



The Federal Supreme Court (F S C) has been convened on 2.14.2017 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 / Mayor of Baghdad / being in this capacity/ his agent the legal official (aleef. jeem .meem.hah) the manager of legal affairs department.
Defendant / Minister of youth and sport / being in this capacity/ his agent the legal official (yaa'.seen.aeen).

Claim

The agent of the plaintiff claimed that according to article (45) of governorates incorporated into a region law No. (21) 2008 (amended), where 8 branch directorates had been decided to be moved for eight ministries, including ministry of youth and sport with its credits allocated in the budget, and the employees to the governorates, and the role of the ministry is planning and drawing the general policy, and the supreme committee shall carry out the coordination between the governorates which assigned to move the branch directorates within two years of amendment law for governorates law No. (19) For 2013 validity, and in case of not completing these tasks the jobs regards moved ipso jure, the duration of two years was over on 8.6.2015 and the directorates regarded moved by judgment and according to what aforementioned, the ministry of youth and sport issued the ministerial order No. 23614 on 12.28.2015 which included moving the directorates of youth and sport in Baghdad and the forums that belongs to it to the governorates' divan, including the directorate of youth and sport in AL-kharkh, and after

the disengaging of the aforementioned directorate with the forums belongs to it, the ministry intended to commit the following penalties : (a) it referred all the forums that belongs to the directorate of youth and sport of AL-kharkh to the investment without the knowledge of the governorate, among them, (the forum of AL-tahadee/ AL-farouk/AL-amiriyah). (b) It exempted (hah.hah.khaa') the director of AL-shu'la youth and sport forum. (c) It formed an investigation committee against (meem.khaa'.aen/ director of AL-kharkh youth and sport) and isolating him for his objection against the ministry because it invested AL-farouk forum without acknowledgment of the governorate and the directorate of AL-kharkh youth and sport without heeding to the objection of the governorate and the governorate council on the procedures of the ministry, considering that the aforementioned employee became a council employee, pretending of not moving the cadres and the allowances to the governorate, in spite of that the ministry did not oblige to the generalization of the ministry of finance number 4583 on 6.11.2016, which requested to provide it with the inventories of the cadres and the allowances, but the ministry did not provide the ministry of finance with that, to cause obstructing of disengagement procedures and interfere in the directorates affairs which had been disengaged pretending that the cadres stayed there. The agent of the plaintiff requested to regard the procedures of the ministry of youth and sport which concern of referral the forums that related to the directorate of youth and sport of AL-kharkh for investment unconstitutional for out of competence, as well as for its violation for article (45) of the governorates incorporated into a region law number 21 for 2008, which amended by the law number 19 for 2013, and to judge with the voidance of the ministry procedures which concerns in isolation of AL-kharkh youth and sport director (meem.khaa.aen) for its violation for the aforementioned article, and the voidance of the ministry procedures with an executive nature that exceeds the role enacted to it by the law, which means planning and put the policy of the directorates that involved to the disengagement. The plaintiff/ being in this capacity were notified by the petition of the case and its documents, so he answered with the draft presented on 12.21.2016 which he listed as for the specialty of the FSC was restricted for the governorates incorporated into a region in article (31/11th/3) which concern in insistence of governorate council on its decision, therefore the matter shall be referred to the FSC. And article (20/3rd/2), therefore the FSC in not specialized in challenges that stirred by the agent of the plaintiff/

being in this capacity. As for the investment, the law had excluded the lands which a projects are built on, or dedicated for investment in the governorate, therefore the lands which the plaintiff invested, the ministry has the right to invest it, and the governorate does not have the right of disposal, just after it is dedicate to it, and with approval of the cabinet for that dedication, as article (12) of youth and sport law number 25 for 2011 stipulates on. As for the administrative procedures which made by the ministry, it was adapted to the law and it provided the ministry of finance with all listed requirements in their letters, but the ministry did not take a decision about that. The agent of the defendant requested to reject the case. The court called upon the both parties, after assigning a date for the pleading. The agent of the plaintiff attended as well as the agent of the defendant. The pubic in presence pleading proceeded, the agent of the plaintiff repeated the petition of the case, and requested to judge according to it, the agent of the defendant answered as what listed in his answering draft, the court ended the pleading, and issued the following decision in public.

The decision

After scrutiny and deliberation by the FSC, the court found that the Mayor of Baghdad/ being in this capacity has claimed after the decision of moving the branch directorates and the specialties its exercise by the concern ministries, including the ministry of youth and sport to the governorates, accordingly to the provisions of article (45) of governorates incorporated into a region number (21) for 2008 (amended). So the ministry of youth and sport behaved contrariwise of that by referring the forums belongs to AL-kharkh youth directorate to investment, without knowledge of the mayor, among them: AL-tahadee, AL-farouk and AL-amiriyah, as well as it exempted AL-shu'la youth and sport forum (hah.hah.khaa'), and forming an investigation committee against (meem.khaa'.aeen) and isolating him. The plaintiff requested to judge with unconstitutionality of giving the aforementioned forums for investment, and to judge with voidance of (meem.khaa'.aeen) isolation, and voidance the other procedures of the ministry of youth and sport with the executive nature. The FSC finds that its specialties had been determined in article (93) of the constitution and article (4) of the FSC law number (30) for 2005, and what specialties related to it in article (31/11th/3) of the governorates incorporated into a region law, and what requests listed by the plaintiff/ being in this capacity in his case is out

of competence of the FSC completely. Based on that the court decided to reject the plaintiff/ being in this capacity case, as for the competence, and to burden him the expenses and the advocacy fees, which is it a sum of one hundred thousand dinar. The decision issued decisively and made clear on 2.14.2017.