



The Federal Supreme Court (F S C) has been convened on 5.5.2014 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 Altemmen who authorized in the name of the people to judge and they made the following decision:

The Plaintiff: Mayor of Maysan/ being in this capacity – his agent the Legal Advisor (Ain.Ain.Zin).

The Defendant: Head of Maysan Governorate Council – being in this capacity – his agent the legal advisor (Kaf.Kha).

The Claim

The palintiff claimed before the FSC in the numbered case (67/federal/2013) that the Maysan Governorate Council issued a decision number (76) in (17.10.2012) to spend the amount of (25) twenty-five million dinars per year to the Martyr Club (Saad Khalaf Swef) from revenues of the border port of Al-Shayeb for the purpose of supporting the sports process in the Governorate according to what listed in the rationale for the decision issuance. Since the Governorate Councils Law No. (21) of 2008 gave councils under article (7) to issue local legislation, regulations and instructions to regulate administrative and financial affairs so that they can manage their affairs in accordance with the principle of administrative decentralization, and this matter shall not contradicts the constitution and the federal laws. Whereas the above-mentioned decision contradicts with the federal budget law which determined the methods of expenditures on the revenues collected from the border crossings and his client can't neglect it, for this reason he apologized of executing the aforementioned decision according to the letter No. (22899) on (5.11.2012) relying on article (7, 31)

of the governorates councils law, and for the insistence of the council to execute the decision, the agent of the plaintiff requested from the FSC to judge by annulling the decision No. (76) On (17.10.2012) for its violation for the general budget law, and to burden him the fees and the expenses. After registering this case at this court according to the paragraph (3rd) of article (2) of the FSC's bylaw, and after completing the required procedures according to the paragraph (2nd) of article (2) from the aforementioned bylaw. A date for the argument was scheduled, and the legal advisor (Ain.Ain.Zin) attended as an agent of the plaintiff/being in this capacity according to his power of attorney attached to the case's dossier, and the legal advisor (Kaf.Sin.Kha) attended as an agent of the defendant/ being in this capacity according to his power of attorney attached to the case's dossier. The public in presence argument proceeded. The agent of the plaintiff repeated what listed in the petition of the case and requested to judge according to it, with burdening the defendant all the expenses. Moreover, he presented an illustrative draft dated on (8.7.2014) and clarified that his client objected the allocation of the listed amount in the decision of the Governorate Council No. (76) On (17.10.2012) on (5.11.2012) after his notification by it on (24.10.2012). But the Governorate Council insisted on its decision by granting the martyr's club (Saad Khalaf) amount of twenty-five million dinars per year to encourage the athletic field in the Governorate. This amount shall be deducted from the revenues of the customs from the border crossings. The agent of the defendant confirmed that the Governorate Council had insisted on its decision, and the allocated amount in the decision shall be deducted from the collected revenues of the border crossings. The agent of the plaintiff commented that the border crossings revenues had been determined in the budget law for 2012 for the infrastructure only, not for donation, and this matter violates the budget laws. The agent of the defendant answered, he admitted that the Governorate Council insisted on its decision by allocating amount of (25) million dinars yearly for the athletic club, and the governorates incorporated into a region law had granted half of the border crossing revenues for the Governorate. Therefore, the Governorate has the right to dispense these amounts, and he requested to reject the case, with burdening the plaintiff all the expenses. The agent of the plaintiff and the agent of the defendant repeated their sayings and his previous requests, and requested to judge

according to it. Whereas nothing left to be said, the Court has ended the argument and the decision has been made clear.

The decision

During scrutiny and deliberation by the FSC, the Court found that the agent of the plaintiff is challenging by his case's petition the decision issued by the council of Maysan Governorate by the number (76) on (17.10.2012) which adjudged by allocating amount of twenty-five million dinars yearly to the athletic club of martyr (Saad Khalaf Swef), this amount shall be deducted from the revenues of Al-Sheeb crossing border, and the decision shall become in effect starting from the date of its issuance. This decision shall be published in Maysan gazette to encourage the athletic field in the Governorate, but the mayor of Maysan objected the decision according to the objection letter No. (22899) on (5.11.2012) which addressed to the Governorate Council apologizing of executing the decision because it violates the budget law, according to the instructions of executing the budget and the budget law, the revenues of the border crossing shall be added to the operating budget of the Governorate. He also objecting the decision according to the provisions of article (31/Alif-Jim) of the Governorates incorporated into a region No. (21) For 2008. By scrutinizing, whereas the governorates councils have the right to issue the local enactments within the governorate's borders which enables it from managing its affairs according to the principle of administrative decentralization, and this procedure shall not contradicts with the constitution and the laws in effect by relying on article (2/1st) of the governorates incorporated into a region law No. (21) For 2008. Whereas the governorate council of Maysan issued its decision No. (76) On (17.10.2012) by allocating amount of twenty-five million dinars yearly for the athletic club from the revenues of Al-Sheeb border crossing. Whereas article (6rh) of the federal budget law of the Republic of Iraq for the fiscal year 2012 had adjudged by allocating the revenues actually collected from the border crossings (land, sea, air) including the sovereign revenues during the year (2011) to the budget of borders' governorates, each one according to the revenues collected actually in these border crossings which belong to each governorate. Therefore, the decision issued by the governorate council of Maysan by the number (76) for 2012 is violating the federal law (the federal

budget law of the Republic of Iraq for the fiscal year 2012) and it also violating the paragraph (3rd) of article (110) of the Republic of Iraq constitution for 2005 which made the drawing of the financial and customs policy, issuing the currency and regulating the commercial policy through the region and governorate borders in Iraq, in addition to set the public budget is an exclusive jurisdictions of the federal power according to the article (110/3rd) of the constitution. Accordingly, the decision issued by the governorate council of Maysan by the number (76) on (17.10.2012) is violating the federal budget law of the Republic of Iraq for 2012 and article (110/3rd) of the Republic of Iraq constitution for 2005. This matter shall be confronted and annulling it. Therefore, the court decided according to the aforementioned reasons to judge by annulling the decision of Maysan governorate council by the number (76) on (17.10.2012) and to burden the defendant/ being in this capacity the expenses of the case and the advocacy fees for the agent of the plaintiff, the legal advisor (Ain.Ain.Zin) amount of one-hundred thousand Iraqi dinars. The decision has been issued final and binding for all powers according to the article (94) of the constitution of the Republic of Iraq for 2005, and the decision has been made clear on 19.8.2014.