

IN THE NAME OF GOD, MOST GRACIOUS, MOST MERCIFUL

Republic of Iraq
Federal Supreme Court
Ref. 68/federal/media/2015



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 19/10/2015 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges, Hussein 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: the minister of finance/ being in this post -his agent the legal official (alif.sin.kaf.) the director of the legal department of the tax general committee.

The Defendant: the Speaker of the council of representative (I.C.R.)/ being in this post -his agents the legal officials in the I.C.R. legal department (Sin.Ta. Yeh.) and (Heh.Mim.Sin.).

The Claim:

The agent of the plaintiff claimed that some Iraqi laws included provisions prevent the courts from hearing the related cases, such as the text of article (55) of the Income Tax law no.(113) for 1983 (the courts shall not hear any case relating to the tax assessment, taxation, collection or proceeding carried out in accordance with the

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provisions of this law), article (20/7) of the Estate Tax law no.(162) for 1959 (the courts shall not hear any case relating to the implementation the provisions of this law), a Law was issued by the defendant/ being in this post by the number (17) for 2005 that repealed the legal provisions listed in the laws and decisions issued by the dissolved revolutionary command council (from 17/7/1968 to 9/4/2003) which rule to prevent the courts from hearing the cases raised from implementing these laws and decisions, the mentioned law has exclude in article (3) of it the laws of ministry of Higher Education and scientific research, ministry of Educating, Taxes and the decisions of preventing overcoming the state land, from the provisions of the mentioned law, then the law no.(3) for 2015 was issued (the first amendment law to the mentioned law of repealing the legal texts that prevent the courts from hearing the cases no.(17) for 2015), article (1) of it decided to revoke the exclusion stated in article (3) of the law no.(17) for 2005 including the exclude of the taxes and its provisions shall apply retroactively. As the plaintiff the minister of finance/ being in this post is not convinced by that his agent initiate a challenge before the F.S.C. requesting to suspend the implement of Law no.(3) for 2005 in present time, before making decision in the case, and to repeal the law no.(3) for 2005 regarding the Tax laws, and to make the legal texts that prevent the courts from hearing the cases of the tax laws, in effective, because each of the Income Tax law no.(13) for 1982 and the Estate Tax law no.(162) for 1959 has included provisions regulate the litigation procedures before the tax judiciary (appellate committees, cassation committee relating to Income Tax law (articles 33-40), Estate Tax Devan relating to the Estate Tax law (article 20 of it), in this case

the assigned person could challenge the same subject before the regular judiciary and before special tax judiciary and that consider as duplication in litigation that lead to issue contradictory decisions, as there are specified durations to challenge it before the appellate and cassation committees and estate tax Devan that to be concerned, otherwise the requested right will be lost, the texts of the law (under challenge) didn't consider how to deal with these texts, also the challenged law was not issued in accordance with the provisions of article (80) of the constitution, and was issued according to the provisions of article (100) of the constitution, according to its obliged reasons without noticing that the right of litigation is granted for all according to the mentioned law ((article (20) of the Income Tax law no.(113) for 1982 and articles (33-40) of the Estate Tax law no.(162) for 1959 before the issuance of the challenged law)), in addition, the retroactively effective of the provisions of law no.(3) for 2015 (under challenge) contradict with the provisions of article (105) of the Law of Evidence no.(107) for 1979 (the judgments issued by the Iraqi courts that have obtained the degree of decisive, shall be a plea with the rights it adjudicated, if the parties of the case are united, and their capacity didn't change. And the dispute relates to the same right, in location and cause), this retroactively effective effect on the decisions plea. After the settlement of the procedure that agent of the defendant/ being in this post has respond to the case petition with the following:

The challenged law was originally law bill submitted by the previous government to the council of representatives that mean it was issued according to the stipulated mechanism in the constitution, and the I.C.R. issued the law based on its constitutional

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jurisdictions in accordance with the standers listed in the F.S.C. decisions {no.(25/federal/2012) on 22/10/2012, and specially it decision no.(21/29/federal/2015)} that the enacted legislation by the I.C.R. shall not effect (the principal of separation of powers) and don't cause financial obligation on the executive authority without it approval, and the legislation don't contradict with the government ministerial curriculum, and don't affect the duties of the judicial authority, also the challenged law is authentic according to the standers sent by the F.S.C. in its mentioned decision, as the challenged law is proper implementation to the separation of powers principal and doesn't violate it, because providing an opportunity for the non-judiciary to adjudicate matters related to the ministry of higher education and scientific research and the ministry of education and tax issues is an affront to the independence of the judiciary as it is the party that adjudicate in litigation, which is the management that issue the decision that is under challenge so it became the judge and the litigant in same time, and that have been under challenge by the experienced jurists, the law -under challenge- is proper implementation to the ministerial curriculum voted by the I.C.R.. As the current government ensure its commitment to the independence of the judiciary in the ministries' action plan for (2014-2018) which is the term of it service, also in order to ensure the independence of the judiciary, and granting the general custody for him in all disputes as justice require to ensure protection the citizen right (article 19/3) of the constitution, which cannot be granted or proper implemented unless by equitable, independent and impartial judicial, and not the management that is originally a litigant don't fit as judge. The F.S.C. has already issued

it decision in this subject by rejecting the case no.(36/federal/2015), for all the mentioned reasons the agent of the defendant requested to reject the case. The plaintiff' agent respond to the answering draft of the defendant agent with another draft dated on 12/10/2015 repeated in it what he had listed in the case petition requesting to judge according to it. After the case was registered before this court according to paragraph (3rd) of article (1) of the F.S.C. Bylaw and completing the required procedures according to paragraph (2nd) of article (2) of the mentioned bylaw, the date 19/10/2015 was scheduled for the argument, the court convened and attended for the plaintiff his agent, attended for the defendant his agents, and continue with the argument in presence and public, the agent of the plaintiff repeated the case petition and requested to judge according to what listed in it, the agents of the defendant repeated their statements. Whereas nothing left to be said the argument is closed and the decision is issued publicly.

The Decision

After scrutiny and deliberation by the F.S.C., the court found that the plaintiff has challenged the law no.(3) for 2015 the first amendment law for the law of repealing the legal texts which prevent the court from hearing the cases no.(17) for 2005, article (1) of the challenged law revoke the exclusion stated in article (3) of the law no.(17) for 2005 regarding the laws of ministry of higher education and scientific research, ministry of educating, taxes and decisions of preventing overcoming the state land, requesting to determine the implementing of the challenged law in present time before deciding the case, and to judge to repeal it for the tax laws,

and to make the legal texts that prevent the courts from hearing the cases regarding the affective tax laws, because the mentioned repeal, under his claim, violated the provisions of articles 19/9th, 60, 80 of the constitution, and violated the principal of issued judgment plea listed in article (105) of the law of evidence no. (107) for 1979 (the amended), whereas article (19/9th) of the constitution stipulate that ((laws shall not have retroactive effect unless stipulated otherwise. This exclusion shall not include laws on taxes and fees)), therefore repealing the exclusion stated in article (3) of the law of repealing the legal texts which prevent the court from hearing the cases no.(17) for 2005 according to article (1) of the challenged law no.(3) for 2015 consider as clear violation to the provisions of article (19/9th) of the constitution. Therefore the F.S.C. decided to repeal the law no.(3) of 2015 as far as it related to it retroactively affective regard to taxes and duties, the rest of the text is an unquestionable legislative option, and to burden the defendant/ being in this post the expenses and advocacy fees for the agent of the plaintiff amount of one hundred thousand Iraqi dinars. The decision has been issued decisively according to article (94) of the constitution and article (5/2nd) of the F.S.C. law No.(30) for 2005 and unanimously on 19/10/2015.