

Republic of Iraq
Federal Supreme Court
Ref 87/ federal/2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 30/4/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussain who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Rafid Nasser Abdul Karim.

The Defendants:

1. Prime Minister / being in this capacity - his agent the legal adviser Haider Ali Jaber.
2. Minister of Education / being in this capacity - his agent the official jurist Mohamed Rashid Mahmoud.

The Request:

The plaintiff claimed in the lawsuit petition that the second defendant, the Minister of Education / being in this capacity, issued Order No. (4920) on 13/2/2024, which included (approving the recommendations of the Higher Committee for Relief and Support of Displaced Persons based on the Council of Ministers Resolution No. (24043 of 2024), paragraph (16) thereof, which includes setting 30/7/2024 as the date for the closure of camps and the voluntary return of the displaced, and in implementation of this decision, the date mentioned in it was adopted as the date for the closure of the ministry's representations in (Erbil, Sulaymaniyah, Dohuk), and when the decision was contrary to the provisions of the constitution and laws, therefore, the plaintiff took the initiative to challenge it before this court, since article 34 of the Constitution guarantees free education and education for all Iraqis at all levels, and since the governorate of Erbil is an Iraqi province, and the

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Ministry of Education is responsible for ensuring education for all its children of different races and nationalities, because most of the students of the region's representative schools are from the families of Arabs, Kurds and Christ, there are (148) thousand students committed to study within these representations, and most of their families are not from displaced families or camps, but from the families of residents of the northern governorates, and they have settled there he is one of them and has three children in the primary and middle stages, so he asked this court to cancel item (16) of the decision the Council of Ministers No. (24043 of 2024) and the Ministerial Order No. (4920) on 13/2/2024, and charging the defendants fees, expenses and attorneyship fees. After registering the case with this court, collecting the legal fee for it, and informing the defendants of its petition and documents in accordance with Article (21/1st and 2nd) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, the first defendant's agent responded with the reply regulation dated 23/4/2024 Conclusion: The plaintiff's request is outside the jurisdiction of the Federal Supreme Court under Article 93 of the Constitution and Article 4 of the Court Law, as there is no consideration of administrative decisions and ministerial orders, nor does his request exist the interest condition of the plaintiff to file it before the Federal Supreme Court, considering that the representations of the Ministry of Education have been opened to continue studying for the children of displaced families and that their studies are not affected by the issue of displacement compared to their peers in the rest of the governorates and for the Ministry to continue carrying out its tasks by providing free education to all segments of the Iraqi people, whereas the plaintiff and his family by acknowledging it are not displaced families, and therefore he does not have the right to object to the closure of the representations of the Ministry of Education, even if he obtained

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services from them, considering that this benefit is incidental and was not scheduled for him and is not considered one of the segments that were opened to them, and therefore his benefit from its services is not a support to achieve his interest for the purpose of filing this lawsuit and the plaintiff may continue to study his children in the regular schools of the region, and the ministerial (administrative) order subject to the appeal was issued by the second defendant (Minister Education / being in this capacity) based on the decision of the Council of Ministers issued by his client based on the powers granted to him in accordance with Article 80 of the Constitution, to implement the general policy of the state, including the policy of closing camps for displaced persons, as the decision that came in application of the ministerial curriculum that won the confidence and approval of the Council of Representatives based on the provisions of Article 76 of the Constitution, which stated that the government aims to finalize the displacement file to return the displaced families to their cities from which they were displaced based on what was presented by the Minister of Migration and Displacement, which is the concerned authority concerned with the subject as an emergency offer during the meeting of the Council of Ministers and according to what was stated in the aforementioned ministry letter, and thus the ministerial order - the subject of the appeal - is a positive decision from a substantive and formal point of view and based on the provisions of the Constitution and the law because there is no need for the representations of the Ministry of Education after the closure of the camps for the displaced, and to avoid paying the financial allocations of the Ministry of Education to continue to open the ministry's representations in the Kurdistan Region after Closing the camps because there is no need for them, and the opening of the representations of the Ministry of Education in the Kurdistan Region was not intended to

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continue the study of the children of families residing in the Kurdistan Region, as there is no need to open such representations for these families to allow them to be originally allowed by the regional government to study in the region's regular schools, therefore, the closure of these representations does not affect the families residing in the Kurdistan Region was harmed by enabling her to continue her children's studies in the region's schools, so the judgment requested to reject the lawsuit and charging the plaintiff the expenses, fees and attorneyship fees. The second defendant's agent replied with the reply statement dated 1/4/2024 to summarize: that his client's department had issued the letter - the subject of the challenge - based on the decision of the Council of Ministers the subject of the appeal, which came in implementation of the recommendations of the higher committee for the relief and support of the displaced, and that his client's department is an executive authority and implemented the recommendations received from the higher authorities, and therefore unrelated to the matter, and he requested to reject of the lawsuit and charging the plaintiff the fees, expenses and attorneyship fees. After completing the procedures required by the Court's Rules of Procedure, a date was set for the consideration of the case without pleading in accordance with Article (21/3rd) thereof, in which the court was formed and began to consider the lawsuit the court scrutinized the plaintiff's requests, his supports and the defenses of the defendants' agents, and after completing its scrutinies, the end of the minutes has been made clear and the court issued the following decision:

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The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's lawsuit focused on the request to cancel item (16) of the Council of Ministers Resolution No. (24043) on 23/1/2024, which included setting 30/7/2024 as the date for closing camps and voluntary repatriation of the displaced, and also requested the cancellation of the ministerial order issued by the Second Defendant's Department No. (4920) on 13/2/2024, which included the adoption of 30/7/2024 as the date for closing the representations of the Ministry of Education in Erbil, Sulaymaniyah, and Dohuk, and for violating item (16) of the aforementioned decision, as well as the aforementioned ministerial order, for the provisions of the Constitution and for the reasons stated in his petition, he requested a judgment to cancel them and charge the defendants expenses, fees and advocacy fees, through an examination of the lawsuit file and its documents, it was found that the plaintiff had admitted in his petition that he is not a displaced family and did not live in camps, but he and his family are residents of one of the northern governorates he had three children in primary and middle schools, whereas item (16) of the Council of Ministers Resolution No. (24043) on 23/1/2024 included setting 30/7/2024 as the date for closing camps and voluntarily returning the displaced to their place of residence in the cities from which they were displaced, so the plaintiff's interest in filing the lawsuit is not achieved one of the conditions for the admissibility of a constitutional lawsuit, like all other lawsuits, is the availability of a known interest a possible and verified case for the plaintiff in filing a lawsuit in accordance with the provisions of Article (6) of the Civil Procedure Law No. (83) of 1969, as amended, article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, therefore, the plaintiff's claim must be rejected because the

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interest condition for its establishment is not met and according to the foregoing the Federal Supreme Court decided to reject the plaintiff's lawsuit (Rafid Nasser Abdul Karim) and charge him all judicial fees and expenses, including attorneyship fees for the defendants' agents/ being in their capacity, an amount of one hundred thousand dinars distributed in accordance with the law. The decision has been issued unanimously, final and binding in accordance with the provisions of Articles (93 and 94) of the Constitution of the Republic of Iraq for the year 2005, and (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and it has been made clear in the session dated 21/Shawwal/1445 A.H. corresponding to 30/4/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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