

Republic of Iraq
Federal Supreme Court
Ref. 293 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 26/12/2023 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: Saud Saadoon Ali Al-Saidi (member of the ICR)/ his agent, the barrister Mahdi Abdul Ridha Jassim.

Who Requested to Issue the State Order Against:

- 1- Speaker of the ICR/ being in this capacity.
- 2- President of State Council/ being in this capacity.
- 3- President of the Republic/ being in this capacity.

The Abstract of the Request

The applicant for the issuance of the state order submitted to the Federal Supreme Court a statement of claim dated 11/20/2023, for which the legal fee was collected on the same date and registered under the number (293/Federal/2023), pursuant to which it is requested to rule on the unconstitutionality of Articles (1/Third) and (2/). First), (5/First and Second), (9), (27), and (7/Tenth) of State Council Law No. (65) of 1979 as amended, and it also requested the issuance of an urgent state order that includes (suspension of the implementation of the articles under challenge) Until the aforementioned lawsuit is resolved, for the reasons mentioned in detail in the lawsuit petition, including the repeated use of the phrase (Administrative Judicial Court) and (Employees Judicial Court) in many texts of the law without including those texts or the practical reality of forming administrative judiciary courts, and a court employee Judiciary: Involving any of the judges working in the Supreme Judicial Council as members of these courts, without stipulating that these courts formed in the State Council are linked to the Supreme Judicial Council from technical or administrative aspects, and since the aforementioned draft law was enacted in contravention of the Constitution and the principles drawn up by the Federal Supreme Court, which require draft laws to be submitted in a manner that takes into account the principle of separation of powers stipulated in

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Article (47) of the Constitution; Because the authority responsible for approving the creation of judicial courts, including the administrative judiciary courts and the employees' judiciary court, is represented exclusively by the Supreme Judicial Council, which was not adhered to when preparing the draft law and voting on it by the Council of Representatives, especially with regard to the articles - the subject of the appeal - it also violates Article (87) of the Constitution, which stipulates the independence of the judiciary, and the person required to issue the state order against him (the third) has interpreted the text of Article (101) of the Constitution, which permits the establishment of a state council specialized in judicial functions by law. The administrative judiciary is wrong, as performing the functions of the administrative judiciary does not necessarily mean that the State Council must be granted the authority to form administrative courts, as there is no constitutional or legal impediment to the State Council exercising the functions of the administrative judiciary in accordance with the Constitution, however, not by using the designation (court), but rather by using the designation (body) or (department), since the creation of the courts is an exclusive authority for the head of the Supreme Judicial Council to prevent the nature of the work of the State Council and its formations from being mixed with the nature of the courts formed in the Supreme Judicial Council and in accordance with the Judicial Organization Law or The Supreme Judicial Council Law, in addition to the absence of a constitutional and legal basis that allows the Council of Representatives to approve equality between the legal status of the advisor and the assistant advisor in the State Council, with the legal status of the judge in the Supreme Judicial Council and the formations of the judicial authority, due to the lack of application of any of the conditions specified in Articles (7 and 17) of the Judicial Institute Law No. (33) of 1976, as amended. The court examined what was stated in the aforementioned request and after completing its scrutiny, the court reached the following decision:

The Decision

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the person requesting the issuance of the state order, due to his filing of the case No. (293/Federal/2023) before this court, requested, in accordance with its

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regulations dated 11/20/2023, the issuance of an urgent state order, which includes: stopping the implementation of Articles (1. /Third), (2/First), (5/First and Second), (9), (27) and (7/Tenth) of State Council Law No. (65) of 1979 as amended, until the aforementioned lawsuit is resolved, for the reasons referred to in detail in the lawsuit, 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, nor has it been addressed in Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021. Nor are the internal regulations 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. And to the extent that is commensurate with the nature and specificity of the constitutional lawsuit, based on the provisions of Article (39) of the internal regulations 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 that replaces it) and in light of Article (36) thereof which stipulates that (the court's decisions are final). It is binding on all authorities and persons and does not accept appeal by any means of appeal...), and on the basis of the above, 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 Code; Due to the finality of the decisions issued by this court, and not being subject to appeals, 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 the examination of the request to issue the guardianship order from this court has proven that it does not have the status of urgency nor the state of necessity that requires its issuance, in addition to the above. Responding to its content means entering into the origin of the right, and giving a prior opinion on the constitutional lawsuit filed before this court, No. (293/Federal/2023), pursuant to which it is requested to rule the unconstitutionality of Articles (1/Third), (2/First), (5/First and Second), and (9), (27) and (7/tenth) of State Council Law No. (65) of 1979 as amended, for the reasons referred to in

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detail in her petition, and that this contradicts the judicial norms established in the constitutional judiciaries of Arab and foreign countries and with what the judiciary has settled on. The Iraqi Constitution, both its constitutional and ordinary parts, and what is included in the established judicial applications in this field based on the provisions of the Constitution and the laws in force, based on realizing rights and achieving justice and fairness, away from inclinations, whims, arbitrariness, and flattery, the blamer is not to be blamed for what was truly issued in terms of words or deeds. Thus, deciding on the request of the person requesting the issuance of a guardianship order must be rejected for two reasons: The first: Is the absence of the quality of urgency in it and the state of necessity that requires it. Issuing it, and second: deciding on it means entering into the origin of the right and giving a prior opinion on the lawsuit being filed before this court, No. (293/Federal/2023), in accordance with the details referred to above, when the Federal Supreme Court decided to reject the request submitted by Saud Saadoun Ali Al-Saadi (Member of the Iraqi Parliament). 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 12/Jamada Al-Akhira/1445 Hijri coinciding with 26/December/2023 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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