



Translation

**STATE OF KUWAIT
Ministry of Justice
Court of Appeal**

**In the Name of Allah Most Compassionate Most Merciful
In the Name of His Highness the Amir of the State of Kuwait
Sheikh Sabbah Al Ahmad Al Jaber Al Sabbah**

**Court of Appeal
First Circuit for Disputes of Sports Affairs**

At the Session held publically on 25 Shaaban 1437 H corresponding to 01.06.2016 AD Presided over by Justice Dr. Adel Majed Boursley, Court Agent
With the membership of Judges Ammar Jasem Shehab and Louay Mohalhal Al Nosef
In the presence of Mr. Ihab Ahmad Madkour, Secretary of the Session

The following judgment was rendered

In the first appeal filed by:
The legal representative of the Kuwait Olympic Committee

Versus:

- (1) The legal representative of the Kuwait Shooting Sport Club
- (2) Minister of State for Youth Affairs in his capacity
- (3) Minister of State for the Council of Ministers Affairs in his capacity
- (4) Minister of Social Affairs and Labor in his capacity
- (5) Director General of the Public Authority for Sport in his capacity

In the Second Appeal filed by:

- (1) Minister of State of Youth Affairs in his capacity
- (2) His Highness the Prime Minister
- (3) Minister of State for the Council of Ministers Affairs in his capacity
- (4) Minister of Social Affairs and Labor in his capacity
- (5) Director General of the Public Authority for Sport

Versus:

- (1) The legal representative of the Kuwait Shooting Sport Club
- (2) The legal representative of the Kuwait Olympic Committee

Enrolled under No. 12, 14/ 2016 Sport Affairs Disputes/ 1.



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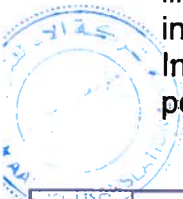
The Court

Having perused the papers, heard the pleadings and following deliberation as stipulated by law.

As revealed by the contested judgment and the remaining papers, the facts of the case may be summarized in that the Respondent (in the first Appeal) has filed, on 01.09.2015, the case that was enrolled under No. 6 of 2015 Sport Affairs Disputes/ 1 requesting that the case be accepted with regards to the form, and with regards to the merits, to cease the implementation of the negative administrative decision issued by the Kuwait Olympic Committee versus the remaining respondents regarding the non-acknowledgement of the Kuwait Shooting Sport Club as the sole representative and the Kuwaiti Shooting Federation that is exclusively handling the role of representing the State of Kuwait, in affiliation with the Kuwait Olympic Committee delegations, and to address the International Shooting Sport Federation, informing it about the aforementioned. And until deciding upon the appeal subject, the implementation to be performed through the draft of the judgement, without any notice and without adding the execution form thereon, and cancelling the negative administrative decision issued by the Kuwaiti Olympic Committee. And versus all other litigants regarding the claim of ceasing the implementation; in addition to withdrawing the previous letter sent from the Kuwait Olympic Committee to the International Shooting Sport Federation and to others in this respect, in a summarily self-executing judgment without bail.

And this is based on the saying that the Kuwait Shooting Sport Club is specialized in the Shooting Sport, and according to Law Decree No. 42 of 1978 regarding the Sport Organizations and its amendments, the specialized club shall be treated as federations in international participations, which has been implemented since the establishment of the Public Authority for Youth and Sport in 1999. On this basis, the club shall be treated as Shooting Federation since it is the sole Kuwaiti Club specialized in the Shooting Sport, and it has joined the International Shooting Sport Federation since the mid-eighties of the last decade, and it has been working with the International Shooting Sport Federation and the Kuwait Olympic Committee in its capacity as federation without objection from any of those two parties.

During 2014, the Kuwait Olympic Committee issued a letter that did not reveal to the Shooting Club, the content of which has stated to not acknowledge the Kuwait Shooting Sport Club as a representative of the Kuwaiti Shooting Sport and to not treat it as federations, and that the Kuwait Shooting Federation does not exist and is illegal. And this letter may forfeit all candidates from the State of Kuwait in all international positions and cancel the affiliation of the Kuwaiti Federation to the International Shooting Sport Federation and make Kuwait lose all its administrative positions in the committee, and the Kuwait Shooting Federation shall not be able to



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apply to the International Shooting Sport Federation membership, unless it is accredited and recognized by the Kuwait Olympic Committee.

The Plaintiff has added in the opening summons of his case that the attitude adopted by the Kuwait Olympic Committee to refrain from acknowledging the Kuwait Shooting Club as the sole representative of the Shooting Sport that should be treated as federations, and its abstention from issuing the required letter, represent a refusal to issue a decision that should have been taken in accordance with the laws and the bylaws.

At the Session of 16.02.2016, the Court of First Instance has rendered its judgment, stipulating that the case be accepted with respect to the form, and with regards to the merits, to cancel the negative decision of the Kuwait Olympic Committee to abstain from acknowledging the Kuwait Shooting Club as a sole representative of the State of Kuwait in participating in the international federations and championships, considering it as a Federation, and the resulting effects, in particular, the fact of obliging the Kuwait Olympic Committee to submit the papers required to address the International Shooting Sport Federation that the Kuwait Shooting Club represents the State of Kuwait and any other authority; in addition to obliging the defendant to pay the expenses along with the amount of Kuwaiti Dinars two hundred for attorneys' fees.

The Court of First Instance established its ruling on causes that may be summarized that the Kuwait Shooting Club, and since its establishment in 1994, has always been the sole club that is representing the State of Kuwait locally and abroad, whether it was described as a club or a federation before the international federations, and it has kept these two capacities until 03.12.2014, which is the date of the objection of International Shooting Sport Federation on the capacity of the Kuwaiti Club as representative of the Shooting Federation because of the issuance of a letter from the Kuwait Olympic Committee about not acknowledging the club in the capacity of a shooting federation.

The Kuwait Olympic Committee did not support the judgment and thus, objected against it through its lawyer who submitted a summons deposited at the Clerk Department of this Court on 13.03.2016. Through the first appeal, he requested to accept the appeal with regard to the form, and in the summarily section, to suspend the execution of the appealed judgment, and with regard to the merits, that the case be dismissed because of the absence of alleged administrative decision.

The Kuwait Olympic Committee claimed through its representative that the Judgment causes invalid reasoning, the matter that led to the error in implementing and interpreting the law, in addition to the lack in reasoning. In the statement thereof, he has mentioned that the dispute is administrative and that the law did not include a text that would oblige the Olympic Committee to carry out the material job of issuing



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the required certificate; thereafter, its abstention thereof shall not constitute a negative administrative decision.

Moreover, the appealed judgment has violated the law when it has considered the Kuwait Olympic Committee as an administrative authority and that its abstention from a specific task represents a negative administrative decision, and that no text in a law or a bylaw determines the nature of the certificate required to be issued. Moreover, the Kuwait Olympic Committee has never issued similar certificates or letters, and the Kuwait Olympic Committee is one of the private, not public, legal entities, and its decisions are not administrative ones; moreover, the text related to the manner of treating the specialized clubs as being federations is only related to the financial and technical support in their international participations and it does not involve any obligation or legal duty on the Kuwait Olympic Committee.

The judgment was not accepted by the Administrative Bodies; therefore, they have objected against it through the second appeal by means of a summons deposited by the lawyer of the Advice and Legislation Department at the Clerk Department of this Court on 17.03.2016, concluding it by requesting that the appeal be accepted with regards to the form, and that the appealed judgment be cancelled with regard to the merits as it has ruled that the appellants in their capacities be obliged to pay the expenses and attorneys' fees, and to limit this to the real litigant in the case (the second respondent) and that the latter be obliged to pay the expenses and attorneys' fees at both litigation levels. Furthermore, the appellants have established the second appeal on the violation of the appealed judgment to the law and error in implementing, interpreting and explaining it. And as an explanation thereof, they have indicated in the Summons of Appeal that they were just litigants and that no claims were addressed against them, and that the real litigant is the Kuwait Olympic Committee, versus which the appealed judgment was issued, and the expenses and fees should have been paid thereby.

And whereas both appeals have been submitted to this Court as indicated in the minutes, the Court has decided at the Session of 11.05.2016 to join the Second Appeal to the First One so that one judgment be rendered in both appeals.

At the same Session, the representative of the Advice and Legislation Department has insisted to change the form of the Second Appeal in facing the lawyer of the respondent, so that it would be filed by the Director General of the Public Authority for Sport in his capacity, instead of the Director General of the Public Authority for Youth and Sport in respect of the fifth appellant. And at the same session, the Court has decided to reserve both Appeals for rendering judgment at today's session.

And whereas both appeals have fulfilled their forms, they shall be thus accepted with regard to the form.



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As with regards to the merits, the objection stated in the first appeal is revoked as it has been established that the settlement of the case is what should be reached by the Court, considering its authority of settling the claims of the litigants – the Court may also recognize the aims of these claims and the intention of the litigants upon expressing them, and shall based thereupon, settle the case and provide its correct legal explanation based its facts – and without conforming in this respect to the conditioning of the litigants for the case, and this while observing the rule of law.

And whereas the real legal adaptation of the claims of the first respondent in the first appeal is to render a judgment obliging the appellant to recognize the Kuwait Shooting Club as the sole representative, and as a Kuwait Shooting National Federation that exclusively handles the mission of representing the State of Kuwait affiliated to the Kuwait Olympic Committee delegations, and to oblige it to address the International Shooting Sport Federation in this respect and to withdraw its letter that was sent to the International Shooting Sport Federation or to others in this respect, facing all other litigants.

And whereas the dispute in the current litigation is to know whether the Kuwait Shooting Sport Club was covered by Decision No. 34-5-99 issued by the Public Authority for Youth and Sport, which stipulates the following: "in addition to treating it as a club, the specialized club which practices one game shall be treated as Federation that is carrying the financial aspects just like other sport federations as well as for its international participation as representative of the state of Kuwait" ; moreover, upon its participation abroad as a representative for the State of Kuwait". It is meant by 'treating the specialized club as a federation' the technical and financial support in the international participations. Or this should include the fact of treating the specialized club like the federations in all specializations decided for the federations, such as the participation in the international elections, and to know if the Kuwait Shooting Club is covered by the definition indicated in Article (16/2) of Law Decree No. 42 of 1978 regarding the sport organizations and the amendments thereof that stipulated that "specialized sport clubs affiliated to Olympic or non Olympic international federations shall be treated just like the federations in the international participations".

And whereas it has been established that the competent court shall have to understand the fact of the case, to verify its truth, to examine what is being submitted of evidences and documents, to compare them to each other's and to rely on what it is convinced thereof, and to also implement the texts of the law on the dispute.

In view of the foregoing, and whereas Article (15) of the aforementioned Law Decree has defined the sport federation as "an organization made of sport clubs and entities that has an activity in one game or more, with the intention of organizing this activity between them and of working on spreading the game and developing its technical level".



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This Article also added that the: "specialized sport clubs affiliated to international federations whether Olympic or non-Olympic shall be treated as same as the federations in international participations within the rules prescribed by the international federation of this game. Furthermore, it shall not be allowed to establish more than one federation for any sport game".

Article 16 of the same Law Decree stipulated that: **"Specialized sport clubs affiliated to international federations being Olympic or non-Olympic shall be treated just like federations in their international participations."**

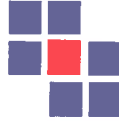
In view of the foregoing, the decision of the Public Authority for Youth and Sport No. 23-5-99 was issued, approving that the specialized club that is carrying out one game be treated, in addition to a club, from the financial aspect as sport federations, and also upon its participation abroad as a representative for the State of Kuwait. **Which means that the Kuwait Shooting Sport Club, and without any objection from all the dispute parties, is a specialized club that is carrying out one game; and now therefore, it should be treated just like federations are being treated, especially from the financial aspect upon his participation abroad as a representative of the State of Kuwait; as it shall enjoy all rights of federations; moreover, the term "participation abroad" covers the sport tournaments, the technical competitions and others such as candidacy for the international federations and the executive positions, and this as per the necessity, and as per reasoning and the correct legal understanding, since that it shall not be reasonable to prevent the State of Kuwait from participation and competition in the international positions for the pretext of the absence of a game federation, while the explicit legal text has decided to treat the sole specialized club just like federations are being treated.**

And whereas it has been proved by the documents that the Kuwait Olympic Committee has addressed a letter to the International Shooting Sport Federation stating that it does not acknowledge the Kuwait Shooting Federation as a representative for the Kuwait Shooting sport, which led to the non-acceptance of the affiliation and to the rejection of the Kuwait Shooting Federation, the matter that prevents the State of Kuwait from being represented before the international federations, organizations and committees specialized in shooting, and participating in the various regional and international sport tournaments or even organizing them inside the country, therefore, this action of the Kuwait Olympic Committee violates the law, the thing which obliges the Kuwait Olympic Committee to abide by the below conclusion reached by this judgment which amends the appealed judgment in its causes for the reasoning of the text of the appealed judgment regarding the first appeal, especially that it has been proved by the documents that the Kuwait Olympic Committee was dealing with the Kuwait Shooting Sport Club considering it as a federation since its establishment in 1994 and until 2004; **and this sudden change in the legal position did not have any legal sufficient causes, and constitutes an illegal use of right, in implementation to Article 30 of Civil Law No. 67 of**



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1980, which considers the Kuwait Olympic Committee one of the private law persons as per Article 18 thereof.

As for the Second Appeal, it shall have proper grounds since the litigation scope is determined by the claims and the parties, i.e. the litigants and the litigant to whom no claims are being addressed shall be a litigant in the case and he may not be required to pay the expenses that the real loser in the case is obliged to pay, as per the provision of Article 119 Procedure and onwards.

And whereas the claims in the case summons are addressed only to the Kuwait Olympic Committee and not to any other litigants, it should be the only one to be obliged to pay the expenses and attorneys' fees due to the judgment rendered in its respect. And whereas the appealed judgment has violated this hearing and obliged the appellants in the second appeal to pay the expenses, it shall be thus violating the law and should be thus amended in respect of this part.

For these Causes

The Court has rendered its judgment stipulating the following:

That both appeals be accepted with regard to the form; as with regard to the merits, that the appealed judgment be amended so that it obliges the Kuwait Olympic Committee to acknowledge the Kuwait Shooting Club as the sole representative and as a national Federation of the shooting sport that shall exclusively represent the State of Kuwait affiliated to the delegations of the Kuwait Olympic Committee; and to oblige the Kuwait Olympic Committee to address the International Shooting Sport Federation informing it of this Acknowledgement. Moreover, the Appellant in his capacity in the First Appeal shall be obliged to pay the expenses of both appeals in addition to Kuwaiti Dinars one hundred for attorneys' fees.

Secretary of the Session

Court Agent

Remark:

This judgment was pronounced by the abovementioned authority. As for the authority that has heard the pleading, contributed to the deliberation, and signed the draft of the judgment, is the following:

Presided over by Justice/ Adel Boursley

With the membership of Judges Bader Al Torairy and Ammar Shehab

Secretary of the Session

Court Agent

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