

First constitutional tax case: why was it rejected and how are constitutional cases litigated in the UAE?

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Over the years, constitutional appeals have been filed before the Constitutional Circuit of the Federal Supreme Court for a plethora of matters, with the first constitutional judgement having been issued on 29 November 1973.

Most recently – in rough figures – four constitutional appeals were filed in 2019, two in 2018, one in 2017 and 2016, two in 2015, five in 2014, and twelve were filed in 2013.

First Constitutional Tax Case

On 1 March 2020, Emirati news outlets published details about the rejection of a taxpayer's constitutional appeal against the 'pay now, argue later' provision of the Tax Procedures Law.

The constitutional appeal was rejected on a procedural basis. Meaning that the process in filing the constitutional appeal lacked the requirements by law for the Constitutional Circuit of the Federal Supreme Court to accept hearing the constitutional appeal, so that it can rule on its context.

At around the same time as the tax constitutional case judgement was issued, another Constitutional Circuit judgement regarding the seizure of assets was accepted, and a judgement favourable to the person who filed the constitutional appeal was issued by the Constitutional Circuit.

Why was one rejected and another accepted? And how are constitutional lawsuits in the UAE litigated?

The Constitutional Circuit

Constitutional cases are subject to the jurisdiction of the Constitutional Circuit of the Federal Supreme Court only, which comprises of the Chief Justice, four other judges, and one alternate judge.

The Constitutional Circuit has authority to rule on the constitutionality of federal or local laws or provisions therein, and a judgement of the Constitutional Circuit is final and binding pursuant to the powers granted to it in Article 99 and 100 of the Constitution, and Article 33 of the Federal Supreme Court Law No. 10/1973,

Filing a constitutional case directly before the Constitutional Circuit is a right restricted to the Federal and local government agencies only.

Otherwise, if a private litigant intends on challenging the constitutionality of a law or provision of law, they may only do so during an on-going substantive case.

The litigant must petition the judge, who is overseeing the substantive case, that a law or a provision in the law is unconstitutional and request leave to file a constitutional appeal before the Constitutional Circuit.

If the judge accepts the petition, the judge then stays the proceedings of the substantive case and grants the litigant leave to file a constitutional appeal before the Constitutional Circuit within a certain time period as set by Article 58 of the Federal Supreme Court Law.

Alternatively, the substantive case judge may of their own accord find that the law or provision is unconstitutional and refer it to the Constitutional Circuit for review.

In any case, the constitutional appeal would not be a subordinate case, but rather a case that is separate from the substantive case because it – the constitutional appeal – deals with a subject that differs from the merits of the substantive case.

The litigant that submits the constitutional appeal then argues their case before the Constitutional Circuit, and the law or provision of law that is being argued as unconstitutional is generally defended by the Federal Public Prosecutor or the State Disputes Department of the Ministry of Justice.

The other litigant(s) of the substantive case, are not a party in the constitutional appeal.

Rejection of the Constitutional Tax Case

According to the news outlets, the constitutional appeal was lodged to argue that the ‘pay now, argue later’ rule in Article 30(2) of the Tax Procedures Law was unconstitutional on the basis that it deprives taxpayers of the right to petition tax issues before the courts unless the taxes and penalties are paid.

The Federal Public Prosecutor rebutted the constitutional appeal on the basis that the judge overseeing the substantive case had not granted leave for the litigant to file the constitutional appeal.

The Constitutional Circuit accepted the Federal Public Prosecutor’s rebuttal and rejected the constitutional appeal on the basis that it had been filed without evidencing permission from the substantive case judge to do so.

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