

Republic of Iraq  
Federal Supreme Court  
Ref. 84 / Federal / 2022



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The Federal Supreme Court (F.S.C.) convened on 12.5.2022 headed by Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haider Jaber Abed, Haider Ali Noory, Khalaf Ahmed Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali, who are authorized to judge in the name of the people, they made the following decision:

The appellant:

Areej Khalil Hamza / Deputy Public Prosecutor assigned to the Appellate Committee/2 concerned with looking into tax cases.

The text is contested as unconstitutional:

Articles (35, 37, and 40) of the Income Tax Law No. (113) of 1982 as amended.

**The Appeal summary:**

Through scrutiny, it became clear that the Deputy Public Prosecutor assigned to the Appellate Committee/2 specialized in looking into tax issues (Areej Khalil Hamza) is challenging the constitutionality of Articles (35, 37 and 40) of the Income Tax Law No. (113) for the year 1982 as amended, for violating the provisions of the Constitution of the Republic of Iraq for the year 2005 and for its violation of the principle of judicial independence and the principle of separation of powers, according to its regulations dated 16/1/2022 sent to the Federal Supreme Court accompanied by the letter of the Presidency of Public Prosecution / Legal Division No. (3 / Opinion / 2022/5441) on 3/28/2022 and its attachments the letter of

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the Public Prosecution Office before the Appellate Committee concerned with examining tax issues, dated 16/1/2022, and the letter of the Public Prosecutor's headquarters in the Judicial Palace in Rusafa, No. 178, on 01/18/2022, and the letter of the Presidency of the Judicial Oversight Authority / Department of Studies and Research in the number (20/ studies /1287/2022 on 23/3/2022, stating the necessity of adding Article (38) of the aforementioned Income Tax Law to the rest of the articles whose constitutionality is challenged, because of the reasons contained therein, and for the reasons referred to in the appeal list, the summary of which lies in the following:

first: - Article (37) of the aforementioned Income Tax Law stipulates that (1) the committees to consider appeal cases shall be formed with a statement issued by the Minister in the Official Gazette, headed by a judge of the second class at least and with the membership of two officials specialized in financial matters, (2) appointed under the same conditions mentioned in Paragraph (1) of this Article is additional members to replace the original members in their absence), and Article (40) of the aforementioned Income Tax Law stipulates the formation of a discriminatory body headed by a judge from the Federal Court of Cassation and the membership of two general managers in the Ministry of Finance, as far as The matter with these two articles, and the Public Prosecution finds that they are inconsistent with the provisions of the Constitution of the Republic of Iraq of 2005 with regard to the principle of separation of powers approved by Article (47) of the Constitution, as well as inconsistent with the principle of judicial independence stipulated in Articles (87 and 88) of the Constitution, especially that the formation of The

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committee is inconsistent with the principle of impartiality, as two members of the committee constitute the majority and they are employees of the Ministry of Finance, which also belongs to the respondent's department.

Second - Article (35/1) of Income Tax Law No. (113) for the year 1982, as amended, stipulates that (1) a person whose objection to the amount of income or tax has been rejected by the Financial Authority may appeal its decision to the Audit Committee by submitting a petition to it or to any of the departments The General Authority for Taxes within (21) days from the date of notifying him of the rejection of his objection, and he must prove it with documents, records, and other data). The General Tax Authority accepts the objection and considers it a decision immune from the appeal, contrary to the text of Article (100) of the Constitution, as the decisions of the financial authority related to tax assessment are related to public money, and there must be a body competent to appeal the decision of the General Tax Authority in the event that it accepts the objection request and that its decision is not immunized in any way, and that the jurisdiction of the judiciary must be completely over the dispute before it, and that the formation of committees that look into disputes in tax cases in this way detracts from this jurisdiction and affects the right of individuals to resort to their natural judge, especially since the right to litigation is one of the rights guaranteed by the constitution, and these texts have deprived litigants of a degree of litigation, as the decision of the financial authority is appealed directly without going through the initial stage)), and for the foregoing, she challenges the constitutionality of articles (35/1, 37, and 40) of the aforementioned Income Tax Law.

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**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it became clear that the constitutional challenge is focused on the provisions of Articles (35/1, 37 and 40) of the amended Income Tax Law No. (113) for the year 1982, for violating the provisions of the Constitution of the Republic of Iraq for the year 2005, especially the principle of separation of powers stipulated Article (47) of it and the principle of judicial independence stipulated in Articles (87 and 88) of it, the Federal Supreme Court finds that Article (35/1) of the aforementioned Income Tax Law stipulates (1- for the person whose objection to the financial authority has rejected the amount of income or tax has to appeal its decision to the Audit Committee with a petition submitted to it or to any department of the General Tax Authority within (21) twenty-one days from the date of his notification of the rejection of his objection, and he must prove this with documents, records and other data), and on the basis of the aforementioned text the financial authority's acceptance of the taxpayer's objection does not mean that the decision issued by the financial authority is definitive because it is not expressly stated, and the taxpayer can object to what the financial authority has determined after the objection for the second time. If his second objection is rejected, he can appeal according to the contexts and the period stipulated in Paragraph (1) of Article (35) of the aforementioned Income Tax Law. Thus, the text of Article (35/1) of the aforementioned Income Tax Law does not conflict with the provisions of Article (100) of the Constitution of the Republic of Iraq for the year 2005, which stipulated (it is prohibited to stipulate in the

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laws immunizing any work or administrative decision from appeal), which requires the appeal to be rejected, as for the challenge to the constitutionality of Article (37) of the aforementioned Income Tax Law, which stipulated (1- Committees to consider appeal cases shall be formed with a statement issued by the Minister in the Official Gazette, headed by a judge of the second class at least and with the membership of two employees specialized in financial matters 2- Additional members shall be appointed under the same conditions mentioned in paragraph (1) of this article to replace the original members when The Federal Supreme Court finds that the formation of the Appeal Committee with a statement issued by the Minister in the Official Gazette headed by a judge of the second class at least and the membership of two officials specialized in financial matters, does not contradict the provisions of the Constitution of the Republic of Iraq mentioned above, especially Article (47) thereof. Which stipulated (the federal authorities consist of the legislative, executive and judicial authorities, exercising their powers and tasks on the basis of the principle of separation of powers), as the tasks of the minister (who entrusts to the Minister of Finance), referred to in the article in question, are limited to issuing a statement of the composition of the committee only As for the judge's selection, nomination and placement for the aforementioned committee, it is done by the Supreme Judicial Council exclusively, and that this also does not contradict the principle of judicial independence stipulated in Article (19/First) of the aforementioned constitution, which stipulates that (the judiciary is independent and has no authority over it except the law), and Article (87) of it, which stipulated (the judicial authority is independent, and it is assumed by the courts of all kinds

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and levels, and they issue their rulings in accordance with the law) and Article (88) of it, which stipulates (the judges are independent, and there is no authority over them in their judgment other than the law, and it is not permissible for any authority to interfere in the judiciary or in matters of justice), especially since the Supreme Judicial Council manages the affairs of judicial bodies based on the provisions of Articles (90 and 91) of the Constitution. Despite its administrative nature and its practice of a work of a special nature, based on the necessity of deciding on financial issues that require the presence of specialists in them, the matter requires the rejection of the challenge to the constitutionality of Article 37 of the aforementioned Income Tax Law, as for the challenge to the text of Article 40 of the Law the aforementioned income tax, which provided for (1- The decisions of the appeal committees are final if the tax amount is ten thousand dinars or less), so the Federal Supreme Court finds that the aforementioned text does not contradict the provisions of Article (100) of the aforementioned constitution, which prohibited the text The laws stipulate immunizing any administrative action or decision from appeal, as the aforementioned appeal committees are of an administrative nature, but they practice a work of a special nature, and that the special nature of their work is reflected in the decisions issued by them, and thus their decisions are of a special nature, neither judicial nor judicial. administrative. Thus, there is no conflict between the two aforementioned articles. As for paragraph (2) of the aforementioned article, which stipulates (if the amount of tax in the decision is more than ten thousand dinars, the financial authority and the taxpayer may object to it within fifteen days from the date of notification before a special discriminatory

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body that constitutes chaired by a judge from the Court of Cassation and two general managers from the Ministry of Finance, one from the Federation of Iraqi Chambers of Commerce and another from the Federation of Iraqi Industries with a statement issued by the Minister and published in the Official Gazette), the Federal Supreme Court finds that the aforementioned text does not contradict the principle of separation of powers and the principle of independence The judiciary, for the aforementioned reasons related to the necessity of rejecting the challenge to the unconstitutionality of Article (37) of the aforementioned Income Tax Law, as for what was stated in the letter of the Presidency of the Judicial Oversight Commission/Department of Studies and Research No. (20/Studies/2022/1287) on 23.3.2022, in which it is indicated that Article (38) of the aforementioned Income Tax Law should be added to the rest of the articles whose unconstitutionality is challenged, because of the reasons contained therein. The ruling dismissing the challenge to the constitutionality of Articles (35/1, 37, and 40) of Income Tax Law No. (113) for the year 1982, amended for not violating the provisions of the Constitution of the Republic of Iraq for the year 2005, and the decision was issued by agreement and final based on the provisions of Articles (93/First and 94) of the Constitution and Article (5/2<sup>nd</sup>) of the Federal Supreme Court Law No.(30) of 2005 amended by Law No. (25) of 2021, and issued in the session dated Shawwal 10/1443 AH corresponding to 12.5.2022 AD.

Signature of  
The president  
***Jasem Mohammad Abbood***

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