

Republic of Iraq
Federal Supreme Court
Ref. 11 / federal / state order / 2022



Kurdish text

The Federal Supreme Court (F.S.C.) was convened on 14.3.2022 headed by the Judge Jasem Mohammad Abbood and the membership of the judges Sameer Abbas Mohammed, Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, and Diyar Muhammad Ali whom are authorized to judge in the name of the people, they made the following decision:

The applicants for the issuance of the state order:

Saad Hamid Kambash - his attorneys are Muhammad Majid Al-Saadi and Mary Hussein Reda.

The state order is against:

Prime Minister / Addition to his post.

The brief of the request:

Saad Hamid Kambash requested, by his draft dated 10/3/2022, for which the legal fee was collected on the same date and recorded in the number (11/ federal/ state order/ 2022) by his two agents, to issue an urgent state order, which includes: ((stop the implementation of the Diwani order No. (450) in No. (qaf.2/5/50/42/982) on 6/3/2022, which stipulates (Based on the requirements of the public interest, and the approval of the Prime Minister, based on the powers granted to his sovereignty under the provisions of Article (78) of the Constitution of Iraq for the year 2005 it was decided the following: 1- Ending the assignment of Mr. Saad Hamid Kambash from the tasks of running the

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affairs of the Sunni Endowment Office as an agency and returning him to his previous post as deputy head of the Office for Religious and Cultural Affairs as an agency in the Sunni Endowment Office. 2. Assigning Mr. (Abed AlKhaleq Medhat Malik) with the duties of the position of the head of the Sunni Endowment Office as an agency), until the issue of the lawsuit filed by him before this court is resolved in the number (50 / Federal /2022) in which he requested (obligating the issuance of the state order against (the defendant / in addition to his post) to cancel what was stated in the secret letter number (3026 / 2290037) on 3/3/2022 and the Diwani order numbered (450) numbered (982) on 6/3/2022, for the reasons The summary of which lies in the following: (The defendant had previously issued the letter numbered (Internal Memorandum - 3026/ 2290037) on 3/3/2022, including in paragraph (1) of it (the termination of the assignment of (Saad Hamid Kambash) from the presidency of the Sunni Endowment Diwan), as included in paragraph (2) of it, assigning (Abdul-Khaleq Medhat Malik) the duties of the position of head of the Sunni Endowment Office), and based on the aforementioned internal memorandum, the Diwani Order No. 450, No. (982) on 6/3/2022, was issued. in view of the violation of the letter and the aforementioned Diwani order with the law, and the right of his client to continue as the head the Sunni Endowment Office, so he took the initiative to appeal it for the following reasons: (First: The Council of Representatives approved in its 46th session on 3/31/2021 dissolving itself based on the provisions of Article (64) of the constitution, as of 7.10.2021, and therefore the Council of Ministers

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in this case is considered resigned and continues to manage daily affairs, in other words, the government turns as of 10/07/2021 into a caretaker government.

Second - The constitutional and legal concept of the caretaker government, and by conducting daily business, it is intended to take measures and decisions that are not subject to postponement, which would lead to the continuation of the work of state institutions, and the following results from this:

1. It is not permissible to propose laws mentioned in Article (60) of the Constitution and Article (80/second) of it.

2. It is not permissible to make loans or recommend to the Council of Representatives to approve the appointment of agents, ambassadors and holders of special ranks, and it is not permissible to exempt from them or restructure ministries in accordance with what is stated in Article (80/fifth) of the Constitution of the Republic of Iraq and the bylaw of the Council of Ministers Article (42/2nd) from it.

3. It is not permissible to negotiate and sign international treaties and agreements, or for whomever he authorizes in accordance with Article (80/Sixth).

4. Not to enter into legal or contractual obligations or an international agreement, not to transfer the budget and not to cancel or modify the legal positions of the state.

5. Not delegating or granting powers or creating administrative or other formations.

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6. The Prime Minister's authority stops the anti-disposal and disposal of any decision or order, so the violation is considered an act in violation of the provisions of the law, especially since the alternative is a person who has obstacles to assuming a position of this importance, being one of them in accordance with Article (Fourth) of the Anti-Terrorism Law No. (15) for the year 2005, as well as his brothers are affiliated with ISIS, and therefore there is a fear of converting this institution into an entity that invests in supporting terrorism, ISIS and terrorist organizations.

7. Forensic evidence confirms the existence of a criminal record for the alternative candidate, and the purpose of his appointment under the caretaker government confirms the existence of pressure on the Prime Minister.

8. There is no legal violation or legal impediment to the applicant continuing to work in the administration, as it was proven during his tenure of office that his administration was sound and there is no administrative investigation against him that proves that he committed any act, but on the contrary, because he obtained many doctorate degrees and certificates Academic and other scientific in various disciplines.

9. The alternative did not work in any position or post in the Sunni Endowment, unlike the request for the issuance of the state order in which he was included.

10. The letter under appeal lacks the required formality, and also lacks confidentiality, as the claimant of the state order learned of it after

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its publication in the media. Therefore, and based on the provisions of Articles (151 and 152) of the Pleadings Law No. (83) of 1969, as amended, the request was submitted to issue a state order expedited according to the aforementioned details.

The decision:

Upon examination and deliberation from the Federal Supreme Court, it was found that the applicant for the issuance of the state order, requested by its regulations dated 10/3/2022, the issuance of an urgent state order that includes: (suspend the implementation of the Diwani order No.(450) (qaf/2/5/50/42/982) on 6/3/2022, which stipulated (based on the requirements of the public interest, the approval of the Prime Minister, and based on the powers granted to his sovereignty under the provisions of Article (78) of the Iraqi Constitution of 2005, the following was decided: 1. Termination of the assignment of Mr. Saad Hamid Kambash) is one of the tasks of running the affairs of the Sunni Endowment Office as an agency and returning him to his previous post as deputy head of the Office for Religious and Cultural Affairs as an agency in the Sunni Endowment Office. filed by him before this court in No. (50/Federal/2022), according to which he requested to oblige the requested person to issue the state order against him (the defendant, in addition to his post) to cancel what was stated in the secret book No. (3026/2290037) on 3/3/2022 and the Diwani order numbered (450) in the number (982) on 6/3/2022. The Federal Supreme Court finds that the issuance of an urgent state order based on an independent or implicit request in the constitutional cases brought before it has not been addressed or dealt with in the Federal Supreme Court Law No. (30) of 2005 as amended, nor the bylaw in the Federal

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Supreme Court No. (1) for the year 2005 and thus it is subject to the provisions referred to in Articles (151 and 152) of the Civil Procedures Law No. (83) of 1969, as amended, and to the extent that is commensurate with the nature and privacy of the constitutional case, based on the provisions of Article (19) of the bylaw of the Federal Supreme court, which stipulated that (the provisions of the Civil Procedures Law No. (83) of 1969 and the Evidence Law No. 107 of 1979 shall be applied in matters not provided for in a special provision in the Federal Supreme Court Law and in this bylaw) and in the meaning of Article (17) thereof, which It stipulated (the judgments and decisions issued by the court are final and do not accept any method of appeal) and on the basis of the foregoing, the issuance of a state order by the Federal Supreme Court It is governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Code for the finality of the decisions issued by this court and not being subject to the methods of appeal that lie in submitting a request in two copies including facts, evidence and documents, and the availability of the capacity of urgency, and not entering into the origin of the right and deciding on it, and since the audit of the issuance request The state order by this court has proven the lack of urgency in it, in addition to the foregoing, responding to its content means entering into the origin of the right and giving a prior opinion in the request of the applicant for the issuance of the state order to compel the state order to be issued against him (the defendant / in addition to his post) to cancel what was stated In the secret letter No. (3026/2290037) on 3/3/2022 and the Diwani Order No. (450) in No. (982) on 6/3/2022 on the basis of the lawsuit filed in this regard before this court in No. (50/Federal/2022) and that this contradicts with the fixed judicial norms in the constitutional districts of Arab and foreign countries, and with what the

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Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this field based on the provisions of the Constitution And the laws in force, which are based on the realization of truth and the achievement of justice and fairness away from tendencies, whims, abuse and flattery, so there is no blame for the blamer for what he said or did. It means entering into the origin of the right and giving a prior opinion. As for the foregoing, the Federal Supreme Court decided to reject the request, and the decision was issued in agreement, conclusive and binding on all authorities, based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 and Article (5/Second) of the Federal Supreme Court Law No. (30) for the year 2005 amended by Law No. (25) of 2021 It was issued in the session dated 10/Shab'ban/1443 AH corresponding to 3/14/2022 AD.

Signature of
The president

Jasem Mohammad Abboud

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