

Republic of Iraq  
Federal Supreme Court  
Ref. 51 / federal /2023



Kurdish text

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The Federal Supreme Court (F S C) has been convened on 2/5/2023 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Khalef Ahmed Rajab, Hayder Ali Noori, Hayder Jaber Abid, Ayoob Abbas Salih, Abdul Rahman Suleiman, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Ali Fadhil Abdul Zahra - Former member of the administrative board and the general body of the Air Force Club.

The Defendants: Speaker of the ICR/ being in this capacity – his agents the legal counselor Haytham Majid Salim and the official jurist Saman Muhsin Ibrahim.

### **The Claim**

The plaintiff claimed in the lawsuit petition that the Sports Clubs Law No. (18) of 1986 as amended by Law No. (37) of 1988 published in the Iraqi Gazette No. (3086) on 24/2/1986 stipulated in Article (14) thereof: (First: The executive body of the Olympic Committee may warn, warn or dissolve the club's administrative body and appoint a temporary administrative body...) This text contradicts the provisions of the Constitution of the Republic of Iraq for the year 2005 in the following articles: First, Article (45/1<sup>st</sup>) thereof, which requires the independence of civil society organizations, including sports clubs, stipulates that "the State is keen to strengthen, support, develop and independence the role of civil society institutions, in line with peaceful means to achieve their legitimate goals, and this

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is regulated by law", and because Article (14) - the subject of the challenge - did not grant independence to sports clubs in the performance of their tasks, and because the Olympic Committee enjoys legal personality and financial and administrative independence, as well as being a non-governmental organization, while the Air Force Club enjoys legal personality and financial and administrative independence under Article (1/1<sup>st</sup>) of the aforementioned Sports Clubs Law, it is a governmental club and is linked to the Ministry of Defense. Second, Articles (13/1<sup>st</sup> and 2<sup>nd</sup>) and (46) thereof, which affirmed that the constitution is the supreme law in Iraq, and it is not permissible to enact a law that contradicts it, the exercise of any of the rights and freedoms set forth therein may only be restricted or limited by law. The Iraqi National Olympic Committee is still working following the article - which is under challenge - while the Olympic Committee Law No. (29) of 2019 has defined the powers of the General Assembly in Article (6) thereof, and also defined the powers of the Executive Office of the Olympic Committee, not including warning, warning, dissolution, or appointment of administrative bodies for clubs. Therefore, any decision issued by the Olympic Committee based on the text of the article - the subject of the challenge - is contrary to the provisions of the Constitution for lack of jurisdiction, and the text of Article (17) of the Law of the Olympic Committee above canceled all laws that conflict with its provisions, and no text that contradicts them is applied, so the plaintiff asked this court to rule the unconstitutionality of the text of Article (14) of the Sports Clubs Law No. (18) of 1986, as amended, and to charge the defendant fees and attorney's fees, the case was registered with this court. Issue (51/Federal/2023) and the legal fee was collected based on Article (21/1<sup>st</sup>) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the defendant / being in this capacity was notified with its petition and documents based on the item (second) of the same article, and his agents replied with the reply regulation dated 28/3/2023, the conclusion of which lies in the fact that the plaintiff did not indicate the interest in filing this lawsuit following the provisions of the Civil Procedure Law No. (83) of 1969, as amended, and Article (20/1<sup>st</sup> and 2<sup>nd</sup>) of the Rules of Procedure of the Federal Supreme Court, and that the text or law - subject to challenge - is one of the laws in force in accordance with the provisions of Article (130) of the Constitution unless it is repealed or amended, and it is

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considered a legislative option that does not It violates the provisions of the Constitution of the Republic of Iraq for the year 2005, in addition to the fact that the Sports Clubs Law is one of the regulatory laws that regulate the work of the administrative bodies of sports clubs and control them in accordance with the law, therefore, they requested this court to dismiss the plaintiff's lawsuit and charge him fees, expenses and attorney's fees, and after completing the procedures required by the court's internal regulations, he set a date for hearing the case without pleading in accordance with Article (21/3<sup>rd</sup>) thereof, and on the appointed day, the court was formed and began to consider the case, and after reviewing the statement of the lawsuit, its documents and the defenses of the parties, the end of the minutes has been made clear and the court issued the following judgment decision:

**The decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the plaintiff filed a lawsuit before this court to challenge the constitutionality of Article (14) of the Sports Clubs Law No. (18) of 1986, as amended by Law No. (37) of 1988, which stipulates: (First: The executive body of the Olympic Committee may warn, warn or dissolve the club's administrative body and appoint a temporary administrative body...) based on its violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 in Articles ((45/1<sup>st</sup>), (13/1<sup>st</sup>, 2<sup>nd</sup>) and (46)) which confirmed the independence of civil society organizations, including sports clubs, and that the constitution is the supreme and supreme law in Iraq, and it is not permissible to enact a law that contradicts it, and it is not permissible to restrict the exercise of any of the rights and freedoms contained therein or limit them except by law), the National Olympic Committee Law No. (29) of 2019 has defined the powers of the General Assembly in Article (6) thereof and defined the powers of the Executive Office of the Olympic Committee, not including warning, warning, dissolution or appointment of administrative bodies for clubs, and the plaintiff believes that any decision issued by the Olympic Committee based on the text of the article - the subject of the challenge - is contrary to the provisions of the Constitution for lack of jurisdiction, as Article (17) of the National Olympic Committee Law stipulates the cancellation of all laws that conflict with its provisions. No provision contrary to the law shall be

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applied, so the plaintiff asked this court to rule the unconstitutionality of the text of Article (14) of the Sports Clubs Law No. (18) of 1986, as amended, and to charge the defendant in addition to his job fees and advocacy fees, the Federal Supreme Court finds that the plaintiff's lawsuit is considered admissible in form due to the fulfillment of the conditions for its establishment stipulated in Articles (44, 45, 46 and 47) of the Civil Procedure Law No. (83) of 1969, as amended, in addition to the other conditions stipulated in Article (20) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, embodied in capacity, litigation, and interest, especially since the plaintiff is from the sports family as a former member of the administrative body and the General Authority of the Air Force Club. Thus, he has an interest in the subject matter of the lawsuit when it is filed, in a direct and influential case in his legal status, and its existence continues even after the issuance of the judgment therein, and the text - the subject of the challenge - was applied to it, and did not benefit from it in whole or in part, so it was decided to accept the plaintiff's lawsuit in form and upon consideration of its subject matter, it was found that it must be answered, since the article - the subject of the challenge of unconstitutionality - stipulated: (First: The executive body of the Olympic Committee may alert, warn or dissolve the club's administrative body and appoint a temporary administrative body...), is not considered a violation of the provisions of the Constitution of the Republic of Iraq of 2005 for the following reasons:

First: The article - which is challenged by unconstitutionality - does not conflict with the independence, support, and development of sports clubs, as a result of the independence of civil society institutions, and then one of its components, in application of the provisions of Article (45 / 1<sup>st</sup>) of the Constitution of the Republic of Iraq, which stipulates that: (The State is keen to strengthen, support, develop and independence the role of civil society institutions, in line with peaceful means to achieve their legitimate goals, and this is regulated by law), and that the achievement of the legitimate objectives of clubs Sports by peaceful means and ensuring that they do not exceed those goals, requires the existence of a text - the subject of challenge - to prevent violations committed by their administrative bodies, which would derail those bodies from exercising their role in achieving the legitimate goals of the clubs. Second: The text - the subject of the challenge - is contained in an organic law aimed at regulating the work of the administrative

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bodies of sports clubs and controlling them in accordance with the law, and thus it represents a necessity required to address the violation of the administrative bodies of sports clubs of their duties to ensure that those clubs achieve the legitimate goals for which they were founded, otherwise, the executive body of the Olympic Committee loses its authority to control, supervise, direct and appoint a replacement, thus eliminating the necessity and importance of its existence. Third: The Constitution of the Republic of Iraq of 2005 affirms in Article (45/1<sup>st</sup>) thereof that support, development, and independence of civil society institutions, including sports clubs, shall be in harmony with peaceful means to achieve their legitimate goals, provided that this shall be regulated by law, as stipulated in Article (46) thereof that (the restriction or limitation of the exercise of any of the rights and freedoms contained in this Constitution shall not be except by law or based on it, provided that such determination shall not be affected. On the basis of the foregoing, the Sports Clubs Act No. 18 of 1986, as amended by Law No. 37 of 1988, in particular article 14 thereof, is consistent with the provision of the Constitution in the two aforementioned articles, in terms of Article (130) thereof, which stipulates: (The legislation in force shall remain in force, unless repealed or amended, following the provisions of the Constitution), as the purpose of the legislation of the Sports Clubs Law at the time lies in organizing the work of the administrative bodies in sports clubs, monitoring their work, and preventing them from committing any violation that would prevent sports clubs from achieving the legitimate objectives prescribed for them under their law, including ensuring their independence, meaning that ensuring their independence must be done in the light of what is approved by law, this is what is stated in the aforementioned Sports Clubs Law and Article - subject to challenge of unconstitutionality. Fourth: The article - the subject of the challenge of unconstitutionality - also does not conflict with the provisions of Article (13/1<sup>st</sup> and 2<sup>nd</sup>) of the Constitution, which stipulates: (First: This Constitution is the supreme and supreme law in Iraq, and it shall be binding throughout it, without exception. Second: It is not permissible to enact a law that contradicts this Constitution, and any text contained in the constitutions of the regions, or any other legal text that contradicts it), especially since the article - the subject of the challenge - was its legislation and entry into force before the provisions of the Constitution of the Republic of Iraq of 2005, but remained in

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force after the entry into force of the provisions of the said Constitution based on the provisions of Article (130) thereof, because it is consistent with the content of the provisions of Articles (45 /1<sup>st</sup> and 46) thereof following the aforementioned detail, and it does not conflict with the rest of its provisions. As for the plaintiff's defenses in the lawsuit petition, it related to the fact that the Olympic Committee Law No. (29) of 2019 defined the powers of the General Assembly in Article (6) thereof and defined the powers of the Executive Office of the Olympic Committee, not including warning, warning, dissolution or appointment of administrative bodies for clubs, contained in the article - the subject of the challenge - which means violating the provisions of the article - the subject of the challenge - of the aforementioned article, and therefore any decision issued by the Olympic Committee based on the text of the article - the subject of the challenge - is contrary to the provisions of the Constitution for lack of jurisdiction)), and this court finds that these defenses must be dismissed as they are unproductive, the failure to mention the powers granted to the Olympic Committee under the article - subject to the challenge - within the powers granted to the committee referred to in Article (6) of the Olympic Committee Law does not mean that the article - the subject of the challenge - violates the provisions of the Constitution, nor does it mean that it is not possible to mention other powers of the Olympic Committee within the Sports Clubs Law, especially the article - the subject of the challenge - in addition to the above, the violation of the provisions of the article - the subject of the challenge - of the provisions of the Olympic Committee Law No. (29) of 2019, Assuming this is true, the article - the subject of the challenge - is not ruled unconstitutional, as for the plaintiff's defenses contained in the lawsuit petition related to the fact that ((the text of Article (17) of the Olympic Committee Law No. (29) of 2019 canceled all laws that conflict with its provisions and does not apply any text that contradicts it, and based on that, the text of the article - the subject of the challenge - is considered unconstitutional)), this court finds that these defenses are also rejectable because the article - the subject of the challenge - does not conflict with the provisions of the aforementioned Olympic Committee Law, especially since the provision contained therein is a complementary provision to the provisions of the Olympic Committee Law and the role of the Committee in exercising its right to supervise, direct and follow up sports clubs in

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a manner that guarantees their independence, in order to achieve the legitimate objectives for which they were founded, in accordance with the peaceful means that require it, in accordance with the provisions of Article (45/1<sup>st</sup>) of the Constitution, and the conflict of the article - the subject of the challenge - with the provisions of the Olympic Committee Law, assuming the validity of this means its cancellation by virtue of the provisions of Article (17) of the Olympic Committee Law, the cancellation of the text in a law does not require a ruling of its unconstitutionality, and in all cases, the article - the subject of the challenge - is not considered inconsistent with the provisions of the Olympic Committee Law and is not repealed under it, nor does it violate the provisions of the Constitution, In view of the foregoing, the plaintiff's claim is subject to dismissal, so the Federal Supreme Court decided to rule as follows:

First - Dismissal of the plaintiff's lawsuit No. (51/Federal/2023) filed to challenge the constitutionality of Article (14) of the Sports Clubs Law No. (18) of 1986, as amended by Law No. (37) of 1988, for not violating the provisions of the Constitution of the Republic of Iraq for the year 2005, especially Articles (13/1<sup>st</sup>, 2<sup>nd</sup>, 45/1<sup>st</sup>, and 46) thereof.

Second - The plaintiff shall burden the fees, expenses, and advocacy fees of the defendant's agents, being in their capacity, the legal counselor Haitham Majed Salem and the official jurist Saman Mohsen Ibrahim, an amount of (one hundred) thousand dinars distributed among them according to the legal ratios

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 2005 and Articles (4 and 5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been made clear on 11/Shawwal/1444 Hijri coinciding with 2/May/2023 AD.

**Judge**

**Jassim Mohammed Abboud**

**President of the Federal Supreme Court**

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