



The Federal Supreme Court (F S C) has been convened on 4.30.2018 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 Qas Georges and Hussein Abbas Abu Al-Temmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiffs: (fa.alif.fa) – his agent the barrister (mim.ha.ain).

The first Defendant: Minister of youth and sports/ being in this capacity – his agent the jurist official (alif.mim.nun).

The Claim

The Plaintiff claimed in the petition of the case number (42/federal/2018) that on 1.22.2013 the ICR enacted the law number (6) for 2013 which is it the law that grants champion athletes and pioneers a subventions issued according to provisions of article (3) in clauses 1st (alif, beh, jim, dal, heh, waw). It also determined the subvention amounts for the champions whom won the championships, continental leagues and world military championships. Clause 3rd of article (3) of the law stipulated (the athletes shall be granted amount of (400) thousand Iraqi dinars), and it also determined allocations and privileges which stipulated in articles (4 & 5 & 6) and returning to the text of article (1) which stipulated (the terms listed for purposes of this law meaning what clarified next to it). First: champion athletes whom won the first places to the sixth in world, Olympic and Paralympic championship and leagues. The winners of the first places to the third in the continental championships which approved by Olympic committee, international Paralympic and international sport unions for the national teams and age-groups. As for clause 2nd which defined and meant pioneer athletes whom served Iraqi sport as a players or coaches in the

national teams or international referees whom reached 50 years old and above, and from these two texts we find it obliged whom covered by this law according to this law, which they are. First: whom included as a champions and gained medals according to what stipulated in the law. Second: clause 2nd has determined the conditions to include the pioneer athlete with the subvention, which they are. 1- The age of the athlete must be 50 years and above. 2- He must be a member in one of the national teams with different age-groups, or he is a coach for one of the national teams, or an international referee. 3- He had served the Iraqi sport, whereas the law is true and clear in granting the champions and athletes according to the provisions of the Iraqi Constitution in article (36) of it (practicing sports is a right of every Iraqi and the state shall encourage and care for such activities and shall provide for their requirements). Clause 3rd of article (34) of the Constitution stipulated (the State shall encourage scientific research for peaceful purposes that serve humanity and shall support excellence, creativity, invention, and different aspects of ingenuity), whereas the members of the national team had exerted their maximum physical and mental effort to serve Iraq with distinction by serving the sport movement (this what listed in the rationale of issuing this law which considered inseparable part of it and texts (in endeavor to evaluate the athletes efforts, champions and pioneers whom lifted the name of Iraq highly in the international participations, and to lift unjust from them and encourage them to present achievements may promotes the place of Iraq and its reputation to the developed countries levels). This law was enacted for these reasons. Also article (12) of the law stipulated (the Minister of youth and sports has the right to issues an instructions which may facilitate executing this law). Whereas the Minister of youth and sports issued an instructions by the number (21666) on 12.6.2015, and by these instructions he violated provisions of article (12) of the law number (6 for 2013) which stipulated (the Minister of youth and sports has the right to issues an instructions which may facilitate executing this law not issuing an instructions violates provisions of the law and the Constitution. These instructions produced deprivation of more than (1700) athletes as a champion or pioneer). Based on that, the Iraqi judiciary represented by Iraqi cassation Court issued a decision by rejecting the judgments of specialized first instance courts which granted a rights for champion athletes and pioneers according to the

instructions of the youth and sports Minister, not according to provisions of the law issued by the ICR. According to article (93 from clauses 1st and 3rd) of the Iraqi Constitution. He requested to judge by unconstitutionality of instructions, orders and procedures issued by the number (21666) on 12.6.2015 which violated provisions of article (1) in clauses 1st and 3rd, while the instructions mustn't violates provisions of the law and the Constitution is prior and higher in Iraq. The Constitution also obligatory all over Iraq, and the plaintiff requested to burden the defendant the expenses and advocacy fees. He also requested to introduce the Head of the higher judicial Council and the Speaker of the ICR as a third parties in the case. After entitling the case at this Court according to clause (3rd) of article (1) of the FSC's bylaw number (1) for 2005. The answer of the defendant has been received, and he requested to reject the case for the reasons he listed in, including invalidity of depriving any athlete from his rights, and not issuing any instructions by the defendant but he issued a defining precisions which doesn't violates the law. After completing required procedures according to clause (2nd) of article (2) from the same bylaw. The day 4.30.2018 was set as a date to try the case, and on this day the Court had been convened. The barrister (mim.ha.ain) attended as an agent of the plaintiff, and the jurist official (alif.mim) as an agent if the defendant. The public in presence argument proceeded. The agent of the plaintiff repeated what listed in the petition of the case, and he requested to judge according to it. The Court inquired him about the number he listed in the case (21666) on 12.6.2015, and is it indicates to a letter or something else? He testified that this number is instructions. So, the Court inquired him about the nature of these instructions, and if it were published in the gazette? He answered that he has no information about it. The Court scrutinized the number which the plaintiff mentioned, and it didn't find it in the instructions issued in 2015. Then, the agent of the plaintiff returned and clarified that the defendant/ being in this capacity issued a new administrative order annulled according to it the two ministerial orders (21666) dated on 12.6.2015 and (14653) dated on 8.19.2015. Both parties repeated their sayings, and the Court completed its investigations. Whereas nothing left to be said, the end of the argument made clear and the decision recited publicly in the session on 4.30.2018.

The Decision

After scrutiny and deliberation by the FSC, the Court found that the plaintiff claimed in the petition of the case it is on 1.22.2013 the ICR enacted the law number 6 for 2013 (grants champion athletes and pioneers a subventions issued according to provisions of article (3) in clauses 1st (alif, beh, jim, dal, heh, waw). It also determined the subvention amounts for the champions whom won the championships according to provisions of articles (4 & 5 & 6). But the (defendant/ being in this capacity) issued an instructions, orders and procedures by the number (21666) on 12.6.2015 and violated provisions of article (12) of aforementioned law. These matters deprived more than a (1700) athletes whether a champion or pioneer from these subventions, and he requested to judge by unconstitutionality of the instructions, orders and procedures issued by (defendant/ being in this capacity). The session dated on 4.30.2018, the agent of the plaintiff confirmed that the defendant issued a new ministerial order annulled according to it the ministerial order number (21666) issued on 12.6.2015 which challenged its unsoundness. Whereas it became clear for the FSC that there are no instructions published in the gazette (AL-Waqa'a) in this concern, and what the defendant/ being in this capacity did is issuing ministerial orders with administrative nature. The agent of the plaintiff in the session dated on 4.30.2018 admitted that the number which mentioned by the plaintiff in the petition of the case number (21666) dated on 12.6.2015 is a ministerial order not an instruction published in the gazette. The FSC finds that this challenge is not including the FSC competences which determined in article (93 of the Republic of Iraq Constitution) and article (4) of its law. Therefore, the case is lacking to its legal substantiation for incompetence. Based on that, the Court decided to reject the case of the plaintiff for incompetence, and to burden him the case's expenses and advocacy fees for the agent of the defendant the official jurist (alif.mim.nun) amount of (one hundred thousand Iraqi dinars). The decision issued in presence of both parties, unanimously and decisively according to article (94) of the Republic of Iraq Constitution, and it was made clear on 4.30.2018. , continental leagues and world military championships. The

decision issued decisively according to provisions of article (94) of the Constitution and article (5) of the FSC's law number (30) for 2005, and made clear on 4.30.2018.