

Republic of Iraq
Federal Supreme Court
Ref. 15 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 3/12/2023 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: the Prime Minister/ being in this capacity – his agent the legal counselor Qassim Suhaib Shakoor.

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 guardianship order submitted to this court, through his representative, his list dated 11/30/2023, the legal fee was collected on the same date, and it was registered under the number (15/Federal/State Order/2023), which included his request to issue an urgent state order ((to suspend the implementation of Article (71) of Law No. (13) of 2023 - the federal general budget of the Republic of Iraq). For the fiscal years 2023-2024-2025, the fees, expenses, and attorney's fees against whom a state order is issued are charged, until the lawsuit filed by him before this court by the No. (223/Federal/2023), is resolved, pursuant to which he is required to rule on the unconstitutionality of the article requested to be suspended and to

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reverse the previous decision of the Federal Supreme Court No. (153/Federal/2023) and its appendix - correction, based on the provisions of the two articles. (151 and 152) of the Civil Procedure Law No. (83) of 1969 (amended), and Article (39) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022), according to the reasons stated in the regulations, the summary of which is as follows: ((1) - The Council of Representatives included this legal article despite its absence in the draft law submitted by the government, as Article (62/2nd) of the Constitution allowed the Council of Representatives to make transfers between sections and chapters of the general budget and reduce its total amounts, and it may, when necessary, propose to the Cabinet increase total expenditure amounts, the implementation of what is requested to issue a state order against him has the powers stipulated in the Constitution. The role of the executive authority, specifically the Council of Ministers, is responsible for planning and implementing the general policy of the state, supervising the work of ministries and entities not affiliated with a ministry, and issuing regulations, instructions, and decisions to implement laws based on Article (80) of the Constitution. 2- Article (80) of the Constitution specified the authority of his client to recommend to the Iraqi Council of Representatives the appointment of special grades and did not specify a specific period for this, as their appointment requires a specific period to know their capabilities and capabilities in managing state institutions to choose the most appropriate and fittest. 3- Article (71) of the aforementioned Budget Law included a topic related to public employment, while it is addressed within other laws and is not replaced by the aforementioned Budget Law. 4- The Constitution of the Republic of Iraq for the year 2005 provided for the Council of Representatives, following Article (61), the mechanism for monitoring the government's

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actions in implementing its program, and it does not include placing legal articles in the budget law or any other laws that are within the jurisdiction of the government, and this is contrary to what was stated in Article (47) of the Constitution. 5- The implementation of Article (71) of the aforementioned law, which includes suspending all financial allocations and administrative powers for those assigned to the positions of heads of independent bodies and special grades (Alif, Beh), deputy ministers, and acting advisors, will lead to disrupting the work of public facilities in the country and restricting the government from performing the tasks assigned to them. This is reflected in services provided to citizens and the disruption of their interests. 6- It is no secret to the court that those charged with the agency under investigation manage some regulatory and security agencies, and it is difficult to fill the position, even for a specific period, as this may lead to a breach of the tasks assigned to them, which leads to opening the door to suspicions of corruption, manipulation, and extravagance of public funds. 7- The implementation of the aforementioned article restricts the government's hand from implementing its program, which affects the lives of citizens and the services provided to them).

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the person requesting the issuance of the state order requested, following its regulations dated 11/30/2023, the issuance of an urgent state order, which includes "suspension of Article (71) of Law No. (13) of 2023 - the Federal General Budget." For the Republic of Iraq for the fiscal years 2023-2024-2025, until the lawsuit filed before this court by No. (223/Federal/2023) is resolved, requesting a ruling on

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the unconstitutionality of the article requested to be suspended and a reversal of the previous decision of the Federal Supreme Court No. (153/Federal/). 2023) and its appendix - Correction, based on the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969 (amended), and Article (39) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022), according to the reasons stated. In the regulations mentioned in the preamble to this decision, the Federal Supreme Court finds that the aforementioned article included the government's commitment to end the management of state institutions by proxy no later than (11/30/2023), provided that the concerned departments suspend all financial allocations and administrative powers if they continue after the above-mentioned date, and the Council of Ministers must send those in charge. positions of heads of independent bodies and special grades (Alif and Beh), deputy ministers, and advisors to the Council of Representatives before (30) (30) days from the above date. The Council of Representatives is committed to deciding by voting within (30) days from the date of sending the names, and since the period specified under the above article has ended, the concerned department suspends all administrative powers of those who manage these institutions by undersecretary after 11/30/2023, it leads to the disruption of the work of those departments, because whoever assumes that administration when his administrative powers expire, any person who replaces him will also be governed by that text, meaning he has no administrative powers because he is also his and his administration is by under secretary not incumbently, which requires this court to find a legal solution that obligates the government to implement the text and not disrupt the work of public facilities at the same time following what the work of those departments requires to achieve a higher interest, which is the interest of the people and the

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nation, therefore, the Federal Supreme Court decided to stop the implementation of the phrase (the concerned departments shall suspend all financial allocations and administrative powers if they continue after the above-mentioned date) of Article (71) of Law No. (13) of 2023 - the federal general budget of the Republic of Iraq for the fiscal years 2023-2024. -2025, until the lawsuit he filed before this court is resolved (No. 223/Federal/2023), while the government's commitment remains to implement what is stated in the article regarding ending the undersecretary's work. 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 18/Jamada Al-Oula/1445 Hijri coinciding 3/December/2023 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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