such proceedings, and the payment by the plaintiff/ being in this capacity that his client was unable to follow the appeal methods provided for in the law referred to because of the non-payment of tax amounts achieved from him is defend lacking to its legal substantiation, and this matter should not be ignored because the provision prohibiting consideration of the objection of the taxpayer unless he pays the estimated tax during the period of objection provided for in article (33/3) of the Income Tax Law No. 113 of 1982 amended is one of the abstract general legal rules to which all individuals are subject and that violation by the plaintiff/ being in this

capacity cannot be a reason for this court to consider such objections, especially since the plaintiff/ being in this capacity has not paid tax amounts even for the period he admitted not to be exempted from, a period that came into force of the Private Education Law No. 25 of 2016 until his funds were seized on 1 December 2019. Since the procedure in question is not a legislative procedure and does not apply to the characteristics of the legal rule in terms of generality and abstraction, but rather a procedure that applied to a specific number of persons (private morality) and that the law has drawn methods of appeal, therefore, its consideration is outside the jurisdiction of this court. For all of the above, the Federal Supreme Court has decided the following:

- 1-To judge by dismissing the case of the plaintiff, the dean of the University College of Rafidain/ being in this capacity for lack of competence.
- 2-To burden the plaintiff/ being in this capacity the expenses and the advocacy fees for the agent of the defendant/ being in this capacity the official jurist Ala'a Alwan Humaidi amounting to 100,000 dinars distributed by the law. A final and binding decision of all authorities was issued unanimously based on the provisions of articles (93 and 94) of the Constitution of the Republic of Iraq for 2005 and articles (4 and 5) of the Federal Supreme Court Law No. (30) For 2005 (amended). The decision has been made clear on 8/June/ 2021.

Signature of the President Jassim Mohammed Abood	Signature of the Member Ghalib Amir Shunayen	Signature of the Member Hayder Jabir Abid
Signature of the Member Hayder Ali Noori	Signature of the Member Khalaf Ahmed Rajab	Signature of the Member Ayoob Abbas Salah
Signature of the Member Abdul-Rahman Suleiman Ali	Signature of the Member Dyar Mohammed Ali	Signature of the Member Munthir Ibrahim Hussein