



The Federal Supreme Court (F S C) has been convened on 6.2.2019 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 and who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (alif.ain.mim) – his agent the barrister (mim.ra.sin).

The Defendant: Head of the higher judicial Council and the judicial institute Council / being in this capacity– his agent the jurist (ain.fa.ha).

The Claim

The agent of the plaintiff claimed that his client had passed the efficiency written examination for the judicial institute the session (40), and the result of the examination was success. After the interview with him, he was surprised by elimination for reasons which he doesn't know. He presented a complaint to the Head of judicial institute, and he didn't get any reply about aforementioned complaint. Whereas his elimination, as he pretend, was unfair toward his right to be accepted into the judicial institute. It also violates the judicial institute law No. (33) For 1976, therefore, he proposed to challenge the decision and he requests to annul the clause of his elimination and to be accepted in the judicial institute for this session. He relied in his challenge on many reasons, including that all required conditions for applicant are available, and the elimination decision violates the article (34) of the Constitution which guaranteed the right of education for all Iraqis and the interview subject as a basic condition to be accepted in the institute has no substantiation in

the law. According to this claim, the agent of the defendant/ being in this capacity had answered by answering draft dated on 9.1.2019 including his defenses which requires to reject the case. On the set day of argument, the Court has been convened and both parties attended. The agent of the plaintiff repeated his requests and previous sayings. He requested to judge according to the petition of the case. The agent of the defendant repeated his requests and previous sayings. He requested to reject the case. Whereas nothing left to be said, the Court decided to end the argument and the decision has been made clear publicly.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the plaintiff is challenging before this Court the decision of his elimination from being accepted in the judicial institute, in spite of he passed the written examination successfully. He requests to judge by annulling the decision of the elimination and to be accepted in the judicial institute, whereas all the required conditions in applicant are available in him. The decision of elimination violates the article (34) of the Constitution which guaranteed the right of education for all Iraqis. The issue of interview as a basic condition to be accepted in the institute has no substantiation in the law, and by returning to the FSC competences which listed in article (93) of the Constitution and article (4) of the FSC law, we didn't find among these competences the trying of the request (case's subject). This matter requires to reject the case for incompetence. Therefore, the Court decided to reject the case of the plaintiff for incompetence, and to burden him the case's 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 article (94) of the Constitution. The decision has been made clear on 6.2.2019.