

In the name of god most gracious most merciful

Republic of Iraq
Federal supreme court
Ref. 81/federal/media /2016



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7.3.2017 headed by 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 Qas Georges and Hussein Abbas Abu AL-Temman who authorized in the name of the people to judge and they made the following decision:

The Plaintiff / Governor of Al-basra/ being in this capacity.

The Defendant/ Minister Finance/ being in this capacity.

The Claim :

The agent of the plaintiffs claimed that the governorate of Al-basra it has several official border outlets and revenues from this, half of the revenues earned are from the governorate's share according to the provisions of paragraph (7) of article (44) of the Law on Governorates not organized in a Region No. (21) of 2008 and the article (45) of the Federal Budget Law of 2016 No. (1) of 2016 despite the claims of the plaintiff (Governor of Al-basra/ being in this capacity) under letters from his department No. (mim.mim/alif/875) on 2/6/2016, (mim.mim/alif/2923) on 19/4/2016, (mim.mim/alif/5954) on 22/8/2016 and (14238) on 4/8/2016, only the defendant (Minister Finance/ being in this capacity) reject apply the provision of articles (44) and (45) from the

tow laws that mentioned before justifying that governorate resources should go to a common container and for not convinced the plaintiff on what the defendant submitted one of the reason to justify his reluctance to allocate the above amounts to the governorate of Al-basra (department of the plaintiff) initiate to challenge before the FSC in two letters issued by the defendant's department and referred to above included that reluctance request for judgment (the defendant/ being in this capacity is obligated) to allocate half of the revenues of the border ports realized to the governorate of Al-basra and transferred to its account for the purpose of disposal by the governorate mentioned in the provision of services to citizens in accordance with the two laws above mentioned. After registering the case with this court accordance to the paragraph (3rd) of the article (1) of the bylaw of the FSC No. (1) of 2005, after completing the required procedure accordance to the paragraph (2nd) of the article (1) of the mentioned bylaw appointed on 7/3/2016 to hearing the case in which the court was formed, the jurist (ha. yeh. mim) an agent for the plaintiff under the agency with the file of the case the defendant Minister Finance/ being in this capacity did not attend and did not represent his representative, despite reporting in accordance with the law, decided to proceed with the case in his absence, the agent of the plaintiff repeated the petition and request to judgment under it. Whereas, the case is completed for reasons of judgment, it decided to hear it in the absence of the defendant accordance to the bylaw of the FSC No. (1) of 2005. The agent of the plaintiff repeated the petition and request to judgment by the reported and where nothing was left to be said the end of argument has been made clearly, the decision had made clear public.

The Decision :

After scrutiny and deliberation by the FSC found that the plaintiff's agent claimed that the governorate of Al-basra has several official border outlets and has realized revenues from this and half of the revenues earned is the governorate's share according to the provision of paragraph

(7) of the article (44) of the law of governorate not organized in the Region No. (21) of 2008 and the article (45) of the Federal Budget Law of 2016 No. (1) of 2016 and the defendant (Minister Finance/ being in this capacity) refuses to allocate such revenues to the plaintiff's department (governorate of Al-basra) for the reasons that mentioned before and for not convinced his client (Governor of Al-basra/ being in this capacity) so initiated to challenge before the FSC requesting to judgment by (the defendant/ being in this capacity is obligated to allocate half of the revenues of the border ports realized to the governorate of Al-basra and transferred to its account for the purpose of disposal by the governorate mentioned in the provision of services to citizens in accordance with the law above mentioned). The FSC found that the hearing the challenge out of its jurisdiction provided in the article (93) of the Constitution and the article (4) from its law No. (1) of 2005 whereas the jurisdiction of the FSC regarded with the application of the law of the governorates No. (28) of 2008 restricted to article (31/11th/3) of it which authorized the governor to refer the decision of the governor council when the council insists on the decision objected by the governor or if the council amended it without removing the violation that the (governor) explained to the FSC to judge it. The above mentioned is exclusively in the above mentioned law, so the consideration of the request of the plaintiff/ being in this capacity is outside of the jurisdiction of the FSC from this side. On the other hand the FSC found also that the plaintiff was based his claim to the provision of article (45) Federal Budget Law of 2016 No. (1) of 2016 and the mentioned law is not valid with the issuance of the Federal Budget Law of 2017. Whereas, the FSC is in accordance with provision of article (93) of the Constitution jurisdiction the supervise the Constitutionality of the laws and regulation valid and not the end of its judgment the challenge of the jurisdiction of the FSC in this respect as well. As a result the FSC decided to reject the case formally from the jurisdiction as shown above and charge the plaintiff/ being in this capacity expenses and the fees of the lawyer for the

defendant's agent/ being in this capacity amount of 100,000 dinars and the decision was issued decisively according to the provision of article (94) of the Constitution and the article (5/2nd) of the FSC's law No. (30) of 2005 with unanimously and its made clear publicly on 7/3/2017.