

Republic of Iraq  
Federal Supreme Court  
Ref. 151 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 23/7/2023 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, Ayooob 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 Requestor of Issuing the State Order: 1- Ahmed Abdul Wahid Ameen.  
2-Kamiran Teeb Mohammed Ali.

Their agents are the barristers Dr. Mohammed Adil Qadoori and Muayed Khamees Hussein.

Who Requested to Issue the State Order Against: 1. The Prime Minister/  
being in this capacity/ being in this capacity.  
2. Governor of Kirkuk/ Being in this capacity.  
3. President of Kirkuk Investment Commission/ being in this  
capacity.

### **The Claim**

The request for the issuance of the state order submitted to the Federal Supreme Court the statement of claim dated 26/6/2023, for which the legal fee was collected on the same date and registered in the number (151/Federal/2023) under which the claim is made, (ruling on the unconstitutionality of the Council of Ministers Resolution No. (302) of 2009 issued on 27/8/2019), in which they also demanded the issuance of an urgent state order ((to stop the required issuance of the state order against them, in addition to their jobs, from taking administrative procedures and decisions to reduce the weight fees and fines collected by the applicants for issuing the state order from the weighing stations project - the subject of the contract - and stopping the administrative procedures for withdrawing the investment

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license and canceling the investment contract and everything that leads to the suspension of the project)) until the lawsuit is resolved, for the reasons detailed in its petition, the conclusion of which lies in the following: The third state order against him (in addition to his job) is required to grant them on 19/1/2017 the investment license in the number (0142) to develop and operate the project of controlling the axial weights of trucks at the entrances to the city of Kirkuk from the side (Baghdad, Sulaymaniyah, Erbil), and based on the aforementioned investment license, they concluded with the required to issue the second state order against him (the governor of Kirkuk being in this capacity) the investment contract in number: (2272) dated 16/3/2017 for the establishment and implementation of the project (subject of investment license), according to which the weight fee of 20,000 is twenty thousand dinars per vehicle and for one time for one load, this is based on the text of Article (10/b) of the Public Roads Law No. (35) of 2002, as amended by Law No. (5) of 2013, and after they established the project and spent huge sums to operate it, the first state order required to be issued against him (the Prime Minister in addition to his job) issued Resolution No. 302 of 2019 on 27/8/2019, which under paragraph (1) thereof reduced the number of fines from an amount of 5,000 (five thousand) dinars to an amount of 500 (five hundred) dinars per one kilogram, and under paragraph (2) Including reducing the prices of weighing fees from an amount of (20,000 twenty thousand dinars) for each vehicle per load to an amount of (5000) five thousand dinars, and under paragraph (3) thereof, the Ministry of Construction, Housing, Municipalities and Public Works was empowered to amend contracts signed with investors for weighing stations, which were not a party to the contract, and since the amendment of fees and fines, which are considered taxes, It is only done by law (any legislation issued by the legislative authority) under Article (28/1<sup>st</sup>) of the Constitution, which was violated by the aforementioned decision issued by the executive authority, which does not amount to the rank of law, and it was harmful to public money and the public interest, as a percentage of the weight fees and the full

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amounts of fines are transferred to the second defendant, and part of it to the sectoral authority concerned with the repair of public roads (the Ministry of Housing and Construction and the Directorate of Roads and Bridges), and it was issued from the required issuance of the state order against them the second and the third is several administrative procedures and actions for the purpose of forcing applicants for the issuance of the state order to implement the decision subject of the request, for the foregoing, and in accordance with the provisions of Articles (151 and 152) of the Code of Procedure 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 applicants for issuing the state order, due to their filing of the lawsuit No. (151/Federal/2023) before this court, requested, according to its regulations dated 26/6/2023, to issue an urgent state order, which includes: (Stopping the required issuance of the state order against them, in addition to their jobs, from taking administrative procedures and decisions to reduce the weight fees and fines collected by the applicants for issuing the state order from the weighing stations project subject to the contract, and stopping the administrative procedures for withdrawing the investment license and canceling the contract. investment and everything that leads to the suspension of the project), until the lawsuit is resolved, for the reasons detailed in its petition, and 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, 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 Internal Regulations 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

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Procedure Law No. 83 of 1969, as amended, to the extent commensurate with the nature and specificity of the constitutional lawsuit, based on the provisions of Article (39) of the Rules of Procedure 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), and following Article (36) thereof, which stipulates that (court decisions are final and binding on all authorities and persons and cannot be challenged in any way) of the methods 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 subject to the methods of appeal, which is to apply to two copies containing facts, grounds and documents, and the availability of urgency, and the failure to enter into the origin of the right and decide on it, and since the audit of the request for the issuance of the state order by this court has proven the lack of urgency in it, nor the state of necessity that requires its issuance, in addition to the above, responding to its content means entering the origin of the right and giving a prior opinion of the constitutional lawsuit filed before this court No. (151/Federal/2023) under which the ruling is demanded ((The unconstitutionality of the Council of Ministers Resolution No. (302) of 2019 issued on 27/8/2019)), for the reasons referred to in detail in its petition, and that this contradicts the established judicial customs in the constitutional districts of Arab and foreign countries, with what the Iraqi judiciary has settled on, both constitutional and ordinary, and with 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 said or done, and thus the decision on the request of the applicant to issue the state order

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should be rejected for two reasons: First: it is the absence of urgency and the state of necessity that requires its issuance, the second: that deciding on it means entering the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court in number (151/Federal/2023), according to the aforementioned detail, and for the foregoing, the Federal Supreme Court decided to reject the request. The decision has been issued with a majority, final, and binding according to the provisions of article (94) of the Constitution of the Republic of Iraq for 2005 and article (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 edited on the session dated 4/Muharram Al-Haram/1444 Hijri coinciding with 23/July/2023 AD.

**Judge**  
**Jasem Mohammad Abbood**  
**President of the Federal Supreme Court**

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