

In The Name Of God, Most Gracious, Most Merciful

Republic of Iraq  
Federal Supreme Court  
Ref.39 /federal/media/2019



Kurdish text

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The Federal Supreme Court has been convened on 2019/5/27 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 Plaintiff: the barrister Ahmed Abd AL-Raheem Ahmed.

The Defendant: the ICR speaker/being in this capacity- his agent the assistant counselor Haitham Majid Salim.

The Claim:

The plaintiff agent claimed that the defendant/ being in this capacity has legislated the Law No.(25) for 2016 and the article (34/4<sup>th</sup>) from the Constitution has stipulated that the private and public education is guaranteed and regulated by a law, the law –the subject of the case- has listed a text in the article (42/1<sup>st</sup>) (according to this law the certificates that grants by the public universities and colleges are as equal as the certificates that grants by the official universities.) the plaintiff sees that this text violates clearly the Constitution whereas it equals between the public colleges which accept students with very low average comparing with the state's colleges that got scientific sobriety and high averages requirement to accept. Thereby the challenged text violates the article (14) from the Constitution which stipulated that Iraqis are equal before the law without discrimination and violate the article (16) from the Constitution that stipulates Equal opportunities

shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken. For the above, the plaintiff requests the decision of annulling the text of the article (42/1<sup>st</sup>) from the Law No.(25) for 2016, for its violation for the Constitution. The defendant/ being in this capacity had been notified by the case of the petition and he answered on it by his draft that dated on 28/4/2019 which included his defense that required to reject the case, the defenses can be outlined that the plaintiff initiated the case and didn't clarify the direct and present interest for it, the plaintiff mentioned that the challenged text by its unconstitutionality violates the articles (14) and (16) from the Constitution and the defendant sees that the text is between the one case and the case subject doesn't violate the Constitution, and the text which is challenged is a legislative option included with the ICR authorities. After the completion of the court procedures, a day had been appointed for the argument and on the appointed day the court had been convened and the two parties were called upon so the defendant agent attended and the plaintiff didn't attend despite the notifying so it was decided to proceed the case according to too the article (11) from the bylaw No.(1) for 2005 ( process of the work in the FSC). The defendant agent repeated his requests to reject the plaintiff's case for the listed reasons, the end of the argument had been understood and the following decision was issued publicly.

#### The Decision:

After the scrutiny and deliberation by the FSC, the Court found that the plaintiff according to his case is challenging the article (42/1<sup>st</sup>) from the Law of public high education No.(25) for 2016, claiming that it equals between the certificates that grant by the public universities, colleges, and institutions and the official universities, colleges, and institutions. The certificates of the official sector and public sector shall not be equal. The court found that the subject of certificates equalization is a competence of the ministry of higher education and scientific research and if there is a university, college or institutions doesn't meet the criteria, the ministry can withdraw its license and non-recognition of the certificates that are granted by it. The issue of average inequality on admission between the public universities,

colleges and institutions and the officials is a matter that we can find among the official universities, colleges, and institutions according to the time and place. The substantiation that was mentioned by the plaintiff that are the articles (14) and (16) from the Constitution, its meaning is the Equal opportunities is to be contrary to what shown by the plaintiff in his case because it calls to provide the opportunity for who couldn't admit because of his average to admit for the public universities, colleges and institutions and the responsible party to supervise its scientific level is the ministry of higher education and scientific research and organizations and people who concerned can be cooperated for that. Based on this the case became lack of its substantiation from the Constitution, so it had been decided to reject it and to burden the plaintiff all the expenses and fees of the advocacy of the defendant agent being in this capacity and its amount is hundred thousand Iraqi dinars. The decision had been issued unanimously and decisive according to the provision of the article (5) from the FSC law No.(30) for 2005 and the article (94) from the Constitution and was understood publicly on 27/5/2019.