

Republic of Iraq
Federal Supreme Court
Ref. 142/ Federal / 2018



The Federal Supreme Court (F.S.C.) convened on 1.3.2022 headed by Judge Jasem Mohammad Abboud and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali, and Monther Ebrahim Hussain who are authorized to judge in the name of the people, they made the following decision:

The plaintiff:

Lawyer Karwan Abdel Karim Aziz.

The defendant:

Speaker of Kurdistan Parliament/ in addition to his post - his two deputies, responsible for the legal department in the Parliament, Sharmeen Khader Bahgat, and Legal Counsel, Raya Saadi Ahmed.

The claim:

The plaintiff, lawyer Karwan Abdul Karim Aziz, claimed that he had previously filed the case numbered (130/Beh2/2018) before the Court of First Instance of Erbil, requesting the cancellation of the tax against him for practicing the legal profession while it is a civil, non-commercial profession, and the initial case is still pending and has not been decided. As the Parliament of Kurdistan, in the session No. 14 held on October 22, 2007, issued Law No. (26) of 2007 (Law of Amending the Application of Income Tax Law No. 113 of 1982 amended in the Kurdistan Region) inclusive Article (55) of the

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amended Income Tax Law No. 113 of 1982, which stipulates that (the courts shall not hear any lawsuit related to tax assessment, imposition and collection, or any transaction conducted in accordance with the provisions of this law), and since the aforementioned article prevents the courts from hearing the lawsuit, and therefore it conflicts with Article (100) of the Constitution, which prohibits stipulating in the laws the immunization of any administrative act or decision from appeal, also contradicts Article (19/3) of the Constitution, which guarantees the right to litigation for all, a right that is not nurtured or ensured its proper application except for the a fair, just, independent, and impartial judiciary, not the administration, which is originally an opponent, for all of the foregoing, the plaintiff requested from the Federal Supreme Court (the ruling of unconstitutionality of the text of Article (55) of the Income Tax Law No. (113) for the year 1982 as amended valid in the Kurdistan Region for violating the constitution, and charging the plaintiff with all expenses), the case was registered with this court in the number (142 / federal / 2018) and the legal fee was collected for it in accordance with the provisions of Article (1/ third) of the Bylaw of the Federal Supreme Court No. (1) of 2005, the defendant in addition to his post was informed in accordance with Article (2/first) of the same bylaw above, his answer was provided according to the regulation dated 9/2/2022 submitted to this court by his attorney, which included that the legislator in Income Tax Law No. (113) for the year 1982 authorized the taxpayer to dispute the correctness of the income estimate and imposing tax on him by objecting to the tax authority by appealing within the legal period granted. In case of rejecting the appeal, he could appeal that decision before the

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appellate committee headed by a judge of second degree in all appeal areas, the decision of the appeal committee should be justified, otherwise, it would be a subject of cassation. The legislator also gave the person charged with appealing in cassation the decisions of the appellate committee before the cassation body in certain cases in accordance with paragraph (2) of Article (40) of the law, and from this, it becomes clear that the principle of stability of transactions and that the financial transactions, shall be confidential, in order to preserve the reputation of the taxpayer in front of others, in addition to the speedy settlement of these disputes. These matters in their entirety have led the legislator to determine the aspects of appeal in tax decisions according to a special context as above, and from the foregoing, it is clear that there is no conflict or contradiction between the law Income tax and Article (100) of the Iraqi constitution in force. It is clear from this article that the constitutional legislator has prevented the immunization of any decision or action from the appeal. The Income Tax Law has approved and specified the aspects of appeal in decisions related to tax assessment, imposition, and collection. Therefore, the plaintiff's lawsuit from this aspect has no legal basis and is baseless, also the Iraqi legislator had issued Law No. (17) of 2005 on 12/8/2005 the law of abolition legal texts that forbid Courts from hearing a case, and according to it, all these texts were canceled wherever they were mentioned in the laws and decisions of the dissolved Revolutionary Command Council from 17/7/1968 to 9/4/2004. But it excludes the law of the Ministry of High Education and Scientific Research, the Ministry of Education, the tax, the decisions preventing the trace passing on state land from the provisions of this law and this is evidence of the specificity of the

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issues regulated by these laws, which necessitated the organization of special ways to challenge their procedures. These laws were rather drawn up special methods commensurate with the specificity of the topics mentioned in them as previously said, in addition to the fact that Article (100) of the Constitution did not specify any type of appeal, whether it is judicial, administrative, mixed or private. Rather, it was stated absolutely and applies to remain absolute as legally established, so he requested that the plaintiff's lawsuit be dismissed and to charge him with all fees and expenses. after completing the required procedures in accordance with the provisions of the aforementioned court rules of procedure, a date was set for the pleading in accordance with the provisions of Article (2/Second) thereof, and the two parties were informed of it. On the appointed day, the court was formed. The plaintiff, Karwan Abdul-Karim Aziz, attended, and on behalf of the defendant and his two attorneys, each responsible for the legal department in the Parliament of the Kurdistan Region (Sharmin Khader Bahgat) and the legal advisor (Raya Saadi Ahmed), and proceeded to plead in his presence and public. The plaintiff repeated the petition of the case and asked for a ruling accordingly. The defendant's attorney responded, requesting that the case be dismissed for the reasons mentioned in the answer list that included the response to the petition of the case. The plaintiff and the defendant's attorney repeated their previous statements and requests, and where there was nothing left to be said, the court decided the pleading concluded and issued the following ruling:

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the plaintiff had filed the case before this

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court to challenge the constitutionality of Article (55) of the amended Income Tax Law No. 113 of 1982 (as it is in force in the Kurdistan region of Iraq based on the provisions of Law No. (26) of 2007 (Law Amending the implementation of Income Tax Law No. 113 of 1982 amended in the Kurdistan Region), which stipulates that (the courts shall not hear any lawsuit related to tax assessment, imposition and collection or any transaction conducted in accordance with the provisions of this law), and because it prevents the courts from hearing cases in violation of the provisions of the Constitution of the Republic of Iraq For the year 2005 in Article (100) of it, which stipulates (it is forbidden to stipulate in the laws that any act or administrative decision is immune from appeal) as it contradicts Article (19/Third) of it, which stipulates (Litigation is a safeguarded right guaranteed to all), the Federal Supreme Court finds that its competence and powers to monitor the constitutionality of laws and regulations stipulated in Article (93/First) of the Constitution of the Republic of Iraq for the year 2005 and Article (4/First) of the Law of Federal Supreme Court No. (30) for the year 2005 amended by Law No. (25) for the year 2021 is limited to monitoring the constitutionality of laws and regulations in force, and therefore it has no control over the constitutionality of laws and regulations that are not in force, because their non-enforcement means the end of their existence and absence, and the constitutionality of the law cannot be verified without the validity in the presence of the constitution in force, due to the lack of the constitutional authority that authorizes it to do so, also the lack of enforcement of the law or the regulation means the absence of a text that contradicts the provisions of the constitution, since the text of Article (55) of the Income Tax Law No.

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(113) of 1982, as amended, has not been referred to in the amendment Law No. (26) of 2007 (Law Amending the Application of Income Tax Law No. 113 of 1982 amended in the Kurdistan Region), and since the text of Article (55) of the aforementioned Income Tax Law is null and void and there is no reason to apply it in the center or in the Kurdistan Region, because the law repealing legal texts that prevent courts from hearing cases No. (17) of 2005, published in the Iraqi Gazette, No. (4011) on December 22, 2005, amended by Law No. (3) of In 2015, (The Law of the First Amendment to the Law of Repealing Legal Texts That Prevent Courts from Hearing Cases), published in the Iraqi Gazette, No. (4354) on 2/3/2015, all legal texts that prevent courts from hearing cases wherever they are received were canceled and annulled there are also exceptions to it, and accordingly, the aforementioned law nullifies the provisions of Article (55) of the aforementioned Income Tax Law, especially that the text of Article (55) of the aforementioned law was contained in a federal law and not in the Kurdistan Region Law and to prove the nullification of the text whose constitutionality is challenged in accordance with the aforementioned details, therefore, the plaintiff's lawsuit is obligatory to be dismissed, the Federal Supreme Court decided to rule the following:

- 1- Rejecting the lawsuit of the plaintiff, lawyer Karwan Abdul Karim Aziz, regarding the constitutionality of Article 55 of the Income Tax Law No. (113) for the year 1982 as amended, due to the nullification of the text under appeal and not to enforce it based on the provisions of the Law of Repealing Legal Texts

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that Prevent Courts from Hearing Cases No. (17) of 2005, as amended by law No. (3) for the year 2015.

- 2- Charging the plaintiff with expenses, fees, and attorney fees for the defendant's attorneys, in addition to his position, each of them responsible for the legal department in Parliament, Sharmeen Khader Bahgat, the legal advisor, and Rayya Saadi Ahmed, an amount of one hundred thousand dinars distributed according to the law. The decision was issued in agreement based on the provisions of Articles (93/First and 94) of the Constitution of the Republic of Iraq for the year 2005 and Articles (4/First and 5/Second) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 final and binding ruling for the authorities all, and understand publicly on 27 Rajab 1443 AH corresponding to 1/3/2022 AD.

Signature of
The president

Jasem Mohammad Abbood

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