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The Federal Supreme Court (F S C) has been convened on 27/10/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Ghaleb Amir Shunain, Hayder Jabir Abid, Khalef Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, Dyar Mohammed Ali, Munthir Ibrahim Hussein, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff in (46/federal/2020): the Professor Ph.D. Dhia'a Wajid Abbood/ Don in the College of the Engineering/ University of Baghdad – his agent the Barrister Ra'ad Toama Al-Omrani.

The Plaintiff in (50/federal/2020): the Minister of Higher Education and Scientific Research/ being in this capacity – his agent the deputy of Director-General of the legal and administration department Ph.D. Ahmed Jaafar Shawi.

The Plaintiff in (51/federal/2020): the Head of Iraqi Academics/ being in this capacity – his agent the Barrister Safah Raheem Al-Rikabi

The Defendant: the Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

First: The lawsuit (46/Federal/2020) claimed that the defendant passed a law on the basis of the equivalent of Arab and foreign degrees and degrees, and that it represents a large segment of society, including the Iraqi university professors, and that this law may afflict higher

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education in Iraq and erase scientific sobriety in institutions and harm the scientific reputation and social standing of holders of higher degrees of academics and employees and to defend its right and the rights of all those affected by this law, which affects the rights, interests, and dignity of human beings. The Iraqi appealed his unconstitutionality to this court in all and some of his articles for the reasons he cited in the petition, asking for the ruling that the provisions of the law are unconstitutional and to reject it. The case was registered with this court in number (46/federal/2020) and the legal fee was paid in accordance with paragraph (3<sup>rd</sup>) of article (1) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005 and informs the defendant/ in addition to his job with her petition and document In accordance with the provisions of article (2/first) of the aforementioned system, his agents answered the answering regulations of 20/12/2020 and requested that the plaintiff's case be dismissed and charged fees and expenses for a number of reasons, including the lack of conditions stipulated in article (6/1, 2<sup>nd</sup>. 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup>) of the Bylaw of the Federal Supreme Court.

Second: The plaintiff claimed that on 28 October 2020, the defendant voted to pass a law on the basis of arab and foreign degrees equivalent to certificates and degrees, which was not accompanied by the approval of the President of the Republic, and after the legal period was published in the Iraqi Gazette (Issue 4608 on 21/12/2020) with the number (20) of 2020, he initiated an appeal to this court because, when the defendant issued the law in question, he violated the provisions of

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articles (47), (60/I) and (80/ 1<sup>st</sup> and 2<sup>nd</sup>) of Constitution, and what the Federal Supreme Court has settled on, which adopted a constitutional principle that has taken root in many of its provisions, including (43/federal/2010 on July 12, 2010) and (83/ federal/ media / 2018 on 10 July 2018), and other provisions where the court argued that (proposals for laws) submitted by members of the Council of Representatives, or one of its competent committees to the executive branch (presidency of the Republic or the Council of Ministers), to study them and make them in the form of bills if they do not intersect with constitutional provisions and laws and are consistent with the general policy of the state and with multiple plans in all areas, thus we are in the proper application of the principle of separation of powers under article (47) of the Constitution and the principle of sharing functions under articles (60/1<sup>st</sup>) and (80/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution, and the provisions of the law in question have arranged a large financial burden on the public treasury without taking the government's opinion or approval as well as The failure of the Presidency of the Republic to ratify the law because of the existence of a financial side of its legislation consisted of the text of articles (12/1<sup>st</sup>) and (13/1<sup>st</sup> and 2<sup>nd</sup>) of it, in addition to the fLaw that the defendant is unique in the legal drafting of the law in question contrary to the provisions of article (80/1<sup>st</sup> and 4<sup>th</sup>) of the Constitution, which gave the Council of Ministers the power to plan and implement the public policy and plans of the state. This uniqueness, which was made separately from the executive branch in general, including the President of the Republic, part of which is based on the text of the

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article (66) of the Constitution, and the Ministry of Higher Education and Scientific Research in particular, which led to the creation of a law that does not achieve scientific sobriety, and is full of imbalances, which summarized the following: Alif. The title of the legislation was special (on grounds equivalent to Arab and foreign degrees) while its texts contained provisions that had nothing to do with the foundations equivalent to certificates organized by special laws such as (University Service Law, School Leave Law, Civil Service Law, Accountability and Justice Law) and its provisions have also amended some of the provisions of these laws in a legal precedent not undertaken by the legislative formulations. Beh. The law issued the scientific competence of the Ministry of Higher Education and Scientific Research stipulated in Article (4) of the Ministry Law No. (40) of 1988 amended (laying the foundations for the evaluation of Arab and foreign degrees and degrees after secondary school...). Teh. Article (2/1<sup>st</sup>) neglected the work of the scientific committees and therefore there will be a significant failure in determining and studying the number of units required and determining the exLaw competence and scientific clearing materials required between the overlapping disciplines, and the clause (II/E) of the same article was entrusted to the Ministry of Education equivalent certificates issued by the Faculty of Open Education while it is a college of the Ministry of Education and therefore the certificate issued by it is an Iraqi certificate that does not need to issue a decision to evaluate it because it is organized under the law of the Educational College Open No. (169) for 1998, and if this principle is adopted, all

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certificates granted from within Iraq must be equated from government institutions that are not administratively subject to the Ministry of Higher Education, such as the Judicial Institute and the Colleges of Endowments. Tha. Article (2/II/a) of the Law and within the functions of the Certificate Equivalency Section (Equivalence of Certificates of Special Degrees) and article (12) of this Law distinguished members of the Council of Representatives, ministers, those of their degree or agents, those of their degree, general managers and those of their degree and higher special degrees, who are assigned to public service, from other students, which is contrary to the constitutional principles stipulated in the Constitution equally before the law without discrimination and represents a violation of the principle of equal opportunities for all Iraqis. Jim. The law in question confiscated the ministry's right in accordance with the laws in force to determine the structure necessary to exercise its functions when it established a specific structure for the Department of Missions and Cultural Relations. Ha. Article (3/3<sup>rd</sup>) of the Law stipulates the tasks of the evaluation people in the Department of Missions and Cultural Relations by conducting the processes of equation and evaluation of the certificate to ensure that they meet the procedural aspects and this does not extend to the scientific aspects of the contents of letters and frameworks, including the confiscation of the right of the Ministry to follow up on the scientific sobriety of letters and frameworks and limit the role of the ministry to procedural matters only without scientific and this matter reflects negatively on the sobriety of higher education

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in Iraq, as included in paragraph (4<sup>th</sup>) of the same article the possibility of using specialists and relevant scientific and technical bodies by the certificate equivalent section and did not indicate the tasks assigned to these specialists and what is the scientific and technical body, and the provision (5<sup>th</sup>) of the same article that the procedures of equation and evaluation must be completed within a maximum period of 45 days from the date of the application of equation and evaluation and did not show the impLaw if the procedures are not completed. Kha. Article (5/1<sup>st</sup> and 2<sup>nd</sup>) did not specify the stay period for students of higher diploma and baccalaureate and all scientific and human disciplines, while the law specified it in the study of master's and doctoral studies, which means recognition of primary study through affiliation or distance study and in open colleges or correspondence, which disturbs the sobriety of scientific certificates. Dal. Article (5/3<sup>rd</sup>) of the Law contained two conditional paragraphs: (Alif- when the student gains a university certificate. Beh- in the case of attaining a first high additional certificate) and this item did not indicate the impLaw of achieving these requirements. Thal- Article (6/2<sup>nd</sup>) of the Law included setting the minimum duration for obtaining a candida certificate and the law did not specify the definition of the term. Ra- The length of stay for study outside Iraq has been reduced under article (6/4<sup>th</sup>) of the law to four months related or separate for theoretical studies, which is contrary to the small duration of the study courses for many studies, and the law came up with a new principle, namely the possibility of recognizing remote study by not requiring related or separate residence

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for research study and did not specify who decides whether the study is theoretical, laboratory or applied if the role of the Division Procedural only and unscientific and what supports that book sent to the Council of Representatives in the number 1526 of 16/8/2020 which includes that the draft amendment of instructions the basis equivalent to the certificates sent to the Council of State is commensurate with the current circumstance to equalize certificates and does not require the issuance of a law. Zin- Article (7) of the Law did not indicate that the Ministry did not recognize remote study or affiliation as it was in the instructions based on the basis equivalent to the certificates canceled under the contested law, nor did paragraph (3<sup>rd</sup>) of the same article refers to the equation and evaluation of certificates issued by parent universities or branches of these universities in other countries in accordance with the grounds set out in the provisions of this law and this provision did not indicate the provision in the case of the insecurity of the branch and the lack of approval to establish it in accordance with the rules of this law. Law No. (25) of 2016 if the branch is in Iraq. Sin- The text of the article (10) of the law in question obliged the section equivalent to certificates to refer certificates that cannot be equated in accordance with this law to the opinion body for decision, while the text of the article (11) of the law in question gave the Minister the power to agree to evaluate and equalize certificates that do not meet the conditions of residence and the law does not indicate the provision of the opinion body supports the decision of the certificate-equalization section in not evaluating the certificates for violating the residency

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requirement. Article (12/1<sup>st</sup>) of the Law is in contravention of the provisions of the School Leave Law No. (14) of 2009 and the instructions for its implementation no. (165) of 2011 by allowing employees and those with special grades to complete their studies during the period of employment to grant school leave regardless of age without indicating the purpose of this text and the extent to which the scholarship is useful for state employees if their age is close to retirement and the extent to which employees can carry out their contractual obligations by serving the state departments. The duration of the study to benefit from the experiences gained from the study and this leads to the waste of the state's financial resources spent on students without benefiting from their experiences, which represents the purpose of granting school leave, as the law in question did not indicate the extent to which members of the Council of Representatives and higher grades in charge of public service retain their qualities when granting them school leave, in addition to the defendant violated article (49/6<sup>th</sup>) of the Constitution, which stipulated (it is not permissible to combine the membership of the Council of Representatives with any work or work or Another official position. Sad- Article (2<sup>nd</sup>) of the article (12) stipulates that holders of higher certificates from civil servants or public servants other than those of the Ministries of Higher Education and Scientific Research and the Ministry of Education should be granted the scientific title as an exception to the Law of the Ministry of Higher Education and Scientific Research, and did not indicate the purpose of granting the scientific title to non-stakeholders

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on the academic side and it is related to the scientific aspect, as this provision is not found in all comparative laws in other countries. Article (13/1<sup>st</sup>) of the law in question provides for a review of requests to equalize previous certificates that have been rejected or not decided (based on legal provisions in force at the time), which is contrary to the principle that laws cannot be retroLawive to the past and arranges a financial obligation on the treasury. Ta- Paragraph (2<sup>nd</sup>) of the article (13) arranged financial obligations on the ministries without taking into account the government's opinion by requiring ministries to calculate the tuition certificates of the employees who received them without study leave or without the consent of their departments and for allowance, promotion, and retirement without taking into account the need for competence and the compatibility of the certificate with the public functions of the recipients and was contrary to the text of articles (14) and (16) of the Constitution. Dhad- The law challenged in the article (14/2<sup>nd</sup>) excluded many categories of related or separate length of residence and guaranteed privileges for groups at the expense of other categories, which violates the principle of equality before the laws for all Iraqis provided for in the Constitution, and paragraph (3<sup>rd</sup>) of the same article opposes the objectives for which the Accountability and Justice Law No. (10) of 2008 were passed, in addition to violating article (19/6<sup>th</sup>) of the Constitution, which stipulated that everyone has the right to Treated fairly in judicial and administrative proceedings. Ain- There is no justification for article (15) of the law in question, which includes recognition of the equivalence of certificates issued

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under the instructions equivalent to certificates No. 5 of 1976, as this is a legal axiom because the said law does not eliminate the legal implications under laws in force at the time, and this provision is contrary to the text of the article (13/3<sup>rd</sup>) in terms of the logical sequence of legislative drafting, as the latter text referred to the abolition of instructions No. (5) for a year. 1976 The law then referred to the text of the article (15) as recognizing the equivalence of the certificates issued under it. Ghain- The law in question did not include a provision that instructions could be issued to facilitate the implementation of the law, contrary to the legal contexts adopted in the Iraqi legal organization. Fa- Article (16) of the law in question has returned the law to effect from the date of its vote, including the confiscation of the powers of the President of the Republic stipulated in article (73) of the Constitution to ratify and pass laws, and the law is usually effective from the date of publication and the knowledge of all of it. Qaf- The rationale is contradictory to the legal provisions in this law, as many of these texts have nothing to do with maintaining scientific sobriety and adopting objective criteria and are not in line with the legislative objective contained in the positive reasons. What was legislated did not represent a solution to a problem of a general nature experienced by Iraqi society, but rather texts developed to accept violations or cases that departed from the ruling instructions for the basis of the equation of certificates No. 5 of 1976, which will empty the public service of its stability and rob the administration of its discretion and become subject to the moods of its employees as well as the

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reverse effect of inLawion and preoccupation with it under the pretext of studying, the defendant has violated article (34/first) of the Constitution, under the provisions of this law, education is no longer a basis for the progress of society and leads to the reluctance of students to apply for postgraduate studies in Iraqi universities and go to study outside Iraq because of the lack of conditions for the advancement of society. Scientific sobriety leads to the depletion of hard currency. For all the above, the plaintiff asked the Federal Supreme Court to rule that Law No. 20 of 2020 was unconstitutional, to cancel all its effects, to charge the defendant with the costs of the case, and to charge the lawyers. The case was registered with this court in the number (50/Federal /2020) and the legal fee for it was met in accordance with the provisions of article (1/3<sup>rd</sup>) of the aforementioned system and informs the defendant in addition to his job in its petition and documents in accordance with the provisions of article (2/II) of the above-mentioned system, and his agents replied with an answering list concluded that the president's failure to ratify the law does not constitute an example or breach of procedures. Proposals for laws should not be sent to the executive branch in accordance with the rules of procedure of the Council of Representatives, Nor is it right for the plaintiff to replace those who have the right to appeal in this aspect (the Council of Ministers and the Minister of Finance) because it is not legally mandated to cover the financial burdens of the legislation and does not harm it in this respect, and article (80/1<sup>st</sup> and 4<sup>th</sup>) of the Constitution did not mention the competent authority of the legal

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drafting either the plaintiff's objection to the title of the legislation, and the claim to confiscate the competence of the ministry in evaluating certificates and arab and foreign scientific degrees, Omission in article (2/1) although not present, as well as objecting to the determination of the structure of the mission department and on materials (3/3<sup>rd</sup>), (5/first and second), (6/4<sup>th</sup>), (12/2<sup>nd</sup>), (13/1<sup>st</sup>), (14/3<sup>rd</sup>) and (16) From the law in question as well as with regard to paragraphs (Dal, Thal, Zin, Sin, Shin, Ta, Ain, Ghain, Qaf) of the list of proceedings as well as the claim that the law is in conflict with other laws, all of this is due to the fLaw that it does not constitute a violation of the Constitution and therefore its consideration is outside the jurisdiction of the court. The Supreme Federal Ministry specified under article (93/first) of the Constitution and the Ministry of Higher Education and Scientific Research is represented by the Department of Missions and Cultural Relations is the competent body to apply the provisions of the law, which limited the task of equalizing certificates and non-Iraqi scientific and professional degrees in the department of certificate equivalence in the department of missions and cultural relations and the law in question was in accordance with the principle of equality and equal opportunities and the promotion of education and in accordance with article (34) of the Constitution, and the law limits scientific sobriety to letters and frameworks in sober universities and institutes that are determined by the Ministry of Higher Education and Scientific Research and that article (e. 5/1) of the law provided a provision identical to article (5) of instructions No. (5) of 1976 in addition to that

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article (12/2<sup>nd</sup>) of the law came in proper application of article (34/3<sup>rd</sup>) of the Constitution where the legislator In Kurdistan province, the law (9) of 2012, which granted the scientific title to the public and private sector, was enLawed while the federal legislature granted it to the public sector only and article (13/1<sup>st</sup>) was a legislative option for the Council of Representatives and article 19/9 of the Constitution is not violated because the law in question is not part of the laws of fees and taxes, and the legislator does not see a correlation between residence and scientific sobriety and obtaining a certificate is not a combination of membership or between a work or another position and does not violate article (49/6<sup>th</sup>) of the Constitution and the reasons for the defendant's attorney's request to dismiss the plaintiff's case and charge him judicial fees, expenses and legal fees.

Third: The lawsuit (51/Federal/2020) claimed that Law No. (20) of 2020 violates the provisions of the Constitution in Article (60/First) for not submitting the bill by the executive branch and not taking its opinion on the legislation even though it will cost the state budget Large funds as well as the text of articles (2/1 and 4 section -2-6<sup>th</sup>) of the Law of the Ministry of Higher Education and Scientific Research No. (40) of 1988 violated the amendment of the sectoral authority competent to evaluate certificates where its opinion was not taken and because it carries with it many One of the indicators that will have a very serious impLaw on the situation of education in Iraq in various aspects, particularly the sobriety and quality of university and academic education, in addition to distinguishing between groups of society by

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equating certificates, contrary to the provisions of articles (14 and 16) of the Constitution, so, based on the provisions of article 3 of the Iraqi Academics Association Law No. 61 of 2017, he challenged him, asking for unconstitutional rule for violating the Constitution and the Law of the Ministry of Higher Education and Scientific Research and for lacking any support for the law. The case was registered with this court in the number (51/Federal/2020) and the legal fee for it was completed in accordance with the provisions of article (1/3<sup>rd</sup>) of the aforementioned rules of procedure and the defendant is informed of its petition and documents in accordance with the provisions of article (2/1<sup>st</sup>) of the said system and answered its agents In the answer list dated 14 January 2021, the Council of Representatives has legislated laws in accordance with article (60/2<sup>nd</sup>) of the Constitution and that it passed the law in accordance with article (61/1<sup>st</sup>) of the Constitution and represents a legislative option and finally requested the dismissal of the plaintiff's case and the loading of fees and expenses. And the fees of the lawyers. After completing the required procedures in accordance with the provisions of the aforementioned rules of procedure, a date was set for the case to be heard (46/Federal/2020) and the parties were informed in accordance with the provisions of article (2/2<sup>nd</sup>) of the aforementioned rules of procedure, and on the appointed day the court was formed, and the prosecutor, Raad Touma Awad Al Amrani, attended the defendant's agent, in addition to his job, legal counsel Haitham Majid Salem and official jurist Saman Mohsen Ibrahim, and the public in presence argument proceeded. The defendant

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that they are requesting dismissal for the reasons on the answer list and the court noted that there are two lawsuits to challenge the same law No. (20) for 2020: the case (50/federal /2020) before it by the Minister of Higher Education and Scientific Research in addition to his job and the lawsuit (51/federal/2020) before it from The Head of Iraqi Academics accepted/ in addition to his job and that the defendant himself is the speaker of the Council of Representatives in addition to his job and that the result of the judgment in the case (46/federal /2020) affects the outcome of the lawsuits above so the court decided and based on article (76/2) of the Civil Procedures Law No. 83) 1969 Amended uniting the lawsuits with the suit (46/Federal /2020) and it was considered to be the origin and the public public hearing was initiated after the presence of the agents of the parties in the proceedings (50/federal/2020 and 51/federal/2020) and the agent of each party reiterated his statements and previous requests and since the court completed its audits of the case (46 And its units 50 and 51/Federal/2020) and all its documents and there is nothing left to say understand the conclusion of the case and appointed on 27 October 2021 the date of the decision in which the court was formed and issued the next decision.

### **The Decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs claimed that the defendant, in addition to his job, had already passed a law based on the equivalent of Arab and

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foreign degrees no. (20) of 2020, published in the Iraqi Gazette (4608) on 21/12. /2020, where it was not accompanied by the approval of the President of the Republic and was published for the duration of the legal period in addition to its association with formal and objective violations of the Constitution of the Republic of Iraq in 2005, he violated the provisions of articles (47), (60/1<sup>st</sup>) and (80/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution The mechanism of legislation of laws has not been followed in accordance with the Constitution, which requires that proposals for laws submitted by members of the Council of Representatives or one of its competent committees be sent to the executive branch (presidency or cabinet) to be studied and made in the form of bills if they do not intersect with constitutional provisions and are consistent with the general policy of the state and thus we are in the face of the proper application of the principle of separation of powers stipulated in article (47) of the Constitution and the proper application of the principle of sharing tasks that Stipulated in articles (60/1<sup>st</sup>) and (80/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution The plaintiffs further claimed that the defendant did not pay attention to the fLaw that the contested provisions of the law had arranged a significant financial burden on the public treasury without taking the government's opinion or approval, and violated the provisions of article (80/1<sup>st</sup> and 4<sup>th</sup>) of the Constitution, which gave the Council of Ministers the power to plan and implement public policy, in addition to that law it is the scientific competence of the Ministry of Higher Education and Scientific Research provided for in article (4) of the Ministry Law No. (40) of 1988 amended (laying the

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foundations of the calendar). For certificates and degrees Arab and foreign after the high school stage) and that the contested legislation confiscated the terms of reference of the ministry in addition to the defendant in addition to his job violated the provisions of the articles (16, 19/6, 34/1<sup>st</sup> and 47) of the Constitution when legislating the law and because it is full of many defects represented by articles (2/1<sup>st</sup>, 2<sup>nd</sup>/a), (3/3<sup>rd</sup> and 4<sup>th</sup>), (5/1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup>) and (6/2<sup>nd</sup>) (6/4<sup>th</sup>), (7), (10), (12/ 1<sup>st</sup> and 2<sup>nd</sup>), (13/1<sup>st</sup> and 2<sup>nd</sup>), (14/2<sup>nd</sup>), (15) and (16) of it, so the plaintiffs requested that the law be ruled completely unconstitutional and repealed. Through scrutiny, the Court reached the following conclusions:

First: The right to education is a fundamental right critical to its great impLaw on the realization of other human rights and the importance of its consequences for economic and social development and thus its impLaw on the State and the right to education is linked to many other rights through which one can claim and protect his rights, an orderly process through which the learner is given the general foundations of knowledge in a deliberate, orderly and targeted manner, which is one of the fundamental rights that fall within the human rights since every person, regardless of his religion, ethnic or social origin, political leanings or age, has the right to education and because it is one of the basic rights regulated by the constitutional documents, the Constitution of the Republic of Iraq in 2005 came up with a set of texts and principles on education, in several places, and we find from the beginning of the preamble to the constitution that it stipulated (we are

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the sons of Mesopotamia). The home of the apostles and prophets, and the rest of the imams, the cradle of civilization, and the makers of writing) and this indicates in referring to education and its roots in the ancients in Iraq and then the text of the article (4/1<sup>st</sup>) of it refers to (guarantees the right of Iraqis to teach their children in the mother tongue ... ), and article (125) of Chapter 4 of Title V of the Constitution, entitled Local Administrations, stipulates that (this Constitution guarantees the administrative, political, cultural and educational rights of various nationalities such as Turkmen, Chaldeans, Assyrians, and other components, regulated by law) and stipulates article (6<sup>th</sup>) of the article (114) that the general educational and educational policy should be drawn up in consultation with the irregular territories and provinces of the province) and thus the constitutional legislator has drawn up a clear map of the course of the right to education and the Constitution as the rule of education. The highest legal in the state is the duty to follow and respect the rest of the authorities, so he organized rights and freedoms of various kinds, including the right to education.

Second: Article (34/1<sup>st</sup>) of the Constitution (education is a basis for the progress of society and a state-guaranteed right, which is compulsory at the primary level and the state ensures the fight against illiteracy.) Thus, education is an obligation that the State must achieve and fulfill through its constitutional institutions, especially legislative and executive, by issuing laws governing this right and the executive enforcing these texts and applying them on the ground in order to

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achieve their purpose and not to infringe on them contrary to the Constitution and the law, and the inclusion of various rights. Their types in constitutional texts make them gain constitutional power which considered a restriction on the state authorities and a commitment that they must fulfill, which requires the executive branch to intervene and remove all obstacles to achieving this obligation, and this obligation requires the relevant ministries to address any circumstance to achieve the people's right to education at all stages so that the establishment of obstacles to obtaining that constitutional right is a violation of that constitutional right and the Constitution has addressed the right to free education under paragraph (2<sup>nd</sup>). Article 34, which stipulates that "free education is the right of all Iraqis at all stages" and that this right is a duty to abide by it, apply it and not be neutral from it, considering that the Constitution has made education free of charge is a right for all Iraqis, and this does not cover a certain stage of education, but covers all stages of education, and it is the responsibility of the ministries responsible for this, particularly the Ministry of Education and the Ministry of Higher Education and Scientific Research.

Third: Equal educational opportunities require equality among all citizens of the State with the opportunities available to them, and it requires equal educational opportunities to develop the capacities and talents of each individual, regardless of the material conditions of the individual or the social or economic level of the individual. The state gives students equal opportunities to receive education and obtain degrees, and scientific evaluation processes should be conducted in

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accordance with the approved scientific standards, which are supposed to be objective and fair so that they can highlight the individual differences between students in the field of educational attainment. So we sought to create our new Iraq. Without sectarian strife, no racist tendencies, no regional complex, no discrimination, and no exclusion ... Equal opportunities were granted to all) and article (14) provided for (Iraqis equal before the law without discrimination based on sex, race, nationality, origin, color, religion, doctrine, belief, opinion, economic or social status) and article (16) stated that (equal opportunities are a right guaranteed to all Iraqis, and the State ensures that the necessary measures are taken to achieve this).

Fourth: The Constitution of the Republic of Iraq 2005 adopted the subject of separation of powers in accordance with article (47) of it, which requires that federal authorities exercise their powers and functions based on the said principle and that no authority exceeds the limits of its terms of reference, as the parliamentary system in Iraq is based on the principle of cooperation, balance and mutual control between the legislative and executive branches to prevent abuse of power and tyranny by one or several persons through mechanisms and powers drawn by the Constitution for each authority of each authority. The State, in addition to the ability of the parliamentary system to accommodate all components of the Iraqi people and their participation in political decision-making, and the legislative authority in Iraq and under article (61) of the Constitution have exercised its constitutional

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powers provided for in paragraph (I) of it (legislation of federal laws), so the contested law is a legislative option in principle.

Fifth: The Ministry of Higher Education and Scientific Research was following the instructions (5) of 1976 issued by the Council of Higher Education and Scientific Research regarding the basis of parity for Arab degrees and degrees, and these instructions have been very long and have sometimes prevented some members of society from enjoying their right to education and the right to obtain the aspirations of Iraqi students for a degree, many of whom have resorted to foreign countries to obtain some scientific certificates, which has weighed heavier The students mentioned are burdened with great financial burdens and influence the situation of the Iraqi economy, as this has led to obtaining certificates from some universities that are not charLawerized by scientific sobriety or that the procedures for obtaining these certificates are not charLawerized by their accuracy and sobriety, so the Ministry of Higher Education and Scientific Research had to research all this and find easy ways to achieve scientific sobriety and open the way for Iraqi students to get those degrees inside the country because it is not reasonable to address the grounds equivalent to Arab and foreign degrees with instructions issued on time in accordance with the circumstances prevailing in 1976, so this court finds that the challenged law No. 20 of 2020 was enLawed to address the situation of students studying outside Iraq, although its purpose is, as stated in the positive reasons (urging higher certificates while maintaining Scientific sobriety, simplification of equivalent procedures, evaluation of

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certificates and degrees, adoption of objective standards, guaranteeing the right to object and grievance against evaluation and equivalency decisions, therefore, the objective is characterized by a high and noble objective that justifies the purpose of the legislation to achieve the principle of obtaining the right to education, equal opportunities and equality and simplifying procedures for those wishing to do so by obtaining higher certificates in their equation and evaluation, and since education is the most important function of the state and all its federal and local institutions, this forces the state to address the solutions to those surrounding obstacles that prevent everyone from accessing education and must seek new opportunities for individual students and thus enable them to benefit from them and compete for them all according to their ability and energy in accordance with this constitutional obligation, which was targeted by the challenged law despite all this and Although the Said Law in its legislation took into account instructions No. (5) of 1976, some of its provisions violated the provisions of articles (14, 16, 34/1<sup>st</sup> and 47) of the Constitution of the Republic of Iraq 2005, requiring unconstitutionality and all of the above, the Federal Supreme Court decided the following:

First: Ruling that the term "special grades" in the article (2/2<sup>nd</sup>/Alif) of the Law is unconstitutional.

Second: Ruling that the term "embassy or cultural attache" listed in the article (2/2<sup>nd</sup> /Beh) of the law is unconstitutional.

Third: Ruling that article (2/3<sup>rd</sup>/Alif) stipulates that "the General Secretariat of the House of Representatives equals certificates issued by

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the Parliamentary Development Institute and does not take this tie as a basis to enter or teach universities."

Fourth: Ruling that the term (unless the duration of obtaining it is similar to the period required to obtain certificates eligible to enter or teach in those universities) is unconstitutional in the article (2/3<sup>rd</sup>/Jim).

Fifth: Ruling on the unconstitutionality of article (2/3<sup>rd</sup>/Dal), which stipulates that (other ministries and bodies equal the certificates granted to their employees through their study institutes and this tie is not taken as a basis to enter or teach universities).

Sixth: Ruling that article (2/3<sup>rd</sup>/Heh) which states (the universities concerned and the Federal Public Service Council equalize and evaluate training certificates).

Seventh: Ruling on the unconstitutionality of article (3/3<sup>rd</sup>), which stipulates that "the functions of the Division are limited when conducting the equation and evaluation processes of the certificate to ensure that it meets the procedural aspects according to the basis of this law and does not extend to discussing the scientific aspects of the contents of letters and frameworks except on the subject of intellectual safety."

Eighth: Ruling that article (5/3<sup>rd</sup>/Alif and Beh) which states (Alif: if the student obtains a university degree. Beh: In the event of an additional high initial certificate).

Ninth: Ruling on the unconstitutionality of article (11), which stipulates (the minister has the power to approve an equation and evaluation that does not meet the residency requirement provided for in this law if

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there are justified reasons that prevent the student from completing the period mentioned in this law for those not covered by article 14 of this Law).

Tenth: Ruling that article (12/2<sup>nd</sup>) which provides for (holders of higher degrees (master's or doctorate) are granted to civil servants or public servants other than those of my ministry (higher education and scientific research, Education) scientific title excluding the provisions of articles (25, 26, 27 and 28) of law No. (40) of 1988 and their previous services to obtain a higher certificate for promotion for scientific rank based on the recommendations of a scientific committee specialized in their department and coordination with committees Scientific promotions in universities, whether they are of outstanding scientific talent, have made outstanding efforts in work or scientific and technical consultation, or have been issued with valuable, original or innovative scientific research or who teach in a university, institute or training and development centers in ministries and entities not associated with the ministry without any financial impLaw and not being covered by the provisions of the University Service Law.

Eleventh: Ruling that article (14/2<sup>nd</sup>) which stipulates (excluded from the provisions of section (4<sup>th</sup>) of the article (6) of this Law covered by the provisions of Law No. (2) of 2016, Law No. (4) of 2006 amended, Law No. (20) of 2009 amended and Law No. (24) of 2005 amended or any other laws replacing the said laws and the study of research doctorates.

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Twelfth: rejecting the plaintiffs' lawsuit the minister of higher education and scientific research/being in this capacity and the Head of Iraqi academics / being in this capacity concerning the appeal received by them regarding other articles of the law because it came as a legislative option and does not conflict with the provisions of the constitution.

Thirteenth: The plaintiff's case was dismissed by Dhia'a Wajid Abboud for failing to verify the interest in initiating the case and to burden him fees, expenses, and advocacy fees for agents of the defendant amount of 100,000 dinars distributed in accordance with the law.

Fourteenth: to burden the agents of the parties fees, expenses, and proportional legal fees in accordance with the law.

The decision has been issued unanimously, decisive, and binding for all powers according to the provisions of the articles (93,94) of the Republic of Iraq Constitution for 2005 and the articles (4,5/2<sup>nd</sup>) of the Federal Supreme Court Law No. (30) for 2005 which was amended by the Law No. (25) for 2021. The decision has been made clear on 20/Rabea'a Al-Awal/1443 Hijri which is coinciding with 27/October/2021 AD.

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<b>Signature of The president</b>	<b>Signature of The member</b>	<b>Signature of The member</b>
<b>Jasem Mohammad Abbood</b>	<b>Sameer Abbas Mohammed</b>	<b>Haidar Jaber Abed</b>
<b>Signature of The member</b>	<b>Signature of The member</b>	<b>Signature of The member</b>
<b>Munthir Ibrahim Hussein</b>	<b>Khalaf Ahmad Rajab</b>	<b>Abdul Rahman Suleiman Ali</b>
<b>Signature of The member</b>	<b>Signature of The member</b>	<b>Signature of The member</b>
<b>Diyar Muhammad Ali</b>	<b>Ghalib Amir Shunayen</b>	<b>Ayoob Abbas Salah</b>

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