



The Federal Supreme Court (F S C) has been convened on 2.7.2017 headed by the Judge Madhat Al-mahmood and membership of Judges Farouk Mohammed Al-sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-nagshabandi , Aboud Salih Al-temimi , Michael Shamshon Kis Georges and Hussein Abbas Abu Altemmen who authorized in the name of the people to judge and they made the following decision:

Plaintiff / Speaker of Diyala Governorate Council / his agent the legal official (qaf. zae .haa').

Defendant / Head of General Commission of customs / being in this capacity/ his agent the legal official (waw. kaa.meem).

Claim

The plaintiff claimed that an administrative process was made by opening a custom outlet at Alsafrah region, on part of tract No. 272/8/meem29 Wadi AL-Abair, which dependent to Al-Adheem's dam sub district in province of Diyala, on the way joins between Kirkuk- Baghdad, where work in that outlet started, and trucks were duty custom, without involving the council of Diyala governorate. As that procedure is specialty of governorate council exclusively, and should not be done without coordinating with it, and that specialty is one of the joint specialties, which shown in the constitution in articles (110 & 111 & 112 & 113 & 114), and because the decision of governorate council No. (49) in 2016, which decided according to it suspending all the allocations on the tract abovementioned, because that is a core of council specialty, according to provisions of the constitution and governorates incorporated into a region law No. (21) For 2008 (amended). The plaintiff requested to suspend aforementioned procedures in the request, claims that it is violates the constitution and the law, and removing the

conflict between the procedures of federal government and local government. The defendant/ being in this capacity was notified with the petition of the case and its documents, so he answered in his written draft dated on 11.30.2016 which he listed in, before going into the petition of the case, that his client the general directorate of customs commission, does not enjoy juristic personality, according to clause (b) of article (22) of ministry of finance law No. (92) for 1981, and article (47) of civil law, and he requested to reject the case for non-adversarial went against his client. As a result for the public in presence plea, the agent of the plaintiff repeated the petition of the case and requested to judge according to what listed in it, and he requested to make Minister of finance as a third party in the case, because the defendant does not possess the juristic independent personality. The agent of the defendant repeated his pleas, and requested to reject the case, and he added that he does not agree with agent of the plaintiff to make the Minister of finance as a third party in the case, because that demands to prosecute a new independent case, and answer after notifying him about it. The court decided to reject the request of the agent of the plaintiff about moving in a third party into the case, because that never correspond with proceedings and its subject, the two parties repeated their sayings, the court ended the plea and issued the following decision:

The decision

After scrutiny and deliberation by the FSC, the court found that the plaintiff/ being in this capacity, challenging the decision made by the head of customs commission/ being in this capacity by opening a custom outlet at Alsafrah region, and on a part of the tract No. (272/8) county (29) Wadi AL-Abair in Diyala, which situating on the road connects Kirkuk and Baghdad, claims that the defendant did not return to council of governorate in this decision, and pretending that this decision is a specialty of the governorate council exclusively. The FSC finds from scrutinizing the case petition and the pleas listed in, that the described tract belong to the state's real estates, and opening or installing a monitory and custom verification point was with an order issued by the Prime Minister, according to its letter No. (9142) on 7.19.2016, and the defendant/ being in this capacity executed that order. The FSC that the order which sent to the defendant/ being in this capacity, represent, in its legal regulation, an administrative decision, obligatory for the defendant/ being in this capacity, which has not the

juristic personality, if he had, he would be a litigant, according to article (4) of civil procedure law No. (83) For 1969. Based on that, as the challenging of the administrative decisions, the law had made special way to challenge it, and the contact where the challenging goes to, which is it not the FSC. Therefore the court decided to reject the case of the plaintiff/ being in this capacity of the competent authority, and the lack of adversarial. The plaintiff will borne the expenses and advocacy fees of the agent of the defendant, which is a sum of one hundred thousand dinar. The decision issued unanimously and made clear on 2.7.2017.