

(Translated from Arabic)
IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 27/federal/media/2019



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 8.4.2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff : Fras Sami Rashied / attorney

The Defendant: Speaker of the Parliament/ being in this capacity - his agents the legal officials the director Salim Taha Yasein and the assistant legal advisor Haytham Majid Salim.

The Claim:

The Plaintiff claims in the case petition that article (41) Of the Iraqi Penal Code No(111) for 1969 stipulated that ((There is no crime if the act is committed while exercising a legal right, the following are considered to be in exercise of a legal right 1- the punishment of a wife by her husband, the disciplining by parents and teachers of

children under their authority within certain limits prescribed by law or by custom)), and as this first paragraph of the above article involves the concept of legalization for the use of domestic violence against the wife by the husband, and it is considered as a legal justification for the husband to beat his wife under the title of discipline, therefore it has violated the Constitution, clear and obvious violation for the following reasons:

- 1- It has violated the concept of equality that stipulated in article (14) of the Constitution of the Republic of Iraq for 2005 which stipulate that (Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, ... etc.).
- 2- It also violated the provisions of the article (29/4th) of the Constitution which stated that (fourth: All forms of violence and abuse in the family, school, and society shall be prohibited.), where it prevented all forms of violence and force in the family and clearly and without doubt and under any title or legal justification, and finally its contrary to the provisions of the article (30/1st) of the Constitution as it says ((first: the State shall guarantee to the individual and the family especially children and women, social and health security, the basic requirements for living a free and decent life, and shall secure for them suitable income and appropriate housing)) which obligated the State to provide a free and dignified life for the family whether the child, is to be cared for, protected and raised as humane and emotional correct form, or the wife who unfortunately is being subjected to beating and abuse and violence that is justified and permitted by law, in the case of the remaining of the provisions of the first paragraph of article (41) of the valid Penal Code in chapter (four/2 - the use of the right), where this article was involved under the title of the use of the right, which consider a legal justification that constitutes a great danger to the stability and

harmony of the family, and threatens its existence, and affected the freedom and dignity of the wife as a human that the Constitution guaranteed all her rights and civil liberties, considering what the women and the wife exposed to, as well as what is likely to be exposed to in the future from beating and domestic violence, under the legal protection provided by this paragraph of the mentioned article to the person who commits beatings and harming for his wife, as well as what the children are subjected to from beatings and abuse by teachers with extreme cruelty as happened and we saw it all through the media and the social media, which led to the death of some of these children as a result of beatings and abuse by teachers, and as the F.S.C. is responsible for the process of constitutional control upon the laws and the vial regulations according to article (93) provisions of constitution. He request to judge that ((article (41) paragraph (1) of the amended Iraqi Penal Code No(111) for 1969, is unconstitutional for violating the provisions of the aforementioned articles, and to obligate the defendant/ being in this capacity to issue the legislation required for that and burden the defendant the expenses and fees)). The agents of the defendant/ being in this capacity has respond with the answering draft dated 17/3/2019 requesting to reject the case for the following reasons:

- 1- the plaintiff did not show the actual, direct and effective advantage in the legal status or the financial or social of him in this case and did not prove or show the direct actual damage as mentioned in article (6/1st)of the F.S.C. bylaw.
- 2- The text that is under challenge does not explain to the legalization of domestic violence against the wife and the discipline of parents and teachers and those who have custody of minors, in addition, the text of the case subject restraint the methods of discipline within the limits of what is specified by Sharia, law and custom, so what the

plaintiff's has listed of a constitutional violation is not supported in the aspects of the violation that he explained. After the required procedures has completed according to of the F.S.C. bylaw No(1) for 2005, the date 8/4/2019 has set to proceed with the case, the court was convened, the plaintiff has attend as an attorney, , the agents of the defendant has attend also, and proceed with the case in presence and publicly, the plaintiff repeated what listed in the case petition and request to judge case for what listed in it, and submitted an explanatory draft of his claim, explaining what he listed in it that the text allows the beating in the content of it form the husband to his wife and this is true to what the teachers do to their students. The agents of the defendant repeated what listed in the answering draft and requested to reject the case for what listed in it. And where nothing left to be said the argument is closed and the decision is issued publicly.

The Decision:

During scrutiny and deliberation by the (F.S.C.), the court found that the plaintiff challenged in his case petition that paragraph (1) of article (41) of Iraqi Penal Code No(111) for 1969 is unconstitutional, which stipulate that ((there is no crime if the act is committed while exercising a legal right, the following are considered to be in exercise of a legal right: 1-the punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom)), the plaintiff explains his request that paragraph (1) of article (41) which is under challenge, involves the concept of legalization for the use of (domestic violence) by the husband against his wife, and a justification for

beating her under the title of discipline, which violate articles (14, 29/4th, 30/1st) of constitution, which guarantees the principle of equality among Iraqis without discrimination on grounds of sex, and consider the family the basis of society and provides a decent life for women and prevents all forms of violence and abuse in the family, school and society. By analyzing paragraph (1) of article (41) that is under challenge the F.S.C. found that it stipulate the right of (discipline) of the husband against his wife and parents to their children and teachers on their minors students, within the limits of what is specified by Sharia, law and custom, and the process of (discipline) the intent of this article as agreed is variable in method and in its concept by time and place clearly, and does not mean in any way the concept of (the domestic violence) intended, but it is a process of repair and evaluation which is restricted by the text that is being challenged, within the limits of what is specified by law, Sharia, and custom, if they exceed these limits, they shall include an act that is criminalized by penal laws, including the Penal Code, in addition, the repair and evaluation that the process of (discipline) is aimed to, harmonizes with the principles that stated in the constitutional articles that was mentioned by the plaintiff as support for his claim and its purpose is to protect the family and put it on the right path, it also aims for protecting and caring of minor students. According to that the plaintiff's case is not based on a reason from the Constitution and the law. Therefore the F.S.C. decided to reject the case and to burden the plaintiff the expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. and the decision has been issued unanimously and decisively according to the provisions of article (5) of the F.S.C. bylaw No(30) for 2005, and article (94) of constitution and issued publicly on 8/4/2019.