

Republic of Iraq
Federal Supreme Court
Ref. 153 / federal/state order /2023



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The Federal Supreme Court (F S C) has been convened on 12/7/2023 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 Munthir Ibraheem Hussein who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Issuing the State Order: the Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Al-Shuraifi.

Who Requested to Issue the State Order Against: Speaker of the Federal Iraqi Council of Representative/ being in this capacity.

First: Abstract of the Request

The applicant for the issuance of the state order, in addition to his job through the mediation of his agent, 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 (153/Federal/2023) claiming the unconstitutionality of Articles ((2/1st/8/Jim/6) and the phrase (at his request) mentioned in Article (16/2nd), (20/6th), (28/4th/Alif, Beh), (57/1st/C), (62/4th), (63/3rd), (65/2nd), (70/2nd) and (71), (72) and (75)) of Law No. (13) of 2023 ((Federal

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General Budget of the Republic of Iraq for the fiscal years (2023-2024-2025)) and its annulment and charging the defendant in addition to his job fees, expenses and advocacy fees, he also demanded the issuance of an urgent state order to suspend the implementation of the aforementioned articles - subject to appeal - until the aforementioned lawsuit is resolved, for the reasons detailed in the lawsuit petition, the conclusion of which lies in the following: (In view of the fact that the person required to issue a state order against him, in addition to his job, approved the Federal Budget Law for the years (2023 - 2024 - 2025) published in the Iraqi Gazette No. (4726) dated 26/6/2023, which included the inclusion of a number of articles that were not included in the draft law submitted by the government to the Council of Representatives or its amendment, and since such additions constitute a constitutional violation in both formal and substantive terms, as well as violating what was settled by the constitutional judiciary in Iraq, as follows: First: Article 60 of the Constitution has specified two ways to propose draft laws, namely (the Council of Ministers, the President of the Republic), and this is what the judgment of the esteemed court settled on in its decision No. (21/Federal/2015) and its unified (29/Federal/Media/2015) when it stipulated that Law No. 6 of 2006 on the replacement of members of the Council of Representatives is not one of the laws that affect the principle of separation of powers, because it did not have financial implications added to the executive branch, It does not constitute a conflict with the general policy of the state and does not affect the functions or independence of the judiciary, and its legislation came in the exercise of its original competence stipulated in article 61 of the constitution and according to the provision of article 49/5th thereof, which means, according to the concept of violation, that the powers of the Council of Representatives in adding or amending

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must take into account the following: 1. The law shall not prejudice the principle of separation of powers. 2. The law shall not have a financial impact. 3- It does not conflict with the general policy of the state. 4. It shall not prejudice the functions or independence of the judiciary. 5- Not to violate the provisions of the Constitution, and the Court has adopted the principle mentioned in many of its decisions, including its decision No. (17/Federal/2017) regarding the Federal Budget Law for the year 2017. Second: The Council of Representatives has violated the aforementioned principles by adding several paragraphs that included the government in many financial obligations in contravention of the provisions of Article 62 of the Constitution, as well as approving many provisions that contradict the general policy of the State and the principle of separation of powers, as shown below 1- Article (2/1st/8/Jim/6) of the Federal Budget Law grants the Governor exclusively the authority to contract with developers following the Investment Law in force, and this contradicts the general policy of the State. Which stressed the encouragement of investment in all ministries and entities not associated with the ministry and the provinces to advance and develop the process of economic and social development, bring technical and practical expertise, develop human resources, create job opportunities for Iraqis by encouraging investments and supporting the process of establishing, expanding and developing investment projects in Iraq at various economic levels, and that such an amendment would strengthen the government's hand in the field of investment, being that the scope of contracting with developers is limited to governors exclusively, this text also made the Council of Representatives the body responsible for planning the general policy of the state, and confiscated the powers of ministries and relevant authorities regarding investment projects contrary to the provisions of

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the Constitution, according to which the Council of Ministers is the body concerned with planning the general policy of the state, here, we must draw the court's attention to the fact that the aforementioned budget law included the establishment of the Iraq Fund for Development to improve the attractive investment environment and launch sustainable economic and social development with a capital of (1,000,000,000,000) (one trillion dinars) linked to the Council of Ministers and enjoys legal personality and financial and administrative independence, the adoption of such a text means that the Fund is not allowed to enter into any contracts with developers, and this aborts the government's attempts to activate the investment aspect in Iraq through strategic projects that would advance the economic and urban reality in the country, noting that the Council of Ministers had previously issued its Resolution No. (23121) for the year 2023, according to which it formed a technical team to accelerate investment procedures and establish new cities (facilities linked to a copy of it), and that the aforementioned text would undermine what has been done by the Council of Ministers decided above on accelerating investment procedures and establishing new cities, in particular, the Council of Ministers is responsible for drawing up and planning the general policy of the state. 2- Article (16/Second) of the General Budget Law empowers the Council of Ministers, based on the proposal of the minister or the head of the entity not associated with the ministry, the authority to grant an employee with the rank of the general manager who does not manage an administrative formation at the level of a general directorate or the consultant outside the staff, a five-year leave with a nominal salary, or assign him to manage a formation corresponding to his grade or refer them to retirement, but the Council of Representatives added the phrase (at his request) and here we would like to draw the court's attention to the following: Iraq has

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witnessed chaos at the level of administrative structures in the State, which resulted in the appointment of directors-general without their management of a general directorate or the assignment of consultants, despite the absence of the laws of the authorities in charge of such degrees, Therefore, the government sought to address this chaos by adopting a balanced text that does not underestimate the right of those who were appointed in the aforementioned bodies contrary to the law on the one hand, and on the other hand, it does not oblige the government to keep those covered by the aforementioned description without benefiting from their services. Beh- The restriction of the options stipulated in the aforementioned article provided that the person covered by it requests to be referred to retirement, even though he does not manage an administrative formation at the level of a general directorate or be a consultant outside the staff, would maintain the situation as it is, as the person covered by the provisions of the aforementioned article remains in the position and receives his job salary without providing a functional service despite the lack of need for his services. Jim- The retention of the aforementioned text would encourage ministries and entities not associated with a ministry to violate the laws in force, and the Council of Representatives protects them by aborting the government's attempts to reform the practices produced by previous governments that violate the law. Dal- The involvement of the Council of Representatives itself in the aforementioned subject through the amendment adopted by it in the law contradicts the principle of separation of powers affirmed in Article (47) of the Constitution. 3- Article (20/6th) of the Budget Law granted subcommittees the authority to submit decisions on compensating property whose amounts do not exceed (50) million as an exception to the provisions of Article (13) of Law No. (2) of 2020, and the Central Committee is committed to

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completing and returning the files to the subcommittees within a period not exceeding (30) working days, and here we would like to clarify the following: Alif- The government seeks to tighten control over public funds by forming judicial committees whose task is to verify the validity of the decisions issued for subcommittees, and that the adoption of the amended text would lead to the subcommittees being free from the control of the central committees. Beh- Experience has proven the invalidity of granting sub-committees the authority to decide on compensation decisions for property whose value does not exceed (30,000,000) thirty million dinars by referring hundreds of compensation decisions to the Integrity Commission for proving the existence of manipulation, so is it correct for the Council of Representatives to reward those committees by raising the ceiling specified for them by law in raising compensation decisions without referring to the Council of Ministers. Jim- The adoption of the aforementioned amendment would lead to the waste of public money through the failure of the funds to reach those who deserve them, and this will reflect negatively on the file of compensation for the property of those affected by military operations, military errors, and terrorist operations. 4- The Council of Representatives obliged, in Articles (28/4th/Alif, Beh) and (57/1st/Jim), to deduct (one-thousandth of a hundred) from the total salary of employees of all ministries, employees of the Ministry of Interior and retirees, and this contradicts the state's policy in reducing the burden on employees of state departments and retirees, especially in light of the government's tendency to review the salaries and allowances of workers in all state departments in a way that ensures the elimination of discrimination between those with similar positions of employees on the one hand, on the other hand, the Police Martyrs Fund Law guarantees sources of funding for the Fund that

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would carry out the tasks entrusted to the Fund, and the deduction rate is unclear in terms of its imposition on the salary with the allocations and whether it is imposed monthly or imposed annually. 5- The Council of Representatives, in Article (65/2nd), authorized university councils to contract with the private sector to hold a partnership in the field of building teaching hospitals, investment laboratories, scientific production factories, and agricultural investments, contrary to the government project sent to the Council of Representatives. The reality of these institutions as the work of the private sector is governed by the principle of profit and loss. 6- The Council of Representatives legislated Articles 62/4th and 63/3rd of the General Budget Law without standing on the Council of Ministers, as the Council of Representatives excluded itself from suspending appointments when it stipulated the appointment of 150 contractors, as an exception to the provisions of Article 14/4th/Alif of the Budget Law, which prohibits appointment and contracting in all state departments. The government is responsible for planning and implementing the general policy of the state as it entails added financial burdens on the public treasury and increases the total amounts of expenditures, and it is not permissible to legislate laws without referring to the government or amending texts proposed by the Council of Ministers if they have additional financial effects, and this is what the court's judgment has settled on in many decisions. 7- The Council of Representatives added item (second) of Article (70) without referring to the Council of Ministers, violating the text of Article (62/2nd) by increasing the amounts of expenditures prescribed in the government project, in addition to violating the Court's decision that the Council of Representatives may not legislate any laws without referring to the Government if they have additional financial effects on the one hand, on the other hand, it was not clear what led the Council to adopt

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the work arms disbursed for the period from 1/1/2023 to 1/6/2023, while the disbursement should be in accordance with the principle adopted by the government, which is to give priority to spending on the highest completed projects, and this amendment would lead to injustice between the governorates, as there are governorates that have been funded in greater proportions than others, and adding what was spent as an additional allocation means unfairness in adding allocations contrary to the criteria Proportion of population adopted as a public policy. 8- The text of Article (71) was added to the Federal Budget Law without stipulating it in the government draft sent to the Council of Representatives, by obliging the government to end the management of all state institutions by proxy no later than 30/11/2023, and this is considered an interference with the tasks of the executive authority and a violation of the principle of separation of powers stipulated in Article (47) of the Constitution as a purely executive affair contrary to the competencies of the Council of Representatives, especially since the issue of the work of the acting taxpayers was resolved through the government program approved by the Council of Representatives. 9- Article 72 of the Federal Budget Law allows the enforcement departments in the Ministry of Justice to collect 2% of the proceeds of debts collected for their owners and distribute 80% of them as incentives for execution employees and 20% to provide supplies and work requirements in the above execution departments, contrary to the powers of the Council of Representatives and in violation of the principle of separation of powers stipulated in article 47 of the Constitution, as the Council of Ministers is responsible for planning and implementing the general policies of ministries and bodies not associated with a ministry, such a provision would also lead to an increase in government spending by reducing government revenues according to the percentages

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mentioned in the aforementioned article, as well as the resulting migration of employees from the rest of the departments of the Ministry of Justice to the aforementioned department, and that all this contradicts the government's policy of reviewing the salaries and allowances of state workers in order to ensure the elimination of differentiation between them. 10- Article (75) of the Federal Budget Law adopted the date 31/12/2019 instead of 2/10/2019, and this circumvents the government project in stopping contracts and appointments, as its adoption would increase those covered by Cabinet Resolution No. (315) of 2019, which leads to the expansion of public expenditures, violating the text of Article (62/2nd) of the Constitution, It increases the financial burdens on the public treasury, and for the foregoing, and following the provisions of Articles (151 and 152) of the Code of Procedure No. (83) of 1969, as amended, and Article (39) of the Internal Regulations 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:

Second: the decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, the Prime Minister, in addition to his job, due to his filing of the constitutional lawsuit No. (153/Federal/2023) before this court, requested, according to his regulation dated 26/6/2023, to issue an urgent state order, which includes: (Suspension of the implementation of Articles ((2/1st/8/Jim/6) and the phrase (at his request) mentioned in Article (16/2nd), (20/6th), (28/4th/Alif, Beh), (57/1st/Jim), (62/4th), (63/3rd), (65/2nd), (70/2nd), (71), (72) and (75)) of Law No. (13) of 2023 ((The Federal General Budget of the Republic of Iraq for the fiscal years (2023-2024-2025)), until the aforementioned lawsuit is resolved, for the reasons detailed in the

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lawsuit petition, 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 Procedure Law. No. (83) of 1969, as amended, and 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 replacing it)), and in accordance with Article (36) thereof, which stipulates that (the court's decisions are final and binding on all authorities and persons and cannot be appealed 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, for the finality of the decisions issued by this court and their non-subjection to the methods of appeal, which lies in applying two copies containing facts, grounds and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, whereas the scrutiny of the request for the issuance of the state order by this court has proven the availability of urgency and the state of extreme necessity that requires its issuance with regard to Articles ((28/4th/Alif, Beh), (57/1st/Jim), (65/2nd), (70/2nd), (71) and (75)) of Law No. (13) of 2023 (Federal General Budget of the Republic of

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Iraq for the fiscal years (2023-2024-2025), whose implementation is required to be suspended, In particular, responding to its content regarding it does not mean entering into the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court to challenge its constitutionality in the number (153/Federal/2023), as the purpose of the suspension of execution lies in correcting the effects of the entry into force of these articles and preventing them from arranging any result that is difficult to remove until their constitutionality is decided or not, as for the request to suspend the implementation of the rest of the articles that lie in ((2/1st/8/Jim/6) and the phrase (at his request) mentioned in Article (16/2nd), (20/6th), (62/4th), (63/3rd) and (72) of Law No. (13) of 2023 (The Federal General Budget of the Republic of Iraq for the fiscal years (2023-2024-2025)), this court does not find an urgent or necessary case that requires suspending its implementation, this requires the rejection of the application in this regard, and for the foregoing, the Federal Supreme Court decided to rule as follows:

First: Suspending the implementation of the following articles:

1. Article (28) Fourth: Alif- Obliging the Ministry of Finance to collect one percentage of one-thousandth of the total salary of state employees (except the Ministry of Interior) to be placed in the (Martyrs Fund) of the Martyrs Foundation referred to in Article 10 ter of the Foundation's law, allocated to those covered following Law No. 2 of 2016 and Law No. 20 of 2009, as amended following controls issued by the Martyrs Foundation.

Beh- Deducting one-thousandth of pensions and grants from those covered by Law No. 2 of 2016 and Law No. 20 of 2009 as amended and transferring them to the Martyrs Fund account for the purpose of

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developing the financial resources of the institution for those covered by the above two laws.

2. Article (57/1st-Jim) (0.001%) (one-thousandth of a percent) of the total salary of all employees of the ministry (military and civilian), provided that the deductible amount is not less than (1000) (one thousand dinars) for each affiliate.
3. Article (65 /2nd - University councils may contract with the private sector a partnership contract in the field of building teaching hospitals, investment laboratories, scientific production factories, and agricultural and animal investments to serve primary and postgraduate studies, scientific research, and society.
4. Article (70) Second: The Ministry of Finance shall add additional allocations to the work arms completed for the governorates within the regional development plan and disbursed from the period (1/1/2023) to (1/6/2023), and these amounts shall be calculated as an additional allocation to those governorates.
5. Article 71 - The government is obligated to terminate the management of all state institutions by proxy no later than (30/11/2023), provided that the concerned department stops all financial allocations and administrative powers if they continue after the above-mentioned date, and the Council of Ministers must send those charged with the positions of heads of independent bodies, special grades (a, b), undersecretaries of ministries and advisers to the Council of Representatives 30 (thirty) days before the above date, and the Council of Representatives is obligated to decide by voting within 30 (30) days. from the date of sending names)).
6. Article (75) The date (31/12/2019) is adopted instead of the date (2/10/2019) approved by Cabinet Resolution No. (315) of 2019 in ministries and bodies not associated with a ministry.

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From Law No. (13) of 2023 (Federal Budget of the Republic of Iraq for the fiscal years (2023 – 2024 – 2025) until the constitutional lawsuit filed before this court to challenge its constitutionality registered in issue (153/Federal/2023) is decided.

Second: Rejection of the request of the applicant to issue the state order of the Prime Minister / in addition to his job containing the demand to suspend the implementation of Articles ((2/1st/8/Jim/6) and the phrase (at his request) mentioned in Article (16/2nd), (20/6th), (62/4th), (63/3rd) and (72)) of Law No. (13) of 2023 (Federal Budget of the Republic of Iraq for the fiscal years (2023-2024-2025) due to the lack of urgency or necessity to suspend implementation. 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 23/Dhul Hijja/1444 Hijri coinciding with 12/July/2023 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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