

Republic of Iraq
Federal Supreme Court
Ref. 27 / federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 14/6/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Hayder Jabir Abid, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Sarwa Abdul Wahid/ member of the Iraqi Council of Representatives – her agent the Barrister Ali Kamil Rasool.

The Defendants: 1. The Prime Minister of Kurdistan Region-Iraq/ being In this capacity.
2. The Minister of Higher Education in Kurdistan Region-Iraq/ being in this capacity.
3. Minister of Finance in Kurdistan Region/ being in Kurdistan/ being in this capacity.

The Claim

The plaintiff claimed through her agent that the Kurdistan Regional Council of Ministers, chaired by the first defendant in addition to his post, issued his numbered decision (86) on 2 May 2016, which was taken at the numbered council meeting (13) on 2 May 2016, which included in paragraph (6th) the determination of study fees (Parallel) and granted the authority to do so to the Ministry of Higher Education of the region (second defendant's chamber/ being in this capacity). Since this decision is contrary to the provisions of the Constitution in article (34) which regulates the right to education as a universal right, it is secured by the State for a year that is not

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specific, as paragraph (2nd) states that (free education is the right of all Iraqis at various stages), since parallel education or (parallel) is a method of education that is not free and paid and public universities, contrary to the Constitution and the law, practice and meet the price of study in particular and private, and that public higher education is a public facility that It may not be allocated or differentiated in the granting of access to one individual without another in accordance with the concept of the public facility under general administrative law, because private and national education is only available outside state institutions as a paid educational investment activity, the decision of the Regional Council of Ministers (86) on 2 May 2016 violated the Constitution in article (34) of it. Contrary to the provisions of articles (2/1st/Jim, no law may be enacted contrary to the fundamental rights and freedoms contained in this Constitution), and is contrary to article (13/2nd, no law may be enacted contrary to this Constitution, and any provision contained in constitutions is invalid. Territories or any other legal text that contradicts it) and article (16 - equal opportunities are a right guaranteed to all Iraqis, and the State ensures that action is taken to achieve this), tuition fees and fees may not be specified in the parallel education channel without a law prescribed by the legislature under constitutional principles in accordance with the provisions of article (28/1st, taxes and fees are not imposed, amended, not levied, and are exempted only by law), and since the third defendant, in addition to his job, responds to fees and tuition fees from students without law, his conduct is contrary to the Constitution and the law and all of the above, the plaintiff asked the Federal Supreme Court to rule that the decision of the Council of Kurdistan Regional Ministers (68) on 2 May 2016 paragraph (6th), taken at the meeting (13) on the same

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date. The outcome of this paragraph of the decision is considered null and void and does not have a legal effect on it and the defendants are burdened with fees, expenses, and advocacy fees/ being in their capacity. The case was registered with this court on the number (27/Federal/2022) and the legal fee for it was completed on the basis of the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and informs the defendants of its petition and documents in accordance with article (2/1st) of the same Bylaw mentioned above. Where their answers were not received in the petition, the court set a date for the case in accordance with article (2/2nd) of the Bylaw earlier, and on the appointed day the court was convened, so the plaintiff and her agent were present and the defendants or their agents did not appear despite the report under the law, the court noted that it had already appointed On 23 May 2022, the date for the argument and the coincidence of the day in question is a public holiday, the court decided, based on the provisions of article (24) of the Civil Procedures Law No. (83) of 1969 (amendment) to consider this On the day of 24 May 2022, the date for the proceedings, the public in presence argument proceeded, the plaintiff and her agent repeated the petition and requested to judge according to it. Whereas nothing is left to be said, the end of the argument has been made clear, and the court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff's claim included a request for the unconstitutionality of paragraph (6th) of the Kurdistan Regional

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Council of Ministers' (86 on 2 May 2016) to determine the evening study wages and to study parallel in all Levels in public universities and institutions of the Ministry of Higher Education in the Kurdistan Region, as defined by section (1st) of Article (93) of the Constitution of the Republic of Iraq 2005 and Article (4) of the Federal Supreme Court Law No. 30) For the amended year 2005 is the oversight over the constitutionality of the laws and regulations in force and that the appeal in question was based on paragraph (6th) of the decision of the Kurdistan Regional Council of Ministers numbered (86) on (2/5/2016) on the determination of evening school wages and the study of parallel in the public universities in the Kurdistan Region, it did not focus on a law or system in accordance with section (1st) of the articles referred to above, so the consideration of the appeal in question is outside the jurisdiction of this court set out in section (1st) of article (93) of the Constitution of the Republic of Iraq and article (4) of the Law of the Federal Supreme Court and therefore the plaintiff's case is devoid of its constitutional support and should be rejected. The Federal Supreme Court decided to reject the case of plaintiff Sarwa Abdul Wahid Qadir and to burden her with all judicial expenses. The decision has been made unanimously and final, according to the provisions of articles (93,94) of the Constitution of the Republic of Iraq for 2005 and the articles (4 and 5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 14/Dhul Qeda/1443 Hijri coinciding with 14/June/2022 AD.

**Signature of the
President
Jassem Mohammed
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