

Republic of Iraq
Federal Supreme Court
Ref. 36 / federal/state order /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 10/1/2023 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: Mohammed Jassim Mohammed Ali/ his agent the barrister Dr. Uda Yousef Salman.

Who Requested to Issue the State Order Against:

The Prime Minister/ being in this capacity.

First: Abstract of the Request

The requestor of issuance of the state order through his representative from this court with his regulation dated 18/12/2022, for which the legal fee was collected on the same date and registered in the number (36/federal/state order/2022), the issuance of an urgent state order that includes: ((Suspension of the Council of Ministers Resolution No. (297) of 2022 adopted in the ordinary session dated 15/11/2022 and issued on 16/11/2022, the first paragraph of which stipulates granting governors, the mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations the authority to direct contracting up to five billion dinars, as an exception to Article (3) of the instructions for the implementation of government contracts No. (2) of 2014, while the second paragraph of it explicitly stipulated that the

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authorization includes unreferred works, which fall within the Investment budget table)) This is until the resolution of the lawsuit filed by him No. (267/Federal/2022) to challenge the unconstitutionality of the aforementioned decision, and that the reasons for his request to issue the state order lie in the following: First: The decision in question of the constitutional challenge freed the hands of the governors, the mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Acts to contract and exchange without any controls, standards or legal restrictions, as he excluded the application of instructions for the implementation of government contracts, which represent the law that gives legal protection to public funds, As a result, public funds lose their legal protection, and the governors, the mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Acts are free to dispose of public funds. Second: Condition of urgency: Whereas what is stated in paragraph (1st) is an imminent and imminent danger to public money and will inevitably turn into serious tangible and tangible damage when they contract and exchange without legal controls, because the contracts that will be concluded and the financial disbursements that are carried out unconstitutionally and illegally (and in large sums will result in damage that cannot be repaired or removed, which is very large), as the contractor will adhere to the principle of pacta sunt servanda and the principle of good faith, in the event of a request for rescission. The contract, and this will lead to the loss of the state huge funds in vain and interest. Third: Confirming the availability of the condition of necessity and urgency: The decision under appeal requires dealing and disposing of an amount estimated at (11) eleven trillion Iraqi dinars allocated within Article (3/2nd) and paragraphs (4, 7, 11, 20) of Schedule (Beh) within the Emergency Support Law for Food Security and Development

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No. (2) of 2022, contrary to the Constitution, laws and instructions in force, as well as paragraph (second) of the decision in question, which included the numbers and assignments of indirect projects listed in the federal budget tables in force and referred to them with the same Authorization in the text of paragraph (1/1st) thereof, as large obligations will be entered into as a result of the implementation of the terms of the decision in question, and therefore may entail significant financial penalties upon termination of the contract if the court proves unconstitutional. Most of the governors have already submitted their projects within the financial allocations provided to their governorates, to the Ministry of Planning for the purpose of approval, and that most of these projects have been organized so that they are less than (5) five billion dinars, and that the projects that will be contracted and disbursed outside the controls, mechanisms and legal procedures represent a percentage ranging from 80% to 90% for many governorates. Fourth: The decision in question refers in paragraph (second) thereof to the authorization to refer additional projects other than what is stated in the Emergency Support Law for Food Security, namely indirect investment projects listed in the federal budget tables, and to refer them in the same unconstitutional manner referred to above. Fifth: The decision in question was issued at the request of the governors, despite the Prime Minister's own assertion on many occasions during his weekly press briefing that there are failures among many of them and that he is in the process of evaluating performance, as logic assumes obliging those who have not yet proven their good performance to abide by the law and not to suspend the provisions of the law at his request, especially in light of the absence of provincial councils as a supervisory body over their work. Sixth: Attach to the court the plan of projects and the amounts allocated to them, which will be contracted and disbursed without

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adhering to the legal controls, but in accordance with the unilateral and unique will of the governors, the mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Acts, Taking into account that these data relate to four provinces (Karbala, which is certified, and Babil, Diwaniyah and Najaf province in the process of approval) are examples to be inferred by the court to determine the extent of the damage that will be caused to public funds if the contract and disbursement are carried out away from the controls, standards and principles set by the instructions for the implementation of government contracts, while stressing that this derogation from the provisions of the laws will remove the governors, the mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Acts. Therefore, based on the provisions of Articles 151 and 152 of the Civil Procedure Law No. 83 of 1969, as amended, the aforementioned application was submitted.

Second : the decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the applicant for issuing the state order, due to filing the lawsuit No. (267/Federal/2022) before the Federal Supreme Court, requested in its regulation dated 18/12/2022, the issuance of an urgent state order, which includes: (Suspension of the work of the Council of Ministers Resolution No. (297) of 2022 adopted in the regular session of the Council of Ministers on (15/11/2022), the first paragraph of which stipulated granting governors, the Mayor of Baghdad and the head of the Fund for the Reconstruction of Areas Affected by Terrorist Operations the authority to direct contracting Up to five billion dinars as an exception to Article (3) of the instructions for the implementation of

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government contracts No. (2) for the year 2014, while the second paragraph of it stipulated that the authorization includes the unrefereed works, which fall within the investment budget tables), until the resolution of the subject matter of the aforementioned lawsuit under which it is claimed to be ruled unconstitutional, on the basis of violating the provisions of the Constitution of the Republic of Iraq mentioned above, for the reasons detailed in the petition, and 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 Rules of Procedure 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 specificity of the constitutional case, 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 stipulated that (court 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 foregoing, the issuance of a 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, because of the finality of the decisions issued by this court and not being subject to the methods of appeal, which consist in submitting an application in two copies

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containing the facts, grounds and documents, and the availability of urgency, and not to enter into the origin of the right and decide on it, and since the scrutiny of the request for issuing a state order by this court has proven that there is no urgency in it or a case The absolute necessity that necessitates its issuance, in addition to the foregoing, responding to its content means entering the origin of the right and giving a prior opinion of the constitutional lawsuit, and that this contradicts with the established judicial customs in the constitutional districts of Arab and foreign countries and with what the Iraqi judiciary has settled on in both its constitutional and ordinary parts and what was included in the well-established judicial applications in this area based on 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 tendencies, whims, arbitrariness and flattery, so there is no blame for the blame for what was really issued of the saying or thus, deciding on the applicant's request to issue a state order must be rejected for two reasons: the first: it is the absence of urgency, and the second: it lies in the fact that deciding on it means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court in number (267/federal/2022), according to the detail referred to above, and according to the above, the Federal Supreme Court decided to reject the request. 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. It has been edited on the session dated 17/Jamada Al-Akhira/1444 Hijri coinciding 10/January/2023 AD.

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Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court