

Republic of Iraq
Federal Supreme Court
Ref. 144/federal/2018



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 19. 1 .2022 headed by the Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein whom are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Lawyer Karwan Abdel Karim Aziz.

The Defendant: Minister of Higher Education and Scientific Research in the Kurdistan Region / being in his capacity.

The Claim:

The plaintiff claimed, that the defendant, the Minister of Higher Education and Scientific Research in the Kurdistan Region of Iraq / being in his capacity, issued instructions No. (4 and 5) on 25/5/2016, instructions issued by the Ministry of Higher Education and Scientific Research in the Kurdistan Region No. (4 and 5) for the year 2016, Published in the Kurdistan Gazette in the two issues (199-200) includes a set of impossible conditions and rules issued by a non-competent authority. And because the instructions should be to facilitate the implementation of the law as required by Article (80/Third) of the Iraqi Constitution and Article (50) of the Ministry's Law, according to Article (45/5) of the amended Law of the Ministry of Higher Education and

Scientific Research in the Kurdistan Region - Iraq No. 10 of 2008, which requires that matters related to higher education be determined by a system and not by instructions, and that the regulations are according to Article (8) of the Council of Ministers Law Kurdistan No. (3) of 1992 and Article (55) of the Law of the Ministry of Higher Education and Scientific Research No. (10) of 2008 amended the aforementioned, within the competence of the Council of Ministers, and changing the names does not give the right to issue, and according to Article (5/4/7) of the aforementioned Law of the Ministry of Higher Education and Scientific Research, the Council of the Ministry can only (propose draft laws and regulations related to higher education and scientific research) and submit it by the Ministry to the Council of Ministers. It is issued by the Council of Ministers. And that the Ministry's issuance of it represents a leap over the Council of Ministers, and it is considered as nothing, because it was not issued by the competent authority, in addition to the creation of new titles such as the candidate instead of the student, whereas, any (the plaintiff) successfully passed the scientific proficiency exams, until he reached the point where he was threatened with dismissal from postgraduate studies, and what was included under the name of the aforementioned instructions became an obstacle between him and the start of his studies. For all of the foregoing, the plaintiff's request from the FSC is to invite the defendant/ being in his capacity to plead, and to rule the unconstitutionality of Instructions No. (4 and 5) of 2016 issued by the defendant/ being in his capacity for violating the constitution and the law of the ministry and transgressing the powers entrusted to him and not observing the principle of gradualism Powers and competencies, and bear the costs of the lawsuit. The case was registered with this court in No. (144/federal/2018) and the legal fee was paid for it in accordance with Paragraph (1/3rd) of the FSC's bylaw No. (1) of 2005, and the defendant was informed of its petition and documents. The lawsuit petition was not answered despite the notification according to the law, after completing all the procedures required by the aforementioned bylaw, a date was set for the pleading in accordance with

the provisions of Article (2/2nd) of it, and the two parties were informed of it. On the day appointed for the pleading, the court was formed, so the plaintiff himself, the lawyer (Karwan Abdel Karim Aziz), attended, and the defendant did not attend / being in his capacity or his agent, despite being notified according to the law. His requests and statements, and since nothing remains to be said, the end of the pleading has been made clearly, and the court issued the following ruling:

The Decision:

After scrutiny and deliberation by the FSC it was found that the plaintiff's lawsuit focused on the request to rule the unconstitutionality of Instructions No. (4) of 2016 (Instructions for Studying a Master's Degree in Public Universities in the Kurdistan Region for the Academic Year 2016-2017), and Instructions No. (5) of 2016 (Instructions for Doctoral Studies in Public Universities in the Kurdistan Region academic year 2016-2017) issued by the Minister of Higher Education and Scientific Research in the Kurdistan Region for violating the Constitution of the Republic of Iraq for the year 2005, the law of the aforementioned ministry and for violating the powers granted to him, all for the reasons and justifications referred to in the petition and mentioned in the preamble to this decision. This means that the plaintiff has instituted his case based on the jurisdiction of this court contained in Article (93/1st) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/1st) of the FSC Law No. (30) of 2005 as amended. That (the FSC has jurisdiction over the following: **First:** Oversight of the constitutionality of laws and regulations in force) and therefore the aforementioned article has limited the jurisdiction of this court to consider requests and lawsuits related to the constitutionality or unconstitutionality of laws and regulations exclusively without instructions other than what was stipulated in the Law of Administration for the State of Iraq for the Transitional Period of 2004, which is repealed in Article (forty-fourth /jim) of it as the legislative hierarchy in force in the constitutional and legal system in Iraq is

arranging legislation from the highest to the lowest to (constitution - laws - regulations - instructions) and the constitutional legislator, when limiting the jurisdiction of this court to considering the extent of constitutionality of laws and regulations in force, and in the sense of violation has been excluded from that The instructions because the phrases of the legislator in general, and the constitutional legislator a fortiori, are chosen and intended and are subject to precise linguistic and legal formulations. Therefore, the consideration of the constitutionality of the instructions, whether issued by the federal authorities or in the region, is outside the jurisdiction of this court. For all the foregoing and for lack of jurisdiction, the FSC decided to dismiss the plaintiff's claim in form without entering into its origin and subject matter and charging him with judicial expenses from the FSC Law No. (30) for the year 2005 amended by Law No. (25) for the year 2021 and the decision had made clear public on 15 / Jumada al-Akhra / 1443 coinciding with 19/January/2022.