

Republic of Iraq
Federal Supreme Court
Ref. 202 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 20/2/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Hyder 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: Shamiran Morokil Odesho/ Head of the Iraqi Women's Union- her agents the Barristers Zuhair Dhia Al-Deen Yaqoob and Salam Zuhair Dhia Al-Deen.

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

The plaintiff claimed through her agents that article (41/1) of Penal Law No. (111) of 1969, the amended in force, stipulated that "there is no crime if the act occurs in the use of a right established by law and is considered to be a use of the right: 1. Discipline the husband of his wife and discipline the parents and teachers and those in their custody of minor children within the limits of what is prescribed by law or law or custom), and the Constitution of the Republic of Iraq for 2005 in effect had included a number of articles which contradicts with the above-mentioned legal text, these articles are: 1. Article (2/Jim) of which (no law may be enacted that contradicts the rights and basic freedoms stipulated in this Constitution). 2. Article (14) of which (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect,

saady

Republic of Iraq
Federal Supreme Court
Ref. 202 / federal /2021



Kurdish text

belief or opinion, or economic or social status). 3. Article (15- Every individual has the right to enjoy life, security, and liberty. Deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority). 4. Article (16- equal opportunities shall be guaranteed to all Iraqis, and the state shall ensure that the necessary measures to achieve this are taken). 5. Article (29/1st: Alif. The family is the foundation of society; the State shall preserve it and its religious, moral, and national values. Beh. The State shall guarantee the protection of motherhood, childhood, and old age, shall care for children and youth, and shall provide them with the appropriate conditions to develop their talents and abilities, second: Children have the right to upbringing, care, and education from their parents. Parents have the right to respect and care from their children, fourth: all forms of violence and abuse in the family, school, and society shall be prohibited). 6. Article (37/Alif- The liberty and dignity of man shall be protected). The challenged article by its constitutionality allows a man to discipline his wife, which implies that she shall be beaten and that the practice of discipline for both the wife and the children, which implies beatings, by the husband violates the right listed in the article (15) of the Constitution, and gives the husband arbitrary authority to the wife and children through their means, in addition to giving them an unconstitutional right of the husband and teacher to discipline the wife and student through unlawful violence. Finally, the challenged text by its constitutionality contains a violation of article (37/Alif) of the Constitution, and the conditions required under article (6) of the Bylaw the Federal Supreme Court No. (1) of 2005 are available in the plaintiff as a wife. A mother of children and students first, in addition to being the head

saady

Republic of Iraq
Federal Supreme Court
Ref. 202 / federal /2021



Kurdish text

of a women's organization dealing with mothers' affairs and defending their rights, the challenged legal text by its constitutionality constitutes a violation of democracy and directly harms it as a wife and mother of children and students, and the plaintiff and members of her organization can directly harm wives and mothers. It is a real, not theoretical, future or unknown harm, as a result of the legal protection of the use of violence under the article challenged by its constitutionality, and it is fully damaged by the text and does not benefit from any part of it. The plaintiff, therefore, requested from the Federal Court to judge that article (41/1) of Penal Law No. (111) of 1969 be amended because it conflicts with many constitutional provisions and the fact that it provides legal cover for family violence in general and violence against women, which has been widespread and escalated in large proportions in all governorates of Iraq recently, the case was registered with this court in the number (202/federal/2021) and the legal fee for it was met in accordance with the provisions of article (1/3rd) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and notify the defendant/ being in this capacity in its petition and documents in accordance with the provisions of article (2/1st) of the same bylaw, and his agents replied by the answering regulation of 28/12/2021 and requested the dismissal of the case in form of the lack of a condition of interest and the availability of damage in accordance with the conditions set out in article (6) of the court's Bylaw, it was not clear whether the plaintiff had brought the case in its natural or moral capacity as the Head of the Women's Union so that they could respond according to her character and location, and by reference to the text in question, it referred to discipline, not violence or the use of means of force. In addition, the legislator had stated the words "what is prescribed by

saady

Republic of Iraq
Federal Supreme Court
Ref. 202 / federal /2021



Kurdish text

law, law or custom", and there is no constitutional violation, nor does this provision allow the use of violence against the wife or children or to be prescribed by law or custom. Legal adaptation to the use of severe beatings or abuse in accordance with disciplinary standards, and that the single discipline goes to education or alert according to societal values believed in Iraqi society. For these reasons, the defendant's agents requested that the case be dismissed and that the plaintiff shall burden all the fees, expenses, and advocacy fees, and after completing the procedures stipulated in the court's Bylaw, a date has been set for the case in accordance with article (2/2nd) of it, and the parties shall be notified with it, on the appointed day, the court was formed, and the plaintiff and her agent the Barrister Zuhair Dhia Al-Deen Yacoob attended, as did the defendant's agents/ being in this capacity legal counsel Haitham Majid Salem and official jurist Saman Mohsin Ibrahim, and the public in presence argument proceeded. The plaintiff and her agent repeated what was listed in the petition of the case and requested to judge according to it, the agents of the defendant had answered and requested to reject the case for the reasons listed in their answering draft dated 28/12/2021. Each party's agent repeated his sayings and previous requests. 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 brought the case before this court to challenge the constitutionality of article (41/1) of the Penal Law No. (111) of 1969, which stipulated that "there is no crime if the act occurs in the

saady



use of a right established by law and is considered to be a use of the right: Alif. Discipline of the husband to his wife and discipline of parents and teachers and those who rule minor children within the limits of what is prescribed by law, law, or custom) because it violates the provisions of the articles ((2/Jim), (14), (15), (16), (29/1st, 2nd, 4th), (37/Alif)) of the Republic of Iraq Constitution for 2005 and for the reasons indicated in details in the petition of the case. The Federal Supreme Court finds that the plaintiff's case must be dismissed in a pre-adjudicated form on the basis of the court's decision on the number (27/federal/2019) on 8 April 2019, which included the dismissal of the appeal against the constitutionality of the article (41/1) of the Penal Law No. (111) of 1969 amended, the meaning of (discipline) referred to in the text of the article, which is challenged, does not in any way go to the concept of (domestic violence), but goes to a process of reform and evaluation restricted by the text subject to challenge the limits of what is decided by law, sharia and custom, if it exceeds these limits, it involves an act criminalized by penal laws, including the Penal Law, and the aim of that process is in accordance with the principles set out in the constitutional articles for the protection of the family and its status on the right path and the protection of minor students, and take care of them, in accordance with the detail referred to in the above-mentioned decision of the judgement, the plaintiff's interest in bringing the case to challenge the constitutionality of article (41/1) of the aforementioned Penal Law is not pre-adjudicated, and since article (6) of the Bylaw of the Federal Supreme Court No. (1) of 2005 stipulated that the plaintiff have an interest in the prosecution, to challenge the constitutionality of a text, direct and influential case in its legal, financial or social status, providing evidence that it has

saady

Republic of Iraq
Federal Supreme Court
Ref. 202 / federal /2021



Kurdish text

been realistically damaged by the legislation to be abolished, that the damage is direct and independent in its elements, and that it can be removed if the legislation to be repealed is ruled illegal, that the damage is not theoretical, future or unknown, and that the plaintiff has benefited in addition to the text to be abolished, the text to be repealed must have already been applied to or intended to be applied to the plaintiff, and in the interest is intended to be the practical benefit that the plaintiff aims to achieve when judging in accordance with her requests, and the personal interest requirement is considered a requirement to accept the constitutional action before the Federal Supreme Court, as there is no case without interest, and since the absence of the interest clause strips the plaintiff's requests for legal protection, it is inconceivable that the constitutional action will be a tool through which the litigants express personal opinions. Moreover, the plaintiff's lack of interest in the case prior to adjudication means that it is not permissible for the defendant to hold it / being in this capacity, and the court may not rule on the constitutionality of a legislative text in a non-adversarial manner, and thus the plaintiff's case is due to be dismissed in form, and when the Federal Supreme Court decides to dismiss the plaintiff's case in the form of a pre-adjudication of its matter and its lack of interest in initiating of the case and to burden her with the expenses, fees, and the advocacy fees for the agents of the defendant/ being in this capacity, each of the legal counselor Haytham Majid Salim and the official Jurist Saman Muhsin Ibrahim amount of the one-hundred thousand Iraqi dinars divided between them according to the law. The decision has been made unanimously, decisive and binding for all powers according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC's law No. (30) for 2005

saady

Republic of Iraq
Federal Supreme Court
Ref. 202 / federal /2021



Kurdish text

which was amended by law No. (25) for 2021. The decision has been made clear on 18/Rajab/1443 Hijri coinciding with 20/February/2022 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

saady