

Republic of Iraq
Federal Supreme Court
Ref. 1 / federal / state order / 2021



Kurdish text

The Federal Supreme Court (F.S.C.) was convened on 25.5.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Monther Ebraheem Husain who are authorized to judge in the name of the people, they made the following decision:

The applicant for the issuance of the state order:

The Prime Minister /in addition to his post, his agent the legal advisor Haider Al-Soffy.

The person who's the state order is against:

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post.

First- The brief of the request:

The applicant for the issuance of the state order the Prime Minister / in addition to his post by his agent the legal advisor Haider Al-Soffy, requested in his draft presented to the F.S.C. No.(1/federal/ state order/ 2021) dated on 9.5.2021, which its legal fee was collected on 10.5.2021 requested to issue a state order that includes (The person who's the state order is against has voted on the Law of Federal General Budget No.(23) for 2021, which include conducting fundamental changes on the Law bile of Federal General Budget

Athraa



approved by the Council of Ministers by its decision No.(223) of 2021, as many of the articles of the Law of Federal General Budget violates the Constitution and represent serious breaches for the principles stipulated in it, and for what it includes of violation for the state general policy, and interfering with the affairs of the executive power, and preach to the principle of separation of powers, violation for the principles of constitutional judiciary in Iraq included in the decisions of your estimated court, implementing the provision of this budget leads to deprive wide range of employees from their salaries, it also contradicts the governmental program approved by the parliament, also, its implementation would arrange financial implications, disburse allocations, and take executive measures that would have major effects that prejudice the interest of the country that cannot be removed or restore the situation to what it was after the decision of your esteemed court to be issued to invalidate these texts. Accordingly, for the aforementioned, as the Law is considered valid from the date of publication in the official Gazette, I request your estimated court to issue a state order to suspend the procedures of who the state order is against regarding the articles listed below following the amended Civil Procedures Law No. (83) of 1969:

1. The statement (Audited by the Parliamentary Finance Committee in terms of the sectoral distribution of projects) is mentioned in the article (2/1st/4/alif) of the law.
2. Paragraph (zin.) of the article (2/1st/4) of the law which included oblige the Ministry of Finance with the limit of the allocations

Athraa



- mentioned in table (beh.) and to re-distribution of those allocations, both operational and capital, and categorized at the level of parts and chapters and the table (beh.) accompanying the Federal General Budget Law.
3. The statement (authorizes the governor to ratify this agreement) is mentioned in Article (2/1st /4/ha.) of the Law.
 4. Paragraph (8) of the article (2/1st) of the Law, included the establishment of a petrodollar fund in the oil-producing governorates, managed by the concerned governor and financed from the increase in the price difference obtained from crude oil.
 5. Paragraph (beh) of the article (12/2nd) of the law that included the disengagement and restructuring of departments and sections in ministries and bodies not affiliated with a ministry that exercise, according to its laws, tasks corresponding to the tasks carried out by the Federal Service Council.
 6. Paragraph (beh) of the article (18/3rd) of the law included imposing a tax with the ratio of (15%) on imported fuel.
 7. The statement (the total amount shall not exceed (500) billion dinars mentioned in paragraph (alif) of the article (50) of the law which includes restricting the authority of the Minister of Finance to fill the shortfall in employee compensation with (500) billion dinars.
 8. Paragraph (Jim) of the article (50) of the law that obliged the Council of Ministers to increase the current prices for the

Athraa



- purchase of wheat, barley, and (Shilib: type of rice) crops from farmers by (50) thousand dinars per ton.
9. Clause (3rd) of the article (56) of the law that obliged extractive oil companies not to includes the expenses for licensing round contracts in the lists for calculating the cost of commercial activity, except for the salaries of employees seconded to work with contracting companies within the licensing rounds.
10. Article (58) that included (obligating the Council of Ministers to send the names of those entrusted with the positions of heads of independent bodies, special grades, deputy ministers, and advisors to the Council of Representatives by a maximum date 30.6.2021).

Second: The decision:

During scrutiny and deliberation by the F.S.C., it found that the requester of the state order the prime minister / in addition to his post requested in the draft presented to this court No. (1/federal / state order/2021) dated 9.5.2021, to issue state order includes ((suspend the procedures of the person who's the state order is against regard articles (2/1st/4/alif), paragraph (zin) of article (2/1st/4), article (2/1st/4/ha.), paragraph (8) of articles (2/1st), paragraph (beh.) of article (12/2nd), paragraph (beh.) of the article (18/3rd), paragraph (alif) of the article (50), paragraph (Jim) of the article (50), and clause (3rd) of the article (56) and article (58) of the Law of Federal General Budget No. (23) for 2021)), for the reasons listed in details

Athraa



in the mentioned draft. The Federal Supreme Court finds that its competence and power to issue state orders based on requests submitted to it or cases brought before it has not been addressed or mentioned in the F.S.C. amended law No. (30) of 2005, nor its Bylaw of court workflow procedures No. (1) of 2005. Thus, the court's authority to issue state orders is subject to provisions referred to in the two articles (151, 152 only) of the amended Civil Procedures Law No.(83) of 1969, to the extent that is commensurate with the nature and specificity of the constitutional case, based on the provisions of the article (19) of the Bylaw of workflow procedures in the court, which stipulates that (the provisions of the Civil Procedures Law No.(83) of 1969 and the Evidence Law No.(107) of 1979 shall be applied in cases where there is no special provision in the F.S.C. Law and this Bylaw), and in terms of article (17) of it, which states that the judgments and decisions issued by the Court are final and do not accept any method of appeal), on the basis of the foregoing, the issuance of a state order by the F.S.C. 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 decisions issued by this court and not being subject to the methods of appeal, that lie in submitting an application in two copies including the facts, evidence and documents, the availability of the urgency, and not to enter into the origin of the right and decide on it. When the request was reviewed by this court, it was proved that there is no urgency that must be present for the issuance of the state order, and that the

Athraa

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issuance of the state order means entering into the origin of the right and deciding on it, especially that after scrutinizing the request of the applicants for the issuance of the state order/ in addition to his post by this court it finds the absence of the character of urgency in it that is required to issue the state order for lacking the absolute necessity required to issue such order, in addition, issuing state order means entering into the origin of the right and deciding it, especially that who requested to issue the state order / in addition to his post challenged the constitutionality of the articles that he requested to suspend its procedures in the Budget Law No.(23) of 2021, it is consider as giving an opinion prematurely about the unconstitutionality of the contested articles of the law before this court by the lawsuit of the plaintiff / in addition to his post No.(35/federal/2021) it fee was collected on 10.5.2021, and that this contradicts the established judicial norms in the constitutional judicial systems of Arab and foreign countries, and with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this field according to the basis of 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 inclinations, whims, abuse and flattery. Therefore, deciding on the request of those requesting the issuance of the state order is obligatory to be dismissed for two reasons, the first is the absence of the character of urgency in it, and the second is that deciding on it means entering

Athraa



into the origin of the right and giving a prior opinion of the unconstitutionality of the articles of the law whose implementation is requested to be suspended, because of challenging its constitutionality before this court by who requesting the issuance of the state order according to the aforementioned detail. For the aforementioned the Federal Supreme Court decided to dismiss the request of those requesting the issuance of the state order of the prime minister / in addition to his post which includes ((suspend the procedures of the person whose the state order is against regard articles (2/1st/4/alif), paragraph (zin) of the article (2/1st/4), article (2/1st /4/ha.), paragraph (8) of articles (2/1st), paragraph (beh.) of article (12/2nd), paragraph (beh.) of the article (18/3rd), paragraph (alif) of the article (50), paragraph (Jim) of the article (50), clause (3rd) of article (56) and article (58) of the Law of Federal General Budget No. (23) for 2021)).

This decision has been issued according to articles (94) of the Constitution of 2005, and article (5/2nd) of the Federal Supreme Court amended law No. (30) for 2005, unanimously, final, and binding on all authorities, issued publicly on (13. Shawal .1442) A.H., (25.5.2021) A.D.

Athraa

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Signature of

The president
*Jasem Mohammad
Abbood*

Signature of

The member
*Ghaleb Amer
Shnain*

Signature of

The member
Haidar Jaber Abed

Signature of

The member
Haider Ali Noory

Signature of

The member
Khalaf Ahmad Rajab

Signature of

The member
Ayoub Abbas Salih

Signature of

The member
*Abdul Rahman
Suleiman Ali*

Signature of

The member
*Diyar Muhammad
Ali*

Signature of

The member
*Monther Ebraheem
Husain*

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