

Republic of Iraq
Federal Supreme Court
Ref. 11 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/8/2023 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 Ali, and Dyar Mohammed Ali who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Issuing the State Order: Chairman of the Taseer Board of the Cooperative Union in Anbar / being in this capacity – his agent, the barrister Juma'a Hameed Ubada.

Who Requested to Issue the State Order Against: Speaker of the ICR/ being in this capacity.

The Request:

The applicant for the issuance of the state order submitted to the Federal Supreme Court, through the mediation of his agent, his list dated 25/7/2023, for which the legal fee was collected on the same date and registered in the number (11/federal/state order/2023), including his request ((Issuing an urgent state order to suspend the implementation of Article (20/7th) of Law No. (13) of 2023 of the Federal General Budget of the Republic of Iraq for the years (2023, 2024, 2025)), which stipulated ((Cooperative societies established under the provisions of the Cooperation Law No. (15 of 1992) are prohibited. Modified) from the disposal of real estate owned or owned by the state, whether it is the excretion, sale or distribution of land to their affiliates or others, or

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dispose of it for a purpose other than the purpose for which it was owned by establishing its headquarters, otherwise, the Minister of Finance shall recover it in accordance with the law with the suspension of the provisions of Article Thirty-Four of the aforementioned law, until the lawsuit filed before this court is resolved in number (175/Federal/2023) by the plaintiff, chairman of the committee supervising the work of the General Union for Cooperation / being in this capacity, according to which he is required to rule the unconstitutionality of the article whose implementation is requested to be suspended, for the reasons detailed in the draft, which its conclusion lies in the fact that the text of the article required to be suspended was unfair to the rights of cooperative organizations spread in all Iraqi provinces on their various four activities (consumer, housing, production and service) and since the cooperative work in accordance with the Cooperation Law No. (15 of 1992) amended works with self-financing, and that this activity is in force in most countries, as it employs a large segment of citizens working in its organizations, lifting the burden of the state with not a few workers within the cooperative movement, as the required Issuing a state order against him was omitted when enacting the text whose implementation is requested to be suspended, cooperation is a mass socio-economic organization whose goal is to develop economic relations in society from the individual pattern to the collective pattern in line with the general policy of the state, and the targeting of Article (34) of Law No. (15) of 1992 in force, consisting of ten paragraphs, is targeting the spirit of cooperation, this is contrary to the text of Article (25) of the Constitution of the Republic of Iraq of 2005, which stipulates that: (The State shall guarantee the reform of the Iraqi economy according to modern economic foundations and in a manner that ensures the investment of all its resources, diversification

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of its sources, and the encouragement and development of the private sector), and Article (27) thereof, which stipulates (First: Public funds are inviolable, and their protection is the duty of every citizen. Second: The provisions for the preservation and management of state property, the conditions for its disposal, and the limits within which it is not permissible to relinquish any of these funds shall be regulated by law), the Constitution affirmed the inadmissibility of issuing a law that contradicts the principles of democracy and the fundamental rights and freedoms contained therein, and for the foregoing, and based on the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (39) of the Rules of Procedure of the Federal Supreme Court No. (1) of 2022, the request was submitted to issue an urgent state order in accordance with the aforementioned detail.

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, requested, according to its regulation dated 25/7/2023, to issue an (urgent state order), which includes: (Suspension of the implementation of Article (20/7th) of Law No. (13) of 2023 ((Federal Budget Law of the Republic of Iraq for the years (2023, 2024, 2025)), until the lawsuit filed before this court is resolved in number (175/federal/2023) by the plaintiff, chairman of the committee supervising the work of the General Union for Cooperation / being in this capacity, according to which the ruling is required to be unconstitutional. The Federal Supreme Court finds that the issuance of an urgent state order based on an independent request or implicit in the constitutional cases filed before it has not been addressed,

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nor has it been addressed in the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, nor the Bylaw of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette No. (4679) on 13/6/2022, and thus it is subject to the provisions referred to in Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and to the extent commensurate with the nature and privacy of the constitutional lawsuit, based on the provisions of Article (39) of the Internal Regulations of the Federal Supreme Court referred to above, which stipulates that: ((The court may consider requests for summary judgment and orders on petitions in accordance with the provisions stipulated in the Civil Procedure Law No. (83) of 1969, as amended, or any other law that replaces it)), in terms of Article (36) thereof, which stipulates that: (The decisions of the court are final and binding on all authorities and persons and shall not be subject to appeal by any means of appeal...) based on the foregoing, the issuance of an urgent state order by the Federal Supreme Court is governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Law, due to the finality of the decisions issued by this court and not being subject to the methods of appeal, which lie in applying two copies containing facts, grounds, and documents, and the availability of urgency, and not entering into the original right and deciding on it, whereas the scrutiny of the request for the issuance of the state order by this court has proven that it is not available as a matter of urgency or the state of necessity that requires its issuance, in addition to the above, responding to its content means entering into the origin of the right and giving a prior opinion of the lawsuit filed before this court No. (175/Federal/2023) under which it is claimed (ruling on the unconstitutionality of the article whose implementation is to be suspended), and that this contradicts the established judicial customs in

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the constitutional districts of Arab and foreign countries and with what the has settled on, in Iraqi constitutional and ordinary judiciary, and what is included in the well-established judicial applications in this field based on the provisions of the Constitution and the laws in force, based on the realization of the right and the achievement of justice and fairness away from tendencies, whims, arbitrariness and flattery, there is no blame for what was really issued in terms of words or deeds, and thus the decision on the request of the applicant to issue the state order must be rejected for two reasons: the first: it is the lack of urgency in it, and the second: it lies in the fact that deciding on it means entering the origin of the right and giving a prior opinion on the lawsuit filed before this court in the number (175/federal/2023), In accordance with the above-mentioned detail, and in view of the above, the Federal Supreme Court decided to reject the request. The decision has been issued unanimously, final, and binding according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (5/2nd) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. The decision has been edited on the session dated 13/Muharram Al-Haram/1445 Hijri coinciding 1/August/2023 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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