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In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq
Federal Supreme Court
Ref. 154/federal/media/2018



Kurdish text

The Federal Supreme Court has been convened on 2018/10/09 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, Hussein Abbas Abu Al-Temman, Mohammed Rajab Al-kubaisi and Mohammed Qasim Al-Janabi who authorized in the name of the people to judge and they made the following decision :

The Plaintiff : (Zin,Ain,Sad,Sin)- and his agent the lawyer (Ta,,Kaf,Ain,Zin).
The First Defendant : (ICR) speaker - being in this capacity his both agents the legal officials (Sin,Ta,Yeh) and the counselor (Heh,Mim,Sin).
The Second Defendant : minster of higher education and scientific research - being in this capacity this agent the legal officials (Jim,Yeh,Jim).

The Claim :

The plaintiff agent claimed in the case petition that the defendant has already issued law of martyrs foundation No.(2) for year 2016. number of its documents clearly violated the articles (14) and (16) from the Constitution, it listed in the clause (7th) from the article (17) of law for martyrs foundation (allocation a percentage Not less than (10%) of the scholastic seats as exception from the determined instructions and conditions for the admission in the primary and higher studies for martyrs families and Not less than one seat in each major , and the competition is being on the seat between them and a percentage (10%) allocated martyrs families and the popular mass as following (alif. higher studies, fellowships and scientific initiatives from the Ministry of Higher Education and Scientific Research and other government agencies, beh. Primary morning and evening colleges studies, teh. The studies in the civil, military and judicial institutes in all government ministries and foundations.) and based on to this clause the ministry of higher educations and scientific research cutback and booking this percentage of seats every year (exception) then grant the covered students who graduated from sixth class of primary school and they submitted for the admission in the colleges and institutes

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which the clause mentioned it earlier by grants them an increase on the actual degrees they got in the ministry exams of sixth class for the competition on these seats which booked earlier. According to the last issued from the ministry which is the student guidebook for central admission in the Iraqi universities 2017-2018.the regulations are placed according to it ,thereafter the booked seats are distributed. since these placed regulations from ministry of high education and scientific research allowed the student who belongs to these groups an exception to enter medicine group colleges under thirty five degrees which mean 5% of the general average or less than the minimum to accept the student from other people groups who are Not covered by the law of martyrs foundation in these colleges. students who are accepted within the central admission as long as the total degrees of the applicant from people who are covered by martyrs foundation law Not less than 630. degrees which mean (90%) but as far for him who doesn't reach (90%) average from the covered students by martyrs foundation law so he competes on other colleges under fifty degrees of the summation which mean (7%) from the general average of the student . it listed in the page NO.(4) of the guidebook in chapter one (the central admission its conditions ,basics and regulations) second- submitting regulations of martyrs families (1.the covered groups by this regulations are each of : alif. martyrs families of dissolved baeath party victims , ba. martyrs families of popular mass, jim. families of the war operations victims and military mistakes and terrorist operations and for the wounded who are covered by the law 57. for year 2015.

2. the submitting and admission for the mentioned groups in the clause(1) above by percentage (5%) for each group and the competitive on the seats for each group is separately.

3. the students compete for the admission in : alf. medicine group colleges - medicine ,dentistry, pharmacy- and under thirty five degrees of the summation or less than the minimum for admission in the colleges within the central admission for the scholastic year (2017-2018) but the applicant summation should Not be less than (630) degrees , ba. remaining competences under fifteen degrees of the summation or less than the minimum range to admission in the college or institute within central admission of the scholastic year 2017-2018. and (4) isetc) from aforementioned we find the ministry of higher education and scientific research allowed for the students of these groups which mentioned previously to enter the medicine group colleges as exception From central admission so it made it permissible for who has an average (90%) to enter it, but as for him who has average less than (90%) he competes on the remaining Not medical colleges like engineering colleges and the remaining other competences and he has difference on his actual average reach to (7%)

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and the first defendant preferred a social group than else Iraqi people groups he isolated a number of scholastic seats for them, then the second defendant ministry of higher education and scientific research implement this law and placed a regulations especially for it . and all of this violate the articles (14 and 16) from the Constitution of the Iraq republic for year (2005) and it is Not even close to being a legislative option and the (FSC) cleared the meaning of opportunities equality which mentioned in the article (16) from the Constitution and its decisions No.(27/federal/2015) on 29.6.2105 and (15/federal/2018) on 29.1.2018 as it listed in the decision No.(15/federal/2018) (it means no prefer or favoring between who are equal and have the same conditions which stipulated by the law and to grant the opportunities for each one who meets these conditions) and the ICR. got out of these conditions and preferred and favored between students than else who meets the same conditions which stipulated by the law, they got the required study average to have the scholastic seat, as well he prohibit a large part of student from the opportunities of getting the right to study in the competence he desires specially the medical colleges, after isolated (10%) of seats out of the competitive even if the situation of the martyrs families is a special social situation but that doesn't permit for the legislative authority to promote a private law which interrupt the equality that the law should be marked by it on the condition that the Iraqis people are equal in this regard irrespective of the social situation and this is what the article (14) of the Constitution stipulated .the effect of this law and other similar laws which included many of clauses which wrack the social justice will Not lead but to desperation and social depression, its existence especially the clauses that challenged means continuous of the laws which deviant of the basics that the Constitution stipulate it and proceeded by politic compromises far from the Constitution . the citizen doesn't find a way to deliverance from it and achieving but one party it is the FSC. And for all the mentioned reasons and other reasons that mentioned in the case petition the plaintiffs agent requested from the FSC – and for achieving the social justice- he requested to judge the clause (7th) from the article (17) from the martyrs foundation law No.(2) for year 2016. as illegitimacy because its violation for the Constitution, and my client interest is provided in the claim because she is damaged as they will to apply the law upon her. She is a student finished the sixth primary class exams and waiting the final result then the submission for the studying in the Iraqis universities. The defendant agents being in this capacity on the case petition by a written draft dated on 14.8.2018 as following :

1.the plaintiffs agent mention that the challenged text violates the article (14) from the Constitution. And we cleared the Iraqi people are equal in front of the

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law without discernment because the sex and descent..... What your respectable court judgment stabilized on is the equality is between the one-state and we don't see the text violation for the Constitution and the opportunities equality is ensured without doubts especially martyrs have the credit , so we should for achieving the justice grant them the rights and privileges to raise their economical level , scientific, health and cultural and what should fit with the size of their sacrifices and valuation to what they did to save the land and Iraq holies. As mentioned in the ordered reasons for the legislation law which challenged.

2. we mention that the competence of ICR. according to the decisions of the article (61/1st) of the Constitution in federal laws legislation where the law or the challenged text consider as legislation option that match the Constitution decisions. For the mentioned reasons requested from the FSC. to reject the case with burden the plaintiff the expensive and fees of the advocacy. The court seat a date for proceeding and on the seated day the court has been convened and the agent of the plaintiff (Ta,Zin) attended and the agent of the second defendant attended and the argument has been started publicly, the plaintiff agent repeated what listed in the case petition and requested the judge in accordance to it with burden the defendant the expensive and fees of the advocacy. Also the agents of the first and second defendant repeated what listed in their sayings and requested in private to reject the case and burden the plaintiff all of expensive and fees and on this and where there are No more to say the end of the argument has been made clear and the decision has been made clear on 29.12.2018.

The Decision:

during the scrutiny and the deliberation from the FSC. The court found that the plaintiff in her claim challenges the article (17/7th) of the martyrs foundation law No.(2) for the year 2016. because of unconstitutionality and requested the judgment. she relies on the provisions of articles (14) and (16) of the Iraq republic Constitution for year 2005. In her challenge. In returning to the article text (17/7th) the subject of challenge it found stipulate((a percentage Not less than 10% of the scholastic seats allocated as exception from the determined conditions and instructions for the admission in the primary and higher educations for the martyrs families and Not less than one seat in each competence , and the competitive on the seats between them , and a percentage 10% allocate for the martyrs families as following : alif. Graduate studies, scholarships, fellowships and scientific initiatives from the Ministry of Higher Education, Scientific Research and other government agencies.

Beh. Morning and evening primary studies of universities.

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teh. The studies in the civil ,military, judicial and security institutes in all ministries and government institutions. The FSC. return to the text of the articles (14) and (16) from the Constitution which the plaintiff relies on it in strength her challenge of the article (17/7th) from the martyrs foundation law because of unconstitutionality. and it found the article (14) from the Constitution stipulate (Iraqis are equal before the law without discrimination because of sex, ethnicity, nationality, origin, color, religion, sect, belief, opinion or social or economic status.) as for the article (16) from the Constitution it's text came as following: (Equal opportunity is a right guaranteed to all Iraqis, and the state shall take the necessary steps to achieve this.) the FSC. found from studying the challenge and the Constitution articles which rely on it by the plaintiff , that the intended equality in the article (14) from the Constitution being between one group according to the regulations which mentioned in this article, and if one of these regulations in a group of these groups fails in compares to other groups or one of these groups was discern by what other groups Not discern. So the intended principle

of equality in the article (14) from the Constitution doesn't appear and can't be applied on the compete like the situation between students of martyrs families and other students who are Not from martyrs families , student of martyrs families are discriminated from others at the competitive by their enjoyment of capacity it cost was the blood of martyr from their families who gave his blood to the country and its protection, and what resulted of martyring from family, emotion and economic deprivation for students belongs to the martyr's family, by this premise they can't be equal at competitive with other students who aren't from martyrs families. However the opportunities equality that stipulated it the article (16) of the Constitution it goes to give the chance to one group to reach its target at the competitive and martyrs families are Not from Non-martyrs families group, the document of the principle of martyrs families protection and caring from the government is found in the article (30/2th) of the Constitution especially in orphanage case which appear in students rows who are from martyrs families at competitive with others. When The ICR. when proceed the article (17/7th) of martyrs foundation law it take care of that and pertain martyrs families by a specific privilege with determined percentage when competitive with others for admission in the studying and according to its legislation options which stipulated in article (61/1st) of the Constitution. So the plaintiff's challenge is being Not rely on a document from the Constitution and based on that the judgment decided :

reject the plaintiff's claim wherein the subject in relation to the defendant ICR. speaker being in this capacity and reject it from dispute side in relation to the defendant minister of higher education and scientific research being in his

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capacity relying on the article (4) provisions from civil pleadings law No.(83) for year 1969. and to burden him the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars divided between them according to the law. decisively, unanimously and obliging according to the article (94) of the Constitution, and article (5) of the FSC's law No.(30) For 2005. The decision has been made clear publicly on 9.10.2018.

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