

Republic of Iraq
Federal Supreme Court
Ref. 143/ Federal / 2018



The Federal Supreme Court (F.S.C.) convened on 1.3.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Akam Idris Abbas/ his attorney, Karwan Abdul Karim Balani.

The defendant:

Speaker of Kurdistan Parliament/ In addition to his post/ his deputies: Shermin Khader Bahjat, Legal Counsel in the Parliament, Legal Adviser, Rayya Saadi Ahmed.

The claim:

The plaintiff, through his attorney, claimed that he filed the lawsuit before the Administrative Court in Erbil with the number (54/K/2017) requesting the cancellation of the penalty imposed on him by the Dean of the College of Engineering at Salah al-Din University, but the lawsuit was rejected on the grounds that Law No.(10) of 2008 (Law of Ministry of Higher Education and Scientific Research of the Kurdistan Region of Iraq) that stipulates in Article (46) of it that (the university and the commission are solely responsible for deciding on complaints that arise from everything related to admission, transfer, exams, disciplinary penalties imposed on students, dismissal for failing, and evaluation of Iraqi and foreign

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certificates and degrees that follow a stage Secondary studies and claims for awarding academic and honorary titles and certificates), since this article prevents the courts from hearing the case, therefore contradicts Article (100) of the Constitution, which prohibits the text immunizing any work or administrative decision from appeal, and it also contradicts Article (19/3) of the Constitution that guarantees the right to litigation for all, and it is a right that does not nurture and ensure proper application of it except for the fair, independent, and impartial judiciary, not the university, and the administration, which is originally an opponent and is not legally valid, for all of the foregoing, the plaintiff's request from the Federal Supreme Court to rule that Article (46) of Law No. (10) of 2008 (the Law of the Ministry of Higher Education and Scientific Research of the Kurdistan Region of Iraq) is unconstitutional, and that the defendant/in addition to his post, burden the expenses of the case, the case was registered with this court in No. (143/Federal/2018). The legal fee for it was collected in accordance with the provisions of Article (1/Third) of the Federal Supreme Court's Bylaw No. (1) of 2005, the defendant was informed of its petition and documents in accordance with the provisions of Article (2/First) of the same rules of the procedure above. He responded with the answering draft dated 9/2/2022, which included the following:

First - Article (100) of the Constitution of the Republic of Iraq for the year 2005 states: (It is prohibited to stipulate in-laws the immunization of any administrative action or decision from appeal), as the constitutional legislator, to protect rights and freedoms, It is not permissible to immunize any work or administrative decision from the appeal, and the aforementioned text did not specify which

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type of appeal is intended. Is it judicial or administrative appeal, or any other way to object to the action or decision, it is like this, it came absolutely and the absolute is remain as it unless restricted by a text as required by the legal rule.

Second - By comparing the text of Article (46) in question with the text of Article (100) of the Constitution, it becomes clear that there is no constitutional violation in this regard. On the contrary, the contested text specified a mechanism for appealing decisions issued regarding admission, transfer, examinations, and disciplinary penalties imposed on Students, as well as dismissal, failure, and other topics stipulated in the article, and this mechanism is to appeal before the university or the body stipulated in the law, considering that these matters are technical matters related to the academic aspect, which makes these two bodies the most knowledgeable in the details of these aspects and therefore the best able to understand and absorb the content of the decisions issued within the educational process in general, and it is more appropriate to achieve justice, which means that the decisions issued within the framework of the law of the Ministry of Higher Education and Scientific Research are not immune from appeal and objection, even if this challenge is not judicial, as the latter is not embodied in it. All aspects of appeal in various administrative acts and decisions, otherwise the text of Article (100) of the Constitution would have explicitly provided for judicial appeal. However, the constitutional legislator has opted for specifics, certain of the existence of special cases that require the drawing up of special mechanisms for appeal and objection that may be faster than judicial mechanisms in this regard, in addition to what is required by the technical and precise details of some cases similar

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to that organization in the law of the Ministry of Higher Education and Research scientific and others.

Third - From this, it is clear that what the plaintiff stated in his pleading is not true and has no legal value for that, as the text of Article (46) subject to appeal is in agreement with the provisions of the Constitution and there is nothing in it that protects the decisions and actions it referred to from appeal. On the contrary, the mechanism has been drawn up for what in line with the nature of these issues in order to achieve justice and fast decision on complaints that may be submitted in this regard, so he requested that the plaintiff's lawsuit be dismissed with all fees and expenses, and after completing all procedures, a date was set for the pleading, and the two parties were informed of it, according to the provisions of Article (2/ Second) from the aforementioned bylaw, on the day appointed for the pleading, the court was formed, the attorney's representative, the lawyer (Karwan Abdul-Karim Aziz), attended and on behalf of the defendant/in addition to his post and his two attorneys, Sharmeen Khader Bahgat, Legal Counsel, Raya Saadi Ahmed, and Bushah attended the public pleading. The plaintiff's attorney repeated what was stated in the lawsuit petition and requested a judgment accordingly. The defendant's attorney responded, requesting that the lawsuit be dismissed for the reasons stated in the response list submitted by him in response to the lawsuit petition, each party repeated his statements and requests. precedent, since nothing remains to be said, the court decided the conclusion of the pleading, and issued the following ruling:

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The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff had filed the case before this court to challenge the constitutionality of Article (46) of Law No. (10) of 2008 (the Law of the Ministry of Higher Education and Scientific Research for the Kurdistan Region of Iraq), which stipulated that (the university and the commission are solely responsible for deciding on complaints that arise from everything related to admission, transfer, exams, disciplinary penalties imposed on students, dismissal for failing, evaluation of Iraqi and foreign certificates and degrees that follow the secondary school stage, and claims for awarding academic and honorary titles and certificates), as they prevent the courts from hearing the case and thus violate the provisions of the Constitution of the Republic Iraq for the year 2005 in Article (100) of it, which stipulates (it is forbidden to stipulate in the laws that any act or administrative decision is immune from appeal), and it also contradicts Article (19/Third) of it, which stipulates (Litigation is a safeguarded right guaranteed to all). The Federal Supreme Court, upon further consideration of its competencies stipulated in Article (93/First) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/First) of the Federal Supreme Court Law No. (30) of 2005 As amended by Law No. (25) of 2021, it is clear that oversight of the constitutionality of laws and regulations goes to the window, and that the text under appeal is considered valid because it was included in Law No. (10) of 2008 (the Law of the Ministry of Higher Education and Scientific Research for the Kurdistan Region of Iraq) and that it was not repealed by law of Cancellation of legal texts that prevent courts

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from hearing cases No. (17) of 2005, published in the Iraqi Gazette No. (4011) on December 22, 2005, as amended by Law No. (3) of 2015, (The Law of the First Amendment to the Law of Abolition of Legal Texts That Preventing the Courts from Hearing Cases), published in the Iraqi Gazette No. (4354) on 2/3/2015, according to which all legal texts that prevent courts from hearing cases wherever they are received, and the abolition of exceptions to it as well, and on the basis of the aforementioned law have been cancelled. The text of Article (38) of the Law of the Ministry of Higher Education and Scientific Research No. (40) of 1988, which was similar in its provisions to the text of Article (46) of Law No. (10) of 2008 (the Law of the Ministry of Higher Education and Scientific Research for the Region of Iraqi Kurdistan), especially that the decision issued by this court in No. (1/Federal/2015) on 27/1/2015 regarding Article (38) of the aforementioned Law of the Ministry of Higher Education and Scientific Research was issued before the entry into force of Amendment Law No. (3) of 2015 the aforementioned on 2/3/2015, and since the educational and general educational policy is one of the common competencies between the federal authorities and the regions and governorates that are not organized in a region and are drawn up in consultation among them based on the provisions of Article (114/sixth) of the Constitution of the Republic of Iraq, and since the priority of the law of the region and the governorates that are not organized in a region in the event of conflict with the federal laws in everything related to the common competencies based on the provisions of Article (115) of the aforementioned constitution, but this is limited to the non-confliction of the provisions of the law of the region and the governorates not organized in a region with the

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provisions of the Constitution and the necessity of their compatibility and consistency with the constitutional provisions, since Article (46) of Law No. (10) of 2008 (the Law of the Ministry of Higher Education and Scientific Research of the Kurdistan Region of Iraq) is considered inconsistent with the provisions of the Law of Repealing Legal Texts which prevents the courts from hearing cases No. (17) of 2005, as amended by Law No. (3) of 2015, but this conflict does not affect its presence and enforcement in the Kurdistan Region, as it is given priority for its inclusion in the region's law. However, this priority does not justify its violation of the provisions of it to the Constitution of the Republic of Iraq aforementioned, especially Article (100) of it stipulates (it is prohibited to stipulate in-laws the immunization of any work or administrative decision from appeal), and Article (19/Third) of it stipulates (Litigation is a safeguarded right guaranteed to all), and since the text of Article (46)) of Law No. (10) of 2008 (the Law of the Ministry of Higher Education and Scientific Research for the Kurdistan Region of Iraq), the university and the commission are alone in deciding on complaints that arise from everything related to admission, transfer, exams, disciplinary penalties imposed on students, dismissal for failing, and evaluation of certificates and degrees. Iraqi and foreign students following the secondary school stage and claims for awarding academic and honorary titles and certificates, thus immunizing the decisions issued by universities and bodies regarding the aforementioned complaints from the appeal, as it was not possible to appeal them before the judiciary and prevented the courts from hearing those complaints violating the provisions of Articles (19/Third and 100) of the Constitution, which requires a ruling of its unconstitutionality and its

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repeal. As for the foregoing, the Federal Supreme Court decided to rule the following:

1. The unconstitutionality of Article (46) of Law No. (10) of 2008 (Ministry Law Higher Education and Scientific Research for the Kurdistan Region of Iraq) and abolition it from the date of the issuance of this court's decision on 1/3/2022, for violating the provisions of Articles (19/Third and 100) of the Constitution of the Republic of Iraq for the year 2005.

2. Charge the defendant/in addition to his post expenses, fees, and expenses of the attorney of the plaintiff's attorney, Karwan Abdul Karim Balani, an amount of one hundred thousand dinars. The ruling was issued by the majority based on the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 as final and binding on all the authorities, and publicly understood on 27 Rajab 1443 AH corresponding to 3/1 2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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