

Republic of Iraq
Federal Supreme Court
Ref. 70 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 22/9/2021 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jabir Abid, Hayder Ali Noori, Khaled Ahmed Rajab, Ayoob Abbas Salah, Abdul-Rahman Suleiman Ali, and Dyar Mohammed Ali who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Jawad Kadhim Kuraif – his agent the Barrister Karrar Ibrahim Sheekhan.

The Defendant: the Minister of Higher education and scientific research/ being in this capacity – his agent the official jurist Ahmed Jaafar Shawi.

The Claim

The plaintiff claimed by his agent that the defendant, the Minister of Higher Education and Scientific Research/ being in this capacity violated the Constitution of the Republic of Iraq of 2005 in article (34/1st) of which provides for (education is a basis for the progress of society and a state-guaranteed right, which is mandatory.) as well as the text of paragraph (2nd) of the same article (free education is the right of all Iraqis at various stages) and since the defendant has issued ministerial controls under which he introduced the channel of public morning private education in government universities as shown In a procedure guide students' affairs and admissions controls and conditions paragraph (14) (special morning government education. 26 - 29) of the guide above and determine the wages of study in it and according to the letter number (Ta Mim1/2060 on 28 March 2020) and attached to a detailed schedule of tuition wages, which obliged the student to pay wages for education in government

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universities in the morning hours and not free of charge and in very high amounts burdened the citizens although education is guaranteed and free according to the Constitution as he violated the text of article (28/1st) of The Constitution, which states (taxes and fees are not imposed, not amended, not levied, and exempted only by law). Whereas he issued regulations setting wages for studying in the government's morning private education channel in Iraqi universities and started to collect them and deposit them in the (Higher Education Fund). He also violated the text of the article (14) of the Constitution, which stipulates (Iraqis are equal before the law without discrimination based on sex, race, nationality, origin, color, religion, doctrine, belief, opinion, economic or social status), as education in Iraqi public universities in the morning has become two categories, one free of charge and the other requiring the student to pay expensive wages. This matter confirmed that the morning private government learning confirmed beyond doubt that the ministry and its universities can accommodate students and the expansion of admissions for the year 2020-2021 by doubling the seats supports this point and the same cadres and buildings of universities, and that the actions of the Minister of Higher Education/ being in this capacity have caused the plaintiff damage because he is sponsor of his student daughter (Fatima Jawad Kadhim) and responsible for spending on her and she is a student in the second stage of the college of medicine private government education morning (as shown in the letter of confirmation issued by the College of the Medicine University of Qadisiyah in the number (31/595 on May 31, 2021) and although her score is (98.14) which was eligible for admission to the general channel for the academic year 2019-2020 in medical schools in other Governorates, she was not accepted. This

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matter forced him to apply for her in the morning private government education and paid 2,225,000 dinars (part of the annuity) under the numbered cheque (8811940) issued by Al-Rasheed Bank/Diwaniyah branch for al-Qadisiyah University College of Medicine for study wages received under the receipt of No. (22464) on 30/5/2021. For all the above reasons, proofs and facts, the plaintiff requested to call upon the defendant the Minister of Higher Education and Scientific Research/ being in this capacity to plead and to judge by obliging him to apply the Constitution, free education, and unifying the channel of private government education with the free public education channel, stop collecting any tuition fees and achieving equality and justice following the Constitution. Based on the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005, the case was registered with this court in the number (70/federal/ 2021) and informs the defendant/ being in this capacity in its petition and the documents attached to it, according to the article (2/1st) of the above-mentioned Bylaw, where he answered under the numbered letter (Qaf/Shin/1/2299 dated 4 July 2021) as follows: 1. The President of the Republic has already issued a decree numbered (48) for 2016 published in the Iraqi Gazzete in the number 4429 dated 26/12/2016 to allocate (300) a study seat from the parallel study plan of the medical group and half of the tuition wages and is Competition from all students and according to their average qualifications, which means an implicit recognition of the legitimacy of parallel education, and later the Ministry of Higher Education and Scientific Research and the weak allocations of the federal general budget under its letter 8263 dated 23/11/2016 addressed to the honorable cabinet draft resolution ensures that the Ministry is authorized to receive the tuition wages resulting from the study on

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special expenditure, which will increase the capacity of admission of students used to expand buildings and buy equipment and supplies related to the scientific process and pay the wages of teachers who are not appointed on the permanent staff, and based on what was presented in the letter earlier, cabinet resolution No. (340) was issued for 2016 under which the Ministry authorized what it requested to be included in the draft instructions of the Higher Education Fund. 2. In accordance with the decision of the Council of Ministers earlier, instructions No. (171) were issued for 2018 (Third Amendment to the Instructions of the Higher Education Fund No. (122) for 1999) and included reference to the wages of higher and primary morning studies on the special maintenance of the colleges, institutes, and departments of the University, as well as the determination of the mechanism for the disbursement of the resulting revenues by expanding the buildings and to purchase of equipments and supplies related to the educational process and the wages of lectures of docents, which contains a direct reference to the private expenditure channel, which finds its legal basis starting with the text of article (10/2-Alif/1st) of the Ministry of Higher Education and Scientific Research Law No. (40) of 1988, which specified the sources of revenue from higher education funds, including tuition wages, as well as the text of article (34) of the Constitution of the Republic of Iraq 2005 (private and public education shall be guaranteed, and this shall be regulated by law) and this entails that there is no conflict between private public education and free education because both principles have been adopted under the Constitution. After completing all the proceedings, a date was set for the case and the parties were informed of it on the basis of the provisions of article (2/2nd) of the aforementioned Bylaw, and on the day appointed to the

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case, the court was formed. The agent of the plaintiff Karar Ibrahim Sheikhan and the agent of the defendant/ being in this capacity the official jurist Ph.D. Ahmed Jafar Shawi attended, and the public in presence argument proceeded. The agent of the plaintiff repeated what was listed in the petition of the case and requested to judge according to it, he also presented a draft that included his answer on the draft of the defendant/ being in this capacity. The Court had reviewed the draft and attached it to the case dossier. The agent of the defendant answered by repeating the answering draft dated 4/July/2021 and he requested to reject the case for the reasons mentioned in it. Each party repeated his previous sayings and requests. Whereas nothing is left to be said, the end of the argument has been made clear and the day 22/September/2021 is set as a date for issuing the judgment. On the aforementioned date, the Court has convened and issued the following decision publicly.

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, the plaintiff was found to have claimed that the defendant/ being in this capacity had violated the provisions of article (34/1st) of the Constitution of the Republic of Iraq 2005, which provided for (education is a basis for the progress of society and a state-guaranteed right, which is compulsory at the primary level, and the State guarantees the fight against illiteracy) and violated paragraph (2nd) of the same article which stipulates (free education is the right of all Iraqis at various stages) and since the defendant issued ministerial regulations under which he introduced the channel of public private education after in public universities and as shown in the guide of student procedures

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and admission controls and its conditions paragraph (14) (private public morning education p. 26 p. 29) of the guide above and specified the wages of study in it and according to the letter number (Ta Mim 1/2060 on 28 March 2020) and attached a detailed schedule of tuition wages which obliged the student to pay wages for education in public universities in the morning hours and not free and in very large amounts burdened the citizens although education is guaranteed and free according to the Constitution. He also violated the text of the article (28/1st) of the Constitution, which stipulates (taxes and fees are not imposed, not amended, not levied, and exempted, except by law) whereby he issued regulations setting wages for study in the morning private-public education channel in Iraqi universities and proceeded with their levies and deposits in (higher education fund) as well as violating the text of the article (14) of the Constitution, which stipulated (Iraqis are equal before the law without discrimination based on sex, race, nationality, origin, color or religion). or doctrine, belief, economic or social opinion). The procedures taken by the Minister of Higher Education/ being in this capacity caused the plaintiff harm because he is a sponsor of his student daughter (Fatima Jawad Kadhim) and responsible for spending on it and she is a student in the second stage of the faculty of medicine private-public education morning so he asked to invite the defendant in addition to his job to plead and rule by obliging to apply the constitution and free education and unify the channel of private-public education after morning with the channel of free public education and stop collecting any tuition wages and achieve equality and justice in accordance with the Constitution. This Court finds that the plaintiff's request does not fall within the jurisdiction of this Court under article (93) of the Constitution of the Republic of Iraq 2005 and does not fall within its jurisdictions under article (4) of the Federal

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Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, so the plaintiff's case is due to be rejected in this respect. Accordingly, the Federal Supreme Court decided to judge by rejecting the case of the plaintiff Jawad Kadhim Kuraif for incompetence and to burden him the expenses and the advocacy fees for the agent of the defendant/ being in this capacity the official jurist Ph.D. Ahmed Jaafar Shawi amount of one-hundred thousand Iraqi dinars. The decision has been issued unanimously, decisive, final, and binding for all powers according to the provisions of the articles (93) and (94) of the Constitution of the Republic of Iraq of 2005 and articles (4 and 5/2nd) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) Of 2021, and has been made clear on 14/Sufur/1442 Hijri, coinciding 22/September/ 2021.

**Signature of
The president**

**Jasem Mohammad
Abbood**

**Signature of
The member**

Haider Ali Noory

**Signature of
The member**

**Sameer Abbas
Mohammed**

**Signature of
The member**

Khalaf Ahmad Rajab

**Signature of
The member**

Haidar Jaber Abed

**Signature of
The member**

**Abdul Rahman
Suleiman Ali**

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**Signature of
The member**

**Diyar Muhammad
Ali**

**Signature of
The member**

**Ghalib Amir
Shunayen**

**Signature of
The member**

Ayoob Abbas Salah