

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

Republic of Iraq  
Federal Supreme Court  
Ref. 153/federal/media/2018



Kurdish text

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The Federal Supreme Court (FSC) has been convened on 19.11.2018, headed by the Judge Madhat Al-Mahmood and the membership of Judges Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein Abbas Abu Al-Temmen and Mohammed Rajab Al-Kubaise who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (Mim. Kha. Alif.) managing director of Middle East Investment bank/ being in this capacity - her agent the attorney (Beh. Mim. Mim.Kha).

The Defendant: Minister of Finance/being in this capacity - his agent the legal official (Ain. Ain.Ha).

The Claim:

The plaintiff/being in this capacity claims that the paragraph (6) in article (20) from the property tax code No(162) for 1959 has included the phrase (the divan could repeal the decision or the challenged procedure or support it or modify it, In order to achieve that he could conduct detection on the property and to call upon the assigned person and the financial authority representative when necessary, and his decision is decisive), And the paragraph (3) from the aforementioned article included the phrase (the assigned person could challenge for the property tax divan about the financial authority procedure to implement that code provisions within a period of (30) day from the day he was notified),

The article(15) from the aforementioned code included provisions about assessment reconsidering from the scrutiny committees, and the participant of this committees represented the financial authority (property tax department), In light of the foregoing the plaintiff/ being in this capacity challenged that the aforementioned code is unconstitutional for many reasons including that the financial authority (property tax department) is the responsible party for reviewing the assigned person challenges on the assessment decision taken by the financial authority, which interfere with the legal principle that is the base for the federal cassation court's assessment decision about the fairness of the party that review the assigned person challenges, It is not permissible to combine the litigant and the judgment in one person or one party, for justice and equity. On the other hand the paragraph(6) from article (20) in the challenged code stipulated that (the decision of property tax divan is decisive), Which violate the codes preamble that give each party the right to challenge the issued decisions. finally the paragraph (7) from the aforementioned code article (20) stipulated that the courts shall not hear any case related to the Implement of this code, that violate the legal principle of the general mandate report to determine all disputes between the litigants, which is a constitutional text that can't be derogate, In light of that the plaintiff/ being in this capacity request to judge that the paragraph (3) and (6) and (7) from (1) in (Alif) from article (20) in the challenged code is illegality and unconstitutional , and to repeal article (15) from the same code. The agent of the defendant/ being in this capacity submit an answering draft dated on (30/8/2018) that he request in it to reject the case for formal and objective reasons, the formal one included that the (FSC) jurisdiction is to review the disputes concerning the legality and the unconstitutional of the cods, and not the codes that interfere the legal principles, in addition to that the litigation is not direct to the defendant because he is part of the executive authority and not the legislative authority. And the objective reasons is that the code article (20) don't interfere with the fairness of the party that review the challenges, because the committee that review the challenge is headed by a judge, in addition to other reasons including what listed in paragraph (7) article (20) that has been repealed by code (3) for 2015 which concerns the repealing of legal texts that prevent the courts from hearing the cases No(17) for 2005. After the case has been filed and registered and an argument date has been Scheduled the court has been convened and call upon the two parties, the agent of the plaintiff has attend, the agent of the defendant did not attend or send a

representative, As the notification has been completed the case has proceed, the agent of the plaintiff repeated the case petition and requested to judge according to what listed in it, As the case was completed for reasons of judgment the argument has been closed and the decision is issued publicly.

### The Decision:

During scrutiny and deliberation by the (FSC), the Court found that the plaintiff/ been in this capacity challenged that the paragraph (3) and (6) and (7) from (1/Alif) from article (20) in the property tax code No(162) for 1959 is illegitimacy and unconstitutional, she also request to repeal article (15) from the same code which related to the decisions issued by the property tax department and the mechanism of challenging it, and that articles interfere with the fairness of the party that review the challenges of the assigned person, will it is not permissible to combine the litigant and the judgment in one person, and the code has been challenged stipulated that the courts shall not hear any case that caused be this code implementation, when reviewing the case we notice that the plaintiff/ being in this capacity requested in her case petition that legislative text is unconstitutional, she also litigant the Minister of Finance/ being in this capacity which cannot be litigant in this case, because he don't have the right to legislate codes which is a legislative authority jurisdiction, And by reviewing article (4) from the modified code of civil procedure No(83) for 1969 which stipulated that (it is stipulated that the defendant must be a litigant. His admission considered a judgment by assessing of issuing a decision from him, and he also must suited or obliged by something if the case was approved). Accordingly, the FSC decided to reject the case for litigation and to burden the plaintiff the expenses and advocacy fees for the agent of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued decisively, and unanimously according to article (94) of the Constitution, and article (5) of the FSC Bylaw and issued publicly on 19/11/2018.