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The Federal Supreme Court (F S C) has been convened on 23.1.2019 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-Nagshabandi, Michael Shamshon Qas Georges, Aboud Salih Al-Temimi and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: 1. (sin.fa.shin).  
2. (fa.ain.ain).  
3. (mim.ain.shin).  
4. (sin.ain.alif).  
5. (fa.ain.fa).  
6. (ain.ha.mim). } their agent- the barrister (ain.sad.ain).

The Defendant: the Minister of higher education/ being in this capacity – his agent the official jurist (zin.ta.kha).

### The Claim

The agent of the plaintiffs claimed that the defendant had issued a circulation to all Universities by travel banning all the plaintiffs to abroad, and they shouldn't be granted a long leave according to the circulation No. (10265) on 17.4.2017. This order violates the Constitution, because travel banning should be via judiciary only and it also restrains the citizen's freedom which guaranteed by the Constitution. As the Court considered the guardian of the Constitution, he requested to judge by unconstitutionality of the circulation No. (10265) on 17.4.2017 and to burden the defendant all the expenses and the advocacy fees. After registering the case at this Court according to clause (3<sup>rd</sup>) of article (1) of the FSC's bylaw No. (1) For 2005, and on 9.12.2018 an answer from the acting Director of

the legal and administrative department had been received. He clarified that granting the long leave is a discretionary power, and the administration is not obliged to grant this leave. The aim of the Ministry is to send its employees to the expedition countries, and this matter is to guarantee that they will get the modern knowledge. This matter will contribute in developing the State, and if they had been granted this leave will prohibit the aforementioned aim. Therefore, the Ministry proposed not to grant them a long leave, and the procedures of their offices were corresponding to the law. The circulation of not granting them a regular leave had been issued to maintain the public fund, because there are a binding contractive in the protection of the plaintiffs. An answering draft has been received from the agent of the plaintiffs dated on 15.1.2019, he restricted the case of his clients by issuing a decision about the unconstitutionality of travel banning of his clients (the plaintiffs). After completing the required procedures according to clause (2<sup>nd</sup>) of article (2) of the same bylaw, the day 23.1.2019 has been set as a date to try the case. On this day, the Court has been convened, the agents of both parties attended and the public in presence argument proceeded. The agent of the plaintiff repeated the petition of the case, and he requested to judge according to it. The agent of the defendant answered that he repeat the answering draft, and he requests to reject the case. Both parties repeated their sayings. After the Court completed its investigations, and each party repeated his sayings. Whereas nothing left to be said, the end of the argument has been made clear during the session.

### The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiffs had clarified in their case's petition that the defendant/being in this capacity had issued a circulation to all Universities about travel banning to abroad, and they shouldn't be granted a long leave according to the circulation No. (10265) issued on 17.4.2017. This matter is violating the Constitution and the law, because travel banning should be exclusively via judiciary. They requested to judge by unconstitutionality of the aforementioned circulation. The Court reviewed the circulation (challenge subject) of judging by unconstitutionality, and it found the following text: ((his Excellency

the Minister of higher education had ordered on 2.4.2011<sup>7</sup> not to grant long regular leaves for scholar students formerly and graduates, as well as those whom returned to Iraq and they have contractive bindings with the office of their delegation in addition to their escorts if they were employees, and this procedure is to avoid their travelling with their families abroad.)). It is clear that this circulation is not including travel banning, not to grant those whom included by long leaves. Accordingly, the case is lacking to its constitutional substantiation. The Court decided to reject the case, and to burden the plaintiffs the expenses and the advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to provisions of article (94) of the Constitution, and article (5) of the FSC law No. (30) For 2005. The decision has been made clear on 23.1.2019.