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Federal Supreme Court
Ref 50/ federal /2024



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The Federal Supreme Court (F S C) has been convened on 12/3/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid , Hayder Ali Noori, Khalef Ahmed Rajab Ayoob Abbas Salih, Dyar Mohammed Ali, and Munther Ibrahim Hussain, who are authorized in the name of the people to judge and they made the following decision:

Plaintiff: Managing Director of Al-Sadiq City General Trading Company Ltd. / being in this capacity - Sadiq Ali Asghar.
Noureddine - his agent the barrister Abdel Karim Arab Asaad.

Defendant: Prime Minister / being in this capacity - his two agent the legal advisers Abbas Majeed Shabib and Haidar Ali Jaber.

The Claim:

The plaintiff claimed through his agent that the law ratifying the TIR Convention between the Government of the Republic of Iraq the Government of the Republic of Turkey No. 193 of 1980 in force authorized (facilitating the transport of passengers and goods by road and transport by transit through their territories) and under Articles 1, 2, 9, 12 and 26 thereof, the provisions of this agreement shall apply to the international carriage of passengers and goods by road to and from the territory of one of the contracting parties, as well as to the passage of through the territory of the other contracting party by means of vehicles registered in the territory of the first contracting party, the phrase (Transit Transport) as: the transport of passengers and goods by vehicles registered in the territory of one contracting party through the territory of the other contracting party between two starting and ending points located outside the territory of the other contracting party, and

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no fees, expenses or charges shall be imposed on vehicles, goods and personal effects involved in the transport process between the territories of the two countries, and passing through their territory, except for expenses levied on the use of the road network and expenses resulting from the increase in the load, weight and removal of the vehicle from the limits prescribed in the national legislation of the contracting parties, and the remuneration resulting from the services provided to goods, passengers and their personal effects; payments are settled related to transport and transit transport operations between the contracting parties in any transferable operation acceptable to the central banks of the contracting parties, and in accordance with the laws, regulations and instructions of external transfer in force in their countries, and that the follow-up of the implementation of this agreement shall be through the head of the General Corporation for Land Transport / Ministry of Transport and Communications - Baghdad, and the reasons for the law are considered to put the TIR Convention into force, which is stipulated in the law of accession of the Republic of Iraq to the TIR Convention of 1975, (TIR Transit Traffic Regulation) No. (6) of 2020 in force, after obtaining the necessary approval, his company requested the General Authority of Customs to approve the transfer of the company's goods (of Turkish origin) according to the transit situation from the Ibrahim Al-Khalil border crossing (entry) and their transfer to the Syrian Arab Republic from the Al-Qaim border crossing (exit); it issued its approval No. (58 S/5266) on 5/10/2023 and notified the Representative Office of the Kurdistan Regional Government in Baghdad, and the Presidency of the Office of the Council of Ministers of the Kurdistan Region according to the letter of the Representative Office of the Kurdistan Regional Government in Baghdad numbered (Mim. Ra 50954) on 22/10/2023 to take the

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necessary action according to the transport controls of the transit system according to its circulars No. (58 Sin/1296) on 8/3/2023, and confirmed for a second time in the book in number (58 Sin/6866) on 3/12/2023, the report to the representative office of the Kurdistan Regional Government in Baghdad to take the necessary action in accordance with the Customs Law No. 23 of 1984 in force, and the transit system transport controls and referring to the outcomes of the bilateral meeting with the Director General of the Kurdistan Region Customs and his accompanying delegation, and agreeing to overcome many obstacles that prevent the achievement of facilitating customs procedures, whereas, the (plaintiff) was officially informed by the General Authority of Customs of its letter No. (Qaf/Qaf 1050) on 25/1/2024, the amendment of the application of the Customs Law No. (23) of 1984 in force, and the transit transport controls in force, as they are federal controls approved by the Council of the Border Ports Authority and issued by the General Authority of Customs, and that their amendment is still legitimate, and the amendment will be circulated as soon as it acquires its full legal form and until this is reached, transit controls are in force and binding on all border crossings, and the repercussions of this the regional authority obstructs the implementation of article 85 of the Customs Law No. 23 of 1984 in force, preventing the entry of goods passing through and restricting them in accordance with the transit status through the ports of the Kurdistan Region to any other border crossing in violation of Article (87) thereof, which resulted in direct damage, and whereas the conflict and contradiction with the laws in force and suspending their implementation in violation of the provisions of Article 130 of the Constitution of the Republic of Iraq of 2005, these include the aforementioned TIR Convention ratification law, the law of accession

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of the Republic of Iraq to that convention by Law No. 6 of 2020 in force, and the Customs Law No. 23 of 1984 in force, which under articles (2, 3, 85 and 87) thereof, every goods that cross the customs line in entry, exit or transit shall be subject to the provisions of this law and the customs rules in force, and it is permissible to transport goods of foreign origin according to the transit status (transit), whether they enter from a certain point of the border to exit from another point therein, or they are sent from a customs office to another customs office, provided that they are not subject to restriction and prohibition unless otherwise stipulated in the laws and regulations in force, and that the Prime Minister, in addition to his job, directed the General Authority Customs according to the letter of the General Secretariat of the Council of Ministers, Legal Department No. (Qaf/2/4/25/42/5007) on 26/12/2022 (Preparing the controls for transit with all countries, provided that they are presented to the Council of the Border Ports Authority for approval), and approved after its official approval by the Council of the Border Ports Authority in its letter No. (3262) on 28/2/2023, which was circulated according to the letter of the General Authority of Customs / Legal Affairs and Customs Affairs No. (58 Qaf/1296) on 8/3/2023 to the Representative Office of the Kurdistan Regional Government in the General Secretariat of the Council of Ministers in Baghdad to work according to it after him as a representative of the Council of Ministers exercising the authority to plan and implementation of the general policy of the State, issue regulations, instructions and decisions with a view to implementing laws, submit draft laws, and is directly responsible for the general policy of the State, he manages the Council of Ministers and chairs its meetings in accordance with the provisions of Article (78) of the Constitution and in accordance with Article (80 / First, Second and

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Third) thereof, so and based on Article (93 / 1st and 2nd) of the Constitution the prosecutor requested a ruling on the constitutionality of the articles(1, 2, 9, 12, and 26) of the Law Ratifying the TIR Convention, the constitutionality of the Law on the Accession of the Republic of Iraq to the TIR Convention, the constitutionality of article 85 of the aforementioned Customs Law, and the invalidity of any customs system that modifies its application or prevents or restricts goods passing in accordance with the transit status in application of the provisions of article 87 thereof lacking the correct constitutional basis, The invalidity of transit transport controls for violating the provisions of articles 9, 12 and 26 of the TIR Convention ratification law and the aforementioned law on the accession of the Republic of Iraq to the TIR Convention of 1975, and the issuance of a state order not to subject his company's goods to prohibition and restriction in application of the provisions of articles (1 and 2) of the TIR Convention ratification law, and the law on the accession of the Republic of Iraq to the aforementioned TIR Convention, as these foodstuffs parked at the border crossing have a validity period, limited and quickly exposed to damage, and the defendant in addition to his job bears expenses and fees, and after registering the lawsuit with this court No. (50/Federal/2024) and collect the legal fee for it and notify the defendant of its petition and documents in accordance with Article (21/1st and 2nd) of the rules of procedure of the Federal Supreme Court No. (1) of 2022, his agents replied in the reply dated 27/2/2024, its conclusion: the court's lack of jurisdiction to consider the case, as its subject matter is considered a fatwa or a statement of opinion, in addition to the lack of litigation towards their client, as the court's judgment has settled that its control over the constitutionality of the contested legal texts and its purpose is to return them to the provisions

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of the Constitution, this is done through the adjudication of appeals addressed to the provisions of the law or regulations in force on the basis of their violation of the provisions of the Constitution, whether these appeals are formal or substantive, under Article 93/3rd of the Constitution, the court is competent to adjudicate cases arising from the application of federal laws, regulations, instructions, or procedures issued by the federal authority, while the controls - the subject of the appeal - were issued by the Border Ports Authority, which was circulated by the General Authority of Customs, which is not considered one of the federal authorities, as Article (110/3rd) of the Constitution indicated the exclusive competence of the federal authorities regarding the formulation of customs policy and the regulation of trade policy, where it stipulated (drawing up financial policy, customs, issuing currency, organizing trade policy across the borders of regions and governorates in Iraq, setting the general budget of the state, drawing up monetary policy and establishing the Central Bank, and managing it), and therefore this is one of the exclusive competencies of the federal authorities, and that the controls did not include a violation of the provisions of the Constitution and the Council of Ministers exercises the powers referred to in the provisions of Article (80) of the Constitution, which stipulated (First: Planning and implementing the general policy of the state, general plans, and supervising the work of ministries, and entities not associated with a ministry), so the issuance of controls, whether issued by the bodies referred to in the lawsuit petition or under the guidance of the Prime Minister in his capacity as the direct executive officer for the general policy of the state in accordance with the provisions of Article (78) of the Constitution, is not considered a violation of its provisions, and that the Customs Law and Law No. (6) of 2020, were issued later to the No.

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193 of 1980 (Law Ratifying the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey) the plaintiff also stated his claim that the Kurdistan Region considered the provisions of Article 85 of the Customs Law to be suspended, although it is not possible to suspend or amend the application of federal laws from the region in the event of a conflict or contradiction between federal law and the law of the region, and not to amend or disrupt the application of federal laws, which the court stated in its decision No. (178/Federal/2023), therefore, he requested to reject the appeal and charging the plaintiff with the expenses, fees and attorneyship fees. After completing the procedures required by the Court's Rules of Procedure, a date was set for the hearing of the case, without pleading in accordance with Article (21/3rd) thereof, in which the court was formed and the case was considered, the court scrutinized the plaintiff's requests and his supports and the defenses of the defendant's agents, and after completing their scrutinies, the end of the argument has been made clear and the court issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff was the managing director of Madinat Al-Sadiq General Trading Ltd. In addition to his job, he filed this lawsuit against the Prime Minister in addition to his job, claiming that the law ratifying the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey decree No. 193 of 1980 authorizing the facilitation of the transport of passengers and goods by land and transport by transit through their territories, whereas Article 1 thereof clarifies that the provisions of this Agreement shall apply to the

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international transport of passengers and goods by road to and from the territory of one of the Contracting Parties, as well as to the passage through the territory of the other Contracting Party by vehicles registered in the territory of the first Contracting Party, and that the term "transit transport" means the transport of passengers and goods by vehicles registered in the territory of one of the Contracting Parties through the territory of the other Contracting Party, and Article (9) thereof, that no fees, expenses or charges shall be imposed on vehicles, goods and personal effects involved in the transport process between the territories of the two countries and passing through their territories, except for expenses collected for the use of the road network and expenses resulting from increasing the load, weight and dimensions of the vehicle and wages resulting from the services provided to goods, passengers and their personal effects, as indicated in Article (12) thereof, that payments related to transport and transport operations (by transit) shall be settled between the Contracting Parties by any transferable operation acceptable to the central banks of the two contracting parties, in accordance with the laws, regulations and instructions of external transfer in force in their countries, and as a result of the issuance of transport controls in transit system, the goods imported in the name of his company were restricted and prevented from entering through the Ibrahim Al-Khalil border crossing, which caused him great harm, so he requested to invite the defendant in addition to his job to plead and rule on the constitutionality of Articles (1, 2, 9, 12 and 26) of the TIR Convention ratification law between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. 193 of 1980, and the constitutionality of the Law on the Accession of the Republic of Iraq to the TIR Convention of 1975 No. 6 of 2020 (Transit Traffic System for International Road

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Transport), as well as ruling on the constitutionality of Article (85) of the Customs Law No. (23) of 1984, and ruling on the invalidity of any system that modifies its application or prevents or restricts goods passing in accordance with the transit status in application of the provisions of Article (87) of the same law, due to its lack of the correct constitutional basis, and also requested a ruling on the invalidity of transport controls in transit system for violating the provisions of Articles (9, 12 and 26) of the Law Ratifying the TIR Agreement between the Government of the Republic of Iraq and the Government of the Republic of Turkey, and the Law on the Accession of the Republic of Iraq to the Land Transport Convention. International, as requested version a state order not to subject the goods of his company passing through the transit situation from the Ibrahim Al-Khalil border crossing to prevention and restriction in application of the provisions of Articles (1 and 2) of the Law Ratifying the TIR Agreement between the Government of the Republic of Iraq and the Government of the Republic of Turkey and to charge the defendant in addition to his job fees, expenses and attorneyship fees. The defendant's agents, in addition to his job under the regulation dated 27/2/2024, answered and requested to dismiss the lawsuit from a formal point of view because the plaintiff's request focuses on ruling on the constitutionality of the laws referred to in the lawsuit petition and ruling on the invalidity of the transport controls with the traffic system, and that the jurisdiction of the court in accordance with the provisions of Article (93/1st) of the Constitution of the Republic of Iraq for the year 2005, is to consider the constitutionality of laws and regulations and monitor their compatibility with the provisions of the Constitution and the absence of a constitutional violation in the contested articles, in addition to the lack of the litigation is directed towards their client in this regard, and

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considering the validity of the transfer controls is outside the jurisdiction of the court because these controls have not been issued of the federal authorities, they also requested to reject of the lawsuit from an objective point of view, since the transport controls of the transit system are prepared from the Council of the Border Crossing Authority issued based on the powers vested in it under the provisions of Law No. (23) of 1984, and Article (110/3rd) of the Constitution has clarified the competence of the exclusive federal authorities regarding drawing up customs policy and regulating trade policy, and therefore this is one of the exclusive competencies of the federal authorities and the decision of this court No. (50/Federal/State Order/2024) issued on 20/2/2024 which includes the rejection of the plaintiff's request for the issuance of the state order for the reasons stated therein, the Federal Supreme Court finds that the plaintiff's application for a ruling on the constitutionality of the articles referred to in the petition is obligatory to reply; the litigation is not directed towards the Prime Minister in addition to his job, as the litigation in challenging the constitutionality of the provisions of the laws is towards the Head of the Council of Representatives in addition to his job, if the plaintiff requests to rule that the transit system transport controls issued by the General Authority of Customs are invalid, and the duty to respond is also obligatory; being outside the jurisdiction of this court, as the controls required to be ruled invalid were not issued by any of the federal authorities or independent authorities, and this is what the judgment of this court has settled on in many of its decisions, for all of the above, and upon request, the Federal Supreme Court decided as follows:

First: Reject of the plaintiff's lawsuit, the Managing Director of Al-Sadiq City General Trading Company Ltd., in addition to his job, regarding the ruling that the controls for the transport of goods in

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transit (transit) issued by the General Authority of Customs are incorrect, due to the court's lack of jurisdiction to consider them. Second: Reject the plaintiff's lawsuit, the managing director of Al-Sadiq City General Trading Company Ltd., in addition to his job, regarding his request to rule on the constitutionality of Articles (1, 2, 9, 12 and 26) of the Law Ratifying the TIR Convention between the Government of the Republic of Iraq and the Government of the Republic of Turkey No. 193 of 1980, the constitutionality of the Law of Accession of the Republic of Iraq to the TIR Convention of 1975 No. 6 of 2020 (the system of transit passage for international road transport) and the constitutionality of Article (85) of the Customs Law No. 23 of 1980, as amended, for the lack of litigation.

Third:Charging the plaintiff / being in this capacity with the fees, expenses and advocacy fees of the defendant's two agents, the Prime Minister, being in this capacity, the legal advisers Abbas Majeed Shabib and Haider Ali Jaber an amount of one hundred thousand dinars distributed in accordance with the law.

The decision has been issued unanimously, final and binding for all authorities according to the provisions of Articles 93 and 94 of the Constitution of the Republic of Iraq for the year 2005,article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021. The decision has been made clear on 1/Ramadan/1445 A.H. corresponding to 12/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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