

In the name of God most gracious most Merciful

Republic of Iraq
Federal supreme court
Ref. 25/federal/2020



Kurdish text

The Federal Supreme Court (F.S.C.) has been convened on 27.6.2021 headed by the Judge Jasem Mohammad Abod and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Munther Ibrahim Hussein whom are authorized to judge in the name of the people, they made the following decision:

The Plaintiff: Director General of the General Authority for Free Zones
/being in his capacity his jurists Anwar Sobhi Jassim and
Shakib Jamil Majid

The Defendant: Speaker of Council of Representation/being in his capacity
his deputy, legal advisor, Haitham Majed Salem, and
jurist
Saman Mohsen Ibrahim

The Claim:

The plaintiff's agent claimed in the petition that the defendant, the speaker of the Council of Representatives/ being in his capacity had already passed the Basra Law, the economic capital of Iraq No. (66) Of 2017 published in the Iraqi Gazette No. (4452) on 3/7/2017. Article (4/1st) stipulates that free trade zones should be formed within the administrative boundaries of Basra province, to which the legal

provisions of the free zones are applied and linked to the secretariat of the economic capital). Article (3rd) of the same article stipulates that the (Free Zones Authority shall carry out its work in accordance with the instructions and regulations issued in accordance with the provisions of the law). What is stated in paragraph (1) of Article (4) is the application of the legal provisions related to free zones and what is stated in paragraph 3 of the same article is that the General Authority for Free Zones exercises its work in accordance with the instructions and regulations issued based on the provisions of the law of Basra, the economic capital of Iraq, which constitutes a contradiction in any instructions that are implemented, are they the instructions issued under the Authority's law or the instructions that will be issued under Law No. (66) Of 2017 - the subject of the case. As the Free Zones Law No. (3) of 1998 valid stipulates in Article (1) of it that (a commission for the management and investment of free zones shall be established in Iraq called (the General Authority for Free Zones) linked to the Minister of Finance and represented by its general manager or whomever he authorizes) and the paragraph (2nd) of it stipulated that (The authority enjoys legal personality, financial and administrative independence, and is self-financed) there is a fundamental difference between the term (free trade zones) and (free zones). The free trade zones mentioned in the law and according to the economic definition are (an agreement concluded between two or more countries with the aim of removing customs complications between the two countries of the agreement for the purpose of activating the movement of goods as well as removing customs duties and taxes this is within the jurisdiction of the Ministry of Commerce, as it is an agreement and not a geographical area on the land on which these areas are built. As for the free zones, they are (protected and fenced land and the law and instructions of that country do not apply to it, only its law and instructions issued in this regard) and for the discrepancy between the Law of Basra, the Economic Capital of Iraq No. (66) Of 2017, and the provisions of the General Authority for Free Zones

Law No. (3) Of 1998 and the instructions issued thereunder, so the prosecutor's representative requested the FSC to rule to cancel the contradiction between the provisions of the laws above. After the defendant notified the Speaker of Council of Representation/being in his capacity, of the petition, his attorney responded to the draft on 25/2/2020 that the plaintiff's attorney did not indicate the constitutional text that he allegedly violated, in addition, the hearing of the case falls outside the jurisdiction of the court in accordance with the provisions of Article (93/1st) of the Constitution, so the defendant's agent requested that the plaintiff's case be rejected and that he be charged with judicial expenses. The plaintiff's agents responded by drafts on (18/11/2020 & 7/12/2020), which repeated the petition, adding that the case was based on an article (93), paragraph (3rd) of the Constitution, which stipulated (Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others) according to the directive of the General Secretariat of the Council of Ministers - Legal Department of the letter (33446 on 16/10/2017) in addition to the conflict is when organizing the investment body in free trade zones after coordination with the investment authority and related departments. The Free Zone branch in Khor al-Zubair, which belongs to their client's department, is working in accordance with the provisions of the Basra Act, the economic capital of Iraq, No. (66) Of 2017, which is contrary to the provisions of their client's district law and the instructions issued on it. Finally, the plaintiff's agents reiterated the request in the petition. After completing the proceedings in accordance with the Bylaw of FSC No. (1) Of 2005, the Court appointed on 6/6/2020 a date for the pleading. On the day of the pleading, the prosecutor/being in his capacity attended, the defendant's agent also attended/ being in his capacity, and the court began to hear the case publicly. The plaintiff's agents/ being in his capacity repeated his client's claim and extended the sentence according

to it, adding that the reason for the appeal is the contradiction and conflict between paragraphs (1st and 3rd) of Article (4) of the Basra Law, the economic capital of Iraq No. (66) Of 2017, paragraph (1st) mandated the formation of free commercial zones within the administrative boundaries of Basra province to which the legal provisions of the free zones, i.e. the provisions of Law No. (3) Of 1998, apply to them. According to paragraph (3rd), the Free Zones Authority exercises its work in accordance with the instructions and regulations issued in accordance with the provisions of Law No. (66) of 2017 and ask to wait for a statement on whether or not those instructions were issued at the hearing on 27/6 the agents of the parties attended and the prosecutor/ being in his capacity answered not to issue the instructions referred to. He added, based on a question from the court, that there is no dispute between his client's department with any other party, and that their dispute is with the House of Representatives, which legislated this law. While the defendant's attorneys/ being in his capacity, repeated what was stated in their drafts on 25/2/2020 and requested a ruling to reject the case, and since there was nothing left to say, the end of pleading has been made clearly and since the court was prepared to issue a ruling, it publicly recited it and issued the following decision:

The Decision:

After scrutiny and deliberation by the FSC found that the Director-General of the General Authority for Free Zones has instituted this lawsuit in addition to his position as a representative of one of the official bodies affiliated to the Ministry of Finance, and despite the fact that the Constitution of the Republic of Iraq for the year 2005 guaranteed the official bodies to appeal directly to the Federal Supreme Court based on the provisions of Article (93/3rd) of it. However, the Bylaw of the Court No. 1 of 2005 and in Article 5 of it stipulated two

conditions for the acceptance of the appeal by the first official authorities, because there is an actual dispute between the official body that files the appeal and another party that, according to the indication requirement, is an official body as well. And if the bylaw did not explicitly clarify this, and it is equal in that whether this dispute is a judicial or administrative dispute, because the text has used the term “dispute” in an absolute manner this condition comes in opposition to the condition of the interest that is required to be present in the direct action brought by natural persons (individuals) or private legal entities. The second requirement established by the rules of procedure for the establishment of such cases or requests is that the official body submitting the appeal sends the appeal to the Federal Court and that these cases contain its support and be sent a letter signed by the competent minister or the president of the republic not associated with the ministry. If neither of these conditions is met, the application or the case filed by the official body must be rejected. Since the prosecutor is the director-general of the General Authority for Free Zones/ being in his capacity did not prove the existence of any actual dispute between him and any other official body, but regarding what his client raised that the dispute of his client's circle with the Council of Representatives, which enacted the impugned law, is a statement that lacks his support, we are seeking to pay attention to him for not reflecting the intended word of disputes contained in the article (5) of Bylaw of the FSC, accepting it means fulfilling the requirement of dispute in all cases that are challenged by the constitutionality of the laws because all laws are issued by the Council of Representatives. The case of the plaintiff/ being in his capacity lacked the second requirement stipulated by article (5) of his bylaw for the court, namely that the case be sent to the FSC by a letter signed by the competent minister, the Minister of Finance, and that the plaintiff / being in his capacity, in this case, is one of his followers so the case is rejected by this side, and on the other hand, the plaintiff/ being in his capacity, did not indicate the text of the constitution, which

was violated by the law in question. Rather, he requested the ruling to eliminate the conflict between the provisions of the contested law and the Free Zones Law No. (3) of 1998, and accordingly, his claim is missing its constitutional basis from this side, since the claim of a conflict between two laws or between paragraphs of the law is the same without violating the Constitution, one of which is outside the jurisdiction of this court, which is stipulated in article (93) of the Constitution. For all of the above and by request, the court decided to rule on the following:

First: reject the case of the plaintiff the director-general of the General Authority for Free Zones/ being in his capacity.

Second: Charging the plaintiff in addition to his job fees and expenses and fees for the lawyers of the defendant's attorneys the Speaker of the Council of Representatives / being in his capacity his deputy, legal advisor, Haitham Majed Salem and jurist Saman Mohsen Ibrahim (100,000) one hundred thousand dinars distributed in accordance with the law. The decision was issued decisively and obligated ruling for all authorities, according to the provisions of articles (93&94) of the Constitution of the Republic of Iraq for 2005 and the articles (4)&(5) of the Constitution of the Republic of Iraq No. (30) Of 2005 (amended) by law No. (25) Of 2021 and article (5) of the FSC's Law No. (1) Of 2005, the decision had made clear public on 27/ June/2021 coinciding with 16/ Dhu Al, Qada/1442.

Signature of
The president
**Jasem Mohammad
Abod**

Signature of
The member
**Sameer Abbas
Mohammed**

Signature of
The member
Ghaleb Amer Shnain

Signature of
The member
Haidar Jaber Abed

Signature of
The member
Haider Ali Noory

Signature of
The member
Ayoub Abbas Salih

Signature of
The member
**Abdul Rahman
Suleiman Ali**

Signature of
The member
**Diyar Muhammad
Ali**

Signature of
The member
**Munther Ibrahim
Hussein**