



The Federal Supreme Court (F S C) has been convened on 4.2.2019 headed by the Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Michael Shamshon Qas Georges, Aboud Salih Al-Temimi and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: (mim.kha.alif) the deputy Director of Middle East Iraqi Bank for investment/ being in this capacity – her agent the barrister (ba.mim.mim.kha).

The Defendant: the Speaker of the ICR/ being in this capacity - his agents the jurist officials, the director (sin.ta.yeh) and the legal consultant assistant (ha.mim.sin).

The Claim

1. The agent of the plaintiff claimed that clause (6) of article (20) of the law No. (162) for 1959 included ((the divan has the authority to annul the decision, or objected procedure. Approving or amending it, and to proceed this it can survey the real estate and call upon the responsible, as well as the representative of the Ministry of finance in necessity. Its decision is decisive)). Also, clause (3) of the same article (20) included (the responsible has the right to object before real estate tax divan about the procedures of financial authority to implement provisions of this law within a period not more than (30) days from the date of his notification. Article (15) from the same law included a judgment of reconsideration in assessment of scrutiny committee, and participants in this committee represents the financial power (real estate tax office) clause (3rd) from (alif) of article (1) of article (20) had included participation of a financial

employee with post not less than a Director in the membership of real estate tax office. This financial employee who named according to provisions of this clause representing the office of real estate tax as well. 2. According to what above-mentioned, my challenge against unconstitutionality of legal judgments mentioned above is concentrating on that the financial authority (real estate tax office) is the office which trying the objections of those whom responsible of assessment decisions, and token procedures by financial authority (real estate tax office). This mean: alif. It is contradicts with the legal principle that the judiciary of Federal cassation Court settled on, especially the subject of neutrality of office which trying the objections of responsible. It is not allowed to gather between litigant and the judge in one person, or one office, specifically ((justice and fair)). Beh. Clause (6) of article (20) which mentioned above stipulates that the decision of (real estate tax diva) is decisive, while this text is contradicts with the preamble of all Iraqi specialized laws. These laws granted the right for every rightful owner to follow many legal methods to challenge any decision or judgment starting from complain and other methods which legally approved, such as appeal, cassation, correction request, retrial and other party objection. Worthy to mention that legal challenge methods is within public order which the Iraqi law stipulated, and it can't be violated. Jim. As well as clause (7) of the same article (20) had stipulated on that the Courts are not allowed to hear any case of implementing provisions of this law for all litigations occurred between litigants. This text is constitutional, and can't be violated. Therefore, the agent of the plaintiff requested from the FSC to judge by illegality and unconstitutionality of issuing clause (3) and clause (6) and clause (7) and clause (3rd) of (1) of (alif) of article (20) of the law No. (162) for 1959. He also requested to annul article (15) of the same law, and to burden the defendant all expenses and advocacy fees. The agents of the defendant answered the petition of the case with an answering draft dated on (16.12.2018) and they requested to reject the case of the plaintiff with burdening her all expenses and advocacy fees. Whereas the agent of the plaintiff claimed that the real estate tax divan decision issued decisively and unchallengeable. He also clarified that the real estate tax divan is the only challenge office in

the decision issued by the scrutiny committee of the financial authority, whereas the law (case's subject) obliged to challenge the decisions issued by aforementioned committee and the financial authority within thirty days from the date of decision notification. Therefore, the decision of the divan issued decisively because it is a decision tried a challenge against previous decision, and we find there is no violation to the Constitution or immunity for the decision to be challenged. After completing required procedures in the FSC bylaw No. (1) For 2005, and the Court set a date for argument. On the set day of argument, the agent of the plaintiff/ being in this capacity attended the barrister (beh.mim.mim.kha) according to the power of attorney which attached to the case's dossier. The public in presence argument proceeded, and the agent of the plaintiff repeated what listed in the petition of the case and he requested to judge according to it, with burdening the defendant the expenses and advocacy fees. As well as the agents of the defendant repeated what listed in their answering draft dated on (16.12.2018), and they requested to reject the case with burdening the plaintiff all the expenses. The Court reviewed the answering draft presented by the agent of the plaintiff which dated on (7.1.2019) as answer on the answering draft presented by the agent of the defendant, and the request to judge according to the petition of the case with burdening the defendant all the expenses and advocacy fees. Both parties repeated his previous sayings and requests, and requested to judge according to it. Whereas nothing left to be said, the end of the argument has been made clear and the decision was recited publicly on 4.2.2019.

The Decision

During scrutiny and deliberation by the FSC, the Court found that the agent of the is challenging in the petition of the case the unconstitutionality of article (15) and clause (3rd) of (1) of (alif) of article (20) and clauses (3) and (6) and (7) of article (20) of the law No. (162) for 1959 (real estate tax law), and he requests to annul it with burdening the defendant the expenses and advocacy fees. By returning to article (15) (challenge subject), the Court found it stipulates ((the responsible and the financial authority has the right to

reconsider the assessment which made by assessment committees. This procedure can be achieved by scrutiny committee and the center of concerned sub-district, and the Minister or whom he authorizes shall form the scrutiny committees as following: 1. In the sub-district of regions' centers of: finance employee/ as Head and employee/ a member and two experts in real estates/ two members. 2. In other sub-districts of: district administrator/Head and finance employee/member and two experts in real estate/two members)). As for clause (3rd) of (1-alif-) of article (20) of the aforementioned stipulated ((the Minister shall form with a statement issued by him and published in the gazette as following: first- judge from the first degree nominated by the Minister of justice/ as Head. Second: an architect or civil engineer not less than second degree of employment degrees/ as member. Third: a finance employee not less than a Director/ as member)). Article (20/3) of aforementioned law stipulated ((the responsible has the right to object at the real estate tax divan against the decision of scrutiny committee, or procedures of financial authority which related to implementing the law provisions within a period not less than (30) thirty days of the date of his notification by the decision of scrutiny committee decision, or financial authority procedures)). Also article (20/6) of the law (challenge subject) stipulated ((the divan has the power to annul the decision, or objected to procedure, annulling or amending it. In order to achieve this matter, the divan can survey the real estate and call upon the responsible with the representative of financial authority in necessity. The decision of the divan is decisive)). As for article (20/7) (challenge subject) which stipulated ((the Courts can't hear any case related to implementing the provisions of this law)). The FSC finds that article (15) (challenge subject) had allowed the responsible and the financial authority in the center of the sub-district to reconsider the assessment which made by assessment committees at the scrutiny committee in the center of concerned sub-district. These scrutiny committees consist of financial employee as a Head, and member of employees with two experts in real estates. The legislator allowed the responsible and the financial authority according to this clause to request reconsideration of assessment which made by scrutiny committee before scrutiny committee. This committee which tries the decisions of real estates assessments by assessment committees, and

this committee considered a challenge committee of decisions. Its decisions submit to challenge before real estate tax divan, and this committee consist of those with experience in field of assessing real estates values and two experts in assessing real estates values. Therefore, the FSC finds that the challenged texts doesn't forms a conflict with the provisions of the Constitution, especially that its decisions are challengeable before challenge office above-mentioned. On the contrary, the aforementioned text is corresponding to provisions of article (100) of the Constitution. As for challenge unconstitutionality of article (20/6) of the law, the FSC finds that the decision and its content which issued by real estate tax divan and formed by a judge from the first degree nominated by the Minister of justice whose the Head of higher judicial Council took his place, and membership of architect engineer or civil engineer, in addition to a financial employee. This divan is specialized in trying challenges presented on the decisions of scrutiny committees, and these decisions are related to assessing real estate values by scrutiny committees. Therefore, real estate divan considered a challenge office and this matter corresponds to what listed in article (100) of the Constitution and doesn't violate it. Especially that article (100) of the Constitution didn't stipulates on restricting challenge of works and administrative decisions before the law only, and in this challenging this clause isn't relying to any substantiation in the Constitution. As well as challenging clause (7) of article (20) (challenge subject) isn't relying on any reason in the law and the Constitution, because the law of annulling legal texts which inhibits the Courts from hearing the cases No. (17) For 2005 which amended by the law No. (3) for 2015 had annulled the legal texts wherever it listed in laws and decisions issued by the revolutionary leadership Council (dissolved) starting from (17.7.1968) till (9.4.2003). This required to reject the case from this aspect as well. Therefore, and for above-mentioned reasons, the FSC decided to reject the case of the plaintiff/ being in this capacity with burdening her all its expenses and advocacy fees for the agents of the defendant amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and decisively according to provisions of article (94) of the Constitution and article (5/2nd) of the FSC's law No. (30) For 2005. The decision has been made clear on 4.2.2019.

