

Republic of Iraq
Federal Supreme Court
Ref. 40 / federal /2021



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/6/2021 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, Ayooob 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 Plaintiffs: 1. Mustafa Sahib Sa'adoon/ Barrister.
2. Osama Hayawai Hamza/ Barrister.
3. Hussein Abdul Aziz Majeed/ Barrister.

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 plaintiffs claimed that it came in the Code of Criminal Due Process No. (23) of 1971 amended in the article (50/Alif) of it (an exception to the first paragraph of the article (49) the official of the police station investigates any crime if he is ordered by the investigating judge or investigator... Etc.), as stated in article (50/Beh) of it (the official at the police station in the circumstances described in this article and article (49) has the authority of an investigator) and since the police officers belong to the executive power, they may not interfere in the jurisdiction of the judiciary and since the article above violates the Constitution of the Republic of Iraq for 2005, where article (47) stipulates that (federal authorities shall consist of legislative, executive and judicial authorities, exercising their powers and functions on the

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Republic of Iraq
Federal Supreme Court
Ref. 40 / federal /2021



Kurdish text

basis of the principle of separation of powers) as stipulated in article (13/2nd) of it (no law may be enacted contrary to this Constitution, and considers nullity every provision in the constitutions of the provinces or any other legal text that contradicts it), therefore, the provision of article (50/Alif and Beh) of the Criminal Procedure Law No. (23) of 1971 amended is contrary to the provisions of the Constitution. The plaintiffs requested from this court to call upon the defendant/being in this capacity to plead after being informed legally and to judge that article (50/Alif and Beh) of the Criminal Procedure Law No. (23) of 1971 amended and to burden him with all fees and expenses. After the registration of the case and the fulfillment of the legal fee based on the provisions of article (3rd) of the article (1) of the Bylaw of the Federal Supreme Court No. (1) of 2005 and the notification of the defendant's petition based on the article (2/1st) of the above-mentioned Bylaw, his agents replied by the draft dated 31 May 2021 that the contested text was made to preserve the loss of the parameters of the crime and the speed with which it is investigated and does not violate the principle of separation of powers or constitutional texts provided by the plaintiffs, so the defendant's agent requested/being in this capacity to dismiss the case, and after completing the required procedures in accordance with paragraph (1st) of the article (2) of the Bylaw, a date was set for the hearing of the case based on the provisions of article (2/2nd) of the said Bylaw, in which the court was formed, the plaintiffs attended by themselves and as agents of the Speaker of ICR / being in this capacity both of legal counsel Haitham Majid Salem and the official jurist Saman

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Muhsin Ibrahim attended according to the power of attorney attached to case's dossier. The public in presence argument proceeded, the plaintiffs repeated and they also requested to challenge the constitutionality of article (47) of the Criminal Procedure Law No. (23) of 1971 amended for violating the provisions of articles (47, 13 and 88) of the Constitution of the Republic of Iraq 2005 regarding the motion of the complaint by the complainant or victim before the police stations, the agents of the defendant/ being in this capacity replied that there was no interest in the plaintiffs in bringing this case and the court clarified from the plaintiffs what interest the case was based on in accordance with article (6) of the Bylaw of the above-mentioned Federal Supreme Court, the plaintiffs replied that the interest was that the application of the challenged articles led to the complainants being reviewed to police stations and thus to gain contact with the investigative authorities and clear interference in the work of the judiciary. After the scrutiny, the court decided not to accept the events of a pending case because of the lack of interest of the plaintiffs in its initiation. Whereas nothing left to be said, the Court has made the end of the argument clear and issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiffs challenged the unconstitutionality of section (50/Alif and Beh) of the Criminal Procedure Law No. (23) of 1971 amended, paragraph (Alif) of which provided for (to except to the first

saady

Republic of Iraq
Federal Supreme Court
Ref. 40 / federal /2021



Kurdish text

paragraph of article 49) the official of the police station investigates any crime if he is ordered by the investigating judge or investigator or if he believes that referring the informant to the judge or investigator delays the proceedings, which leads to the loss of the parameters of the crime, damages the conduct of the investigation, or the accused escapes, the investigative papers shall be presented to the judge or investigator as soon as he is free of them) and paragraph (Beh) of which stipulates that (the official of the police station in the circumstances described in this article and article (49) shall have the authority of an investigator) and since the plaintiffs have not indicated the interest of their initiating for the foreseeable case, which is a prerequisite for accepting the constitutional action so that the case is not valid without it, since the interest in the subject of constitutional proceedings, and the mere existence of a person's interest is not sufficient to bring a constitutional action, since certain conditions must be met in the interest that it is legal and for the interest to be legal, it should involve a breach of a constitutional right and should be direct, i.e. there is direct harm, whether such harm may be done. It happened or was threatened, The damage to or will be inflicted on the plaintiff if the provision is applied is due to the legislative text challenged for violating the provisions of the Constitution and therefore does not count for indirect damage, whether fictitious, unknown, presumptive or not real and where the plaintiffs have not been found to have been affected by the challenged article so that their interest in bringing such a case shall be in the direction of the defendant/being in this capacity is not valid and not achieved, as paragraph (1st) of the article

saady

Republic of Iraq
Federal Supreme Court
Ref. 40 / federal /2021



Kurdish text

(6) From the Bylaw of the Federal Supreme Court No. (1) of 2005 require that the constitutional case have a case and achieved interest so that the conditions for accepting the constitutional case are not met, which requires to dismiss the plaintiffs' case. Accordingly, the Federal Supreme Court decided to reject the case of the plaintiffs (Mustafa Sahib Saadoon, Osama Hayawi Hamza, and Hussein Abul Aziz Majeed) and to burden them the expenses and the advocacy fees of 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 (100.000) one-hundred shall be divided between them according to the law. The decision has been issued decisive according to the provisions of the article (94) of the Republic of Iraq Constitution for 2005, and the article (5) of the Federal Supreme Court No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 19/Dhul Qida/1442 Hijri coinciding 29/June/2021 AD.

**Signature of
The president**

**Jasem Mohammad
Abbood**

**Signature of
The member**

**Sameer Abbas
Mohammed**

**Signature of
The member**

Haidar Jaber Abed

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Republic of Iraq
Federal Supreme Court
Ref. 40 / federal /2021



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Signature of The member	Signature of The member	Signature of The member
Haider Ali Noory	Khalaf Ahmad Rajab	Abdul Rahman Suleiman Ali
Signature of The member	Signature of The member	Signature of The member
Diyar Muhammad Ali	Ghalib Amir Shunayen	Ayoob Abbas Salah