

Republic of Iraq
Federal Supreme Court
Ref. 238 / federal /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/11/2023 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 Applicant of the Request: Dr. Engineer Hayam Al-Yasiri.

The Abstract of the Request

Eng. Hiam Al Yasiri, Minister of Communications, submitted to the Federal Supreme Court its draft dated 20/9/2023, for which the legal fee was collected on the same date and registered in the number (238/Federal/2023) under which it is claimed, (considering its request to challenge the regulation of licensing Internet services (LSP) issued by the decision of the Board of Commissioners in the Media and Communications Commission No. (175/Qaf/2023) on 12/9/2023 for its invalidity and requested the issuance of a state order to suspend its application), based on the provisions of Article (93/III) of the Constitution of the Republic of Iraq for the year 2005, on the basis that it includes violating the provisions of the Constitution in Articles (80 and 83) , from it, the government program and other relevant laws in force, according to the details referred to in the request, the conclusion of which lies: The Authority did not take the opinion of the Ministry or the government before issuing this regulation, considering that the Ministry is the delineator of the policy of the telecommunications sector and the executive arm of the Council of Ministers in the telecommunications and informatics sector concerned with planning and implementing the general policy of the state in accordance with Article (80) of the Constitution, and bears in this regard with the Council of Ministers joint and personal responsibility before the Council of Representatives under Article (83) of the Constitution. Whereas the

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government program approved by the Council of Ministers obligated the Ministry to reduce Internet prices, improve services provided to citizens, introduce modern technologies, formulate policies, and develop plans and programs that guarantee this, which is what was stated in Axis No. (7) and Axis No. (13) of the government program, for example. Limitation, and since the implementation of this regulation will obstruct the Ministry's implementation of its obligations contained in the two aforementioned axes of the government program and the decisions of the Council of Ministers, which include improving Internet service and reducing its prices; This is because the regulation included imposing huge sums of money, represented by the amount of the license, the participation rate, and the amount of the letter of guarantee in exchange for a cheap and limited service with free frequencies, which is Wi-Fi service. This inevitably leads to companies raising the prices of the service to citizens and compressing the number of Internet packages provided to them, which leads to poor... Service: This is what the government and the ministry will bear before the citizen because they are directly responsible for providing these services to him, Whereas the Commission did not coordinate with the Ministry as the policy designer in accordance with Article (110/sixth) of the Constitution when applying the text of Article (17/6th/Waw) of the Federal Budget Law of the Republic of Iraq, which stipulates (the Media and Communications Commission shall license and register all towers of Internet service providers and companies in return for imposing annual fees determined by the Board of Commissioners by regulation) and this does not mean that the Commission's role of regulator is carried out in isolation from the Ministry because of the consequent intersections with the Constitution, laws, contracts in force and the government program, in addition to serious security problems related to the exclusivity of infrastructure. and the sovereignty of border crossings and international access gates that will result from the implementation of this regulation. For the reasons mentioned and the other reasons stated in the regulations, the application was submitted to this court for decision, and after completing its scrutinies, the court reached the following decision:

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the Minister of Communications filed case No. (238/Federal/2023) before this court according to its regulations dated 9/20/2023 and requested consideration of her request to appeal the regulations for licensing Internet services (LSP) issued according to the decision of the Board of Commissioners. In the Media and Communications Commission, No. (2023/Qaf/175) on September 12, 2023, due to its lack of validity, it requested the issuance of a state order to suspend its work until the aforementioned lawsuit is resolved, for the reasons referred to in detail in its regulations. The Federal Supreme Court finds that what was presented by the Minister of Telecommunications does not rise to the level of the case and its formalities stipulated in the amended Law of Civil Procedure No. (83) of 1969, as the request came under the title of a state order, where it requested the issuance of a (state order) due to the lack of validity of the Internet Services Licensing Regulations (LSP) attached to the order request. The Federal Supreme Court finds that issuing an urgent state order based on an independent request or implicitly in the constitutional lawsuits brought before it has not been addressed, it was also not addressed in the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, nor the Bylaw of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette, issue (4679) on 6/13/ 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, to the extent that is proportional to the nature and specificity of the constitutional case, based on the provisions of Article (39) of the court's internal regulations 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 in accordance with Article (36) thereof, which stipulates that (the court's decisions are final and binding for All authorities and persons shall not accept any form of appeal...), on the basis of the above, the issuance of an urgent state order by the Federal Supreme Court is admissible only with the controls and conditions that must be met for issuing it referred to in the Civil Procedure Law, due to the finality of the decisions issued

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by this court and not being subject to methods of appeal, which consists of submitting a request in two copies containing the facts, evidence and documents, the availability of the status of urgency, and not entering into the origin of the right and deciding on it, and since examining the request for issuance The state order from this court has proven that it does not have the quality of urgency, nor the state of necessity that requires its issuance, which requires rejecting the request. Given the above, the Federal Supreme Court decided to reject the request of the Minister of Communications, Hiyam Al-Yasiri. 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 in the session dated 14/Jamada Al-Oula/1445 Hijri coinciding with 29/November/2023 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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