

Republic of Iraq
Federal Supreme Court
Ref. 2 / federal/ state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 5/2/2024 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 barrister Mohammed Ismaeel Khaleel.

Whom Requested to issue the state order against: Mayor of Baghdad/ being in this capacity.

The Claim

The applicant for the issuance of the state order submitted to the Federal Supreme Court its list dated 30/1/2024, for which the legal fee was collected on the same date and registered in the number (2/federal/state order/2024) under which an urgent state order is required, including: (Stopping all procedures and decisions issued by the Baghdad Provincial Council after the end of the electoral cycle specified by law and in violation of the caretaker government and until a lawsuit is filed to do so) based on Article (27) of the Constitution of the Republic of Iraq for the year 2005, and for the reasons detailed in The list whose conclusion lies in the following: ((The province of Baghdad has already announced a number of government contracts within a short period of time by tendering and direct invitation to private companies and taking many decisions and procedures, all of which were after the end of the term of

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its electoral cycle, as stipulated in Article (30) of the Law of Governorates Not Organized in Region No. (21) of 2008, as amended: (The governor, his deputies and the heads of administrative units shall continue to conduct daily affairs after the end of the electoral cycle of the councils and until the election of their successors by new councils), whereas the Prime Minister, according to letter No. (M/S/592) dated 28/12/2023, directed the provincial councils to conduct daily affairs until the formation of the new provincial councils, electing the administrations and taking over their duties duly and referred to the interpretative decision of the court No. (121/Federal/2022), which explains the caretaker government, but the Governorate of Baghdad did not apply the law, did not take the directives of the Council of Ministers into account, and proceeded to commit many legal violations, including:

1. Issuing a letter addressed to the Ministry of Planning No. (Q4: 1547 on 10/1/2024) in which it aims to request an amount of (27,920,000,000) twenty-seven billion nine hundred and twenty million Iraqi dinars from petrodollar allocations for 2023 to the operating budget of Baghdad Governorate, as petrodollar allocations are allocated to the investment budget only.
2. Referring the direct invitation No. (5) for the year 2023 to (Najwan) General Contracting Company for an amount of (59,983,125,000) fifty-nine billion nine hundred eighty-three million one hundred and twenty-five Iraqi dinars, whereas this invitation was announced and referred on 23/1/2024 in violation of the law, as well as its violation of the instructions for the implementation of contracts No. (2) of 2014, as article (4/third) of it stipulates (contracting bodies shall abide by the controls issued by the Ministry of Planning regarding the procedures for announcing public tenders, re-announcing tenders, and extending tenders for all contracting methods) stipulated in these instructions, as well as violating the text of article 3/5th of the same law,

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as well as violating the Federal Budget Law No. (13) of 2023, where Article (2/4/e) of it stipulates that: (Governors and heads of funds not associated with a ministry mentioned in this law are vested with the authority to contract directly up to (6,000,000,000) six billion dinars per project, as an exception to the instructions for implementing government contracts No. (2) of 2014 and the attached controls). 3. Announcement of Tender No. (1) of 2024 dated 14/1/2024, for equipping different wheels for Baghdad Governorate at an estimated cost of (5,317,016,000) five billion three hundred seventeen million sixteen thousand Iraqi dinars. 4. Announcement of Tender No. (2) for the year 2024 dated 15/1/2024 for the construction of the Arkoub Nabi Sheet water complex at an estimated cost of (3,747,945,000) three billion seven hundred forty-seven million nine hundred and forty-five thousand Iraqi dinars. 5. Referring tender numbered 36 for the year 2023 to Al-Qased Company for an amount of (7,775,000,000) seven billion seven hundred and seventy-five million Iraqi dinars on 17/1/2024. 6. Referring tender numbered 42 for the year 2023 to Ard Al-Wahad Company for an amount of (2,095,341,000) two billion, ninety-five million, three hundred and forty-one thousand dinars. 7. Referring tender numbered 43 for the year 2023 to Shams Al-Hammam + Bahour Al-Hikma Company for an amount of (1,048,823,200) one billion forty-eight million eight hundred twenty-three thousand two hundred Iraqi dinars. 8. Referring Tender No. (39) for the year 2023 to Shams Al-Hammam Company + Baghdad Energy + Al-Rayhain Fragrant with an amount of (1,550,720,000) one billion, five hundred and fifty-five million seven hundred and twenty thousand Iraqi dinars. 9. Announcement of Tender No. (3) for the year 2024 for an amount of (5,488,792,500) Five Billion, Four Hundred and Eighty-Eight Million Seven Hundred and Ninety-Two Thousand Five Hundred Iraqi Dinars for the Replacement of

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Central Cooling System Towers at Baghdad Airport. after reviewing the aforementioned application and completing the scrutinies, the Court issued the following decision:

The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, requested, according to its regulations dated 30/1/2024, to issue an urgent state order, including: (suspending all procedures and decisions issued by the Baghdad Provincial Council after the end of the electoral cycle specified by law and in violation of the daily caretaker government and until the lawsuit is filed to do so), for the reasons detailed in it, and the Federal Supreme Court finds that the issuance of an urgent state order based on an independent request or implicitly in the constitutional lawsuits filed It was not addressed, nor was it 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, 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 privacy 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). Which stipulates that (the court's decisions are final and binding on all authorities and persons and do not accept appeal by any means of appeal...), on the basis of the

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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 their non-subjection to the methods of appeal, which are to submit an application in two copies containing facts, grounds and documents, and the availability of urgency, and not to enter into the original right and decide on it, and since the examination of the request for the issuance of the state order from this court has proven that it is not urgent or necessary. which require its issuance, also deciding on it means entering the origin of the right and giving a prior opinion on its subject, In addition to the foregoing, the litigation of the applicant for the issuance of the state order is not achieved in the face of the person required to issue the state order against him / being in this capacity, because the request for the state order of suspension focuses on the procedures issued by the Baghdad Provincial Council and the list of the state order went to the governor of Baghdad / being in this capacity and not the head of the Baghdad Provincial Council / being in this capacity, and the interest of the applicant for the issuance of the state order is also not fulfilled, and since the lawsuit demanding the issuance of the state order requires what is required in the original lawsuit that is filed to claim the origin of the right, including litigation and interest, and because the litigation of the applicant for the issuance of the state order is not directed against the person against whom the order is requested, and his interest is also not achieved when it is filed, which requires the rejection of the request, on the basis of the foregoing, the decision on the request for the issuance of a state order must be rejected for two reasons: First: it is the absence of urgency and the state of necessity that requires its issuance, and deciding on it means entering the origin of the right and giving a prior opinion on

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its subject. The second lies in the lack of the necessary conditions in the request for the issuance of the state order that must be met when filing the original lawsuit, including the litigation of the applicant for the issuance of the order against the person against whom the state order is requested, and his interest, in accordance with the aforementioned detail, and for the foregoing, the Federal Supreme Court decided to reject the application submitted by lawyer Mohamed Ismail Khalil, due to the lack of the necessary conditions for its issuance. The decision has been issued unanimously, according to the provisions of the article (94) of the Republic of Iraq Constitution 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 24/Rajab/1445 Hijri coinciding 5/February/2024 AD.

Judge

Jassim Mohammed Abbood
President of the Federal Supreme Court

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