

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.1 /federal/media/2015



Kurdish text

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The Federal Supreme Court has been convened on 27/1/2015, 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, and Hussein Abbas Abu Al-Temman, who authorized in the name of the people to judge and they made the following decision :

**The Request:**

Holy Karbala court of investigation requested according to their letter No.(14436/2015) on 4/12/2014 from the FSC the deciding in the Constitutionality of the article (38) from the law of ministry of higher education and scientific research No.(40) for 1988 (amended) based on the challenge presented before it from the complainant (Qaf.Heh.Ra) in the presented investigational case against university of Karbala according to his challenge dated on (24/11/2014) by its unconstitutionality of the aforementioned article and his request from the court to annul it for being in the way of the investigation in many points of his case that presented before the office of investigation of Karbala integrity commission against the university of Karbala in what related to cases of corruption in PH.D studying in the college of law because it violates the articles (2/1<sup>st</sup>), ( 19/3<sup>rd</sup>), (88), and the article (100) from the Constitution of the Republic of Iraq for 2005 for the reasons listed in his challenge. The request had been placed under the scrutiny and deliberation by the FSC, and it reached the following decision:

**The Decision:**

During the scrutiny and deliberation by the FSC, the court found that the plaintiff (Qaf.Heh.Ra) challenges the unconstitutionality of the article (38) from the law of the ministry of higher education and scientific research No.(40) for 1988 (amended), and he requests from the court to annul it because it violates the articles (2/1<sup>st</sup>), ( 19/3<sup>rd</sup>), (88), and the article (100) from the Constitution of the Republic of Iraq for 2005. During reviewing the article (38) from the aforementioned article, the court found that it stipulated in the clause (1) (courts shall not try the cases that initiated against the ministry, university, commission or institution in all what related to acceptance, transferring, exams, discipline punishments that are imposed on the students, expelling, and hachuring of record and others and the ministry, the university, the commission are the only who have the right to decide on the complains that raised from these things)) and the clauses (2) ((the courts are prevented trying in the cases of evaluation of certificates, scientific and foreign degrees that came after the high school, and cases of granting the titles and Honorary and scientific certificate)), during studying the article(100) from the Constitution of the Republic of Iraq for 2005, we found that it prohibited the impunity of decisions and administrative works from challenging, and the challenge can take ways other than challenging before the courts and according to the nature of the decision and the body that take it and the determined source of challenging in the law of that body as it was in the decisions that are issued from the department that related to the ministry of higher education and scientific research, the law of the ministry and especially the article (38) allowed for who damaged from the decision that was issued from one of its department to challenge it before the minister of higher education and scientific research, which mean the decision that is issued from the plaintiff at the competent body in the ministry of higher education and scientific research in the presented litigation from the plaintiff at the mentioned ministry is not considered immune and can be challenged before the minister, in the light of what took, the challenge can take the methods that formulated by the law and whereas the article (38) from the law of the ministry of higher education and scientific research No.(40) for 1988 (amended), it doesn't contrary to the provisions of the Constitution

especially the provisions of the article (100) from the Constitution of the republic of Iraq for 2005, so the request of holy karbala court of investigation that presented before this case based on the complain of the plaintiff (Qaf.Heh.Ra) is lacking for a substantiation from the constitution and the law so the FSc decided to reject it, and the decision was issued unanimously on 27/1/2015.