

In the name of God most Gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 106/federal/media /2014



Kurdish text

The Federal Supreme Court (F S C) has been convened on 2.12.2014 headed by Judge Madhat Al-Mahmood and membership of Judges Farouk Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Aboud Salih Al-temimi, Michael Shamshon Qas Georges, Hussein Abbas Abu AL-Temman and Ead Hatif Jabaar who authorized in the name of the people to judge and they made the following decision:

The Plaintiff : (ain .ain. sad.) The authorized director of the company Turkish Eichen Krupp/ being in this capacity his agent (ha. mim. shin.)

The Defendants : Prime Minister / being in this capacity his legal adviser (ain. sin. ain.).

The Claim:

The plaintiff's agent claimed that the Cabinet issued the decision No. (167) of 2010 including exempting companies implementing development projects contracts from the income and reconstruction taxes of Iraq and other fees based on the provisions of legislative resolution supranational resolution (767) of 1987 and implemented on the date issued by the Council of Ministers in the letter of The General Secretariat - Legal No. (qaf/2/1/17151) on 9/5/2010 and for violating

the opinion of the rules of the constitution according to the plaintiff's claim for the following reasons: (1) The Council of Ministers' decision did not establish a legal status, but was a recital of the dissolved Revolutionary Command Council (dissolved) (767) of 1987, because the Constitution stipulated in Article (130) that legislation remain in force unless it was repealed in accordance with the Constitution. (2) According on the question of the Ministry of Finance from the General Secretariat of the Council of Ministers about the fate of resolution (767) and replied that it was not canceled. (3) The decision (767) of 1987 and because of the blockade, it was not possible to establish development projects until 2003 and there were no development projects until 2007 after the development plan implemented in 2008 and the previous legislative resolutions came into force, including Resolution (767) of 1987. (4 and 5) The Deputy Prosecutor requested that Cabinet Resolution (167) for 2010 be implemented in conjunction with the implementation of investment projects starting in 2007. (6) The decision of the Council of Ministers (167) for 2010 is intended only to confirm the exemption of investment companies to encourage them to enter this field, but the Legal Department of the Council of Ministers denied companies the privileges stipulated by legislative resolution (767) of 1987. For the reasons mentioned, the deputy prosecutor requested the provision to amend the effectiveness of Cabinet Resolution 167 and consider the date of the introduction of development projects in the 2007 budget in conflict with the Constitution and jurisprudence. The defendant/ being in this capacity was informed of the petition and answered by his draft of this court on 30/9/2014, which stated, the rivalry is not glowing against his client because the contested book No. (7161) of 1/3/2010 is issued by the General Secretariat of the Council of Ministers, so the opponent is the secretary general of the Council of Ministers and not the Prime Minister/ being in this capacity. There is no interest in the plaintiff in the case and the face of the damage he has suffered has not

been shown. The subject matter of the case is outside the jurisdiction of the FSC because the contested decision is an administrative decision that is competent of the Court of Administrative Justice and requested the reject of the case, the court called on the parties and the plaintiff and the defendant's agent repeated his statements and what came up with his list and concluded the case and issued the following decision:

The Decision:

After scrutiny and deliberation by the FSC found that the plaintiff/ being in this capacity the Authorized Director of The Turkish Company Eichen Crop challenges the decision of the Council of Ministers No. (167) for 2010 adopted at the session of 27/4/2010 to exempt companies implementing development projects contracts from income taxes, the reconstruction of Iraq and other fees. In his suit, the plaintiff requested that the decision of the Council of Ministers be amended and that its effectiveness be considered within the 2007 State budget. The FSC finds that the contested decision is an administrative decision and that the appeal is outside the jurisdiction of the FSC provided for in Article (4) of the FSC's Law No. (30) of 2005 and Article (93) of the 2005 Constitution. The application for retroactive amendment is not the court's jurisdiction. Accordingly, the ruling decided to reject the plaintiff's claim and charge him expenses and the defendant's attorney's fees of hundred thousand dinars, and the decision was issued unanimously on 2/12/2014.