

Republic of Iraq
Federal Supreme Court
Ref. 14/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 18/8/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Ghaleb Amir Shunain, Hayder Jaber Abid, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali , Khalid Taha Ahmed, and Munther Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Requestor of issuing the State Order:

Rakan Saeed Ali- Amember of the Kirkuk Provincial Council,
is the oldest - His agent the barrister Ghassan Dawood Rashid.

Whom requested to issue the State Order against:

Chairman of the Kirkuk Provincial Council / being in this capacity.

The request:

The applicant for the issuance of the state order, through the mediation of his agent submitted to this court his regulation dated 13/8/2024, and after completing the legal fee for it on the same date, was registered in the number (14/federal/state order/2024), according to which it was requested issuing an urgent state order stipulating the following: ((Suspension of the implementation of the procedures of the session held by some members of the Kirkuk Governorate on 10/8/2024, and the results of the appointment of the Chairman of the Provincial Council and the Governor of Kirkuk, until the lawsuit filed before this court is resolved No. 215/Federal/2024 - according to which the ruling is requested to annul the session and its results)), this is for the reasons stated in the regulations, the conclusion of which lies in the fact that the session held on 10/8/2024 at Al-Rasheed Hotel in Baghdad Governorate and outside the provincial council building on Saturday which is an

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official holiday, the legal formality necessary for the convening was not fulfilled, as it was called by the administrative and technical assistant to the governor (Ali Hammadi), who does not have any legal capacity and is not a member of the provincial council and there is no legal text authorizes him to take such action, and the older member has not been formally and written informed of its date and venue, the session was conducted without the presence of the older member of the Council and without the presence of the rest of the members and in the absence of most of the large winning blocs Arabic, Turkmen and Kurdish where it was held outside the province of Kirkuk without an excuse, and thus the session held violated the formality stipulated in Article (7) of the Law of Governorates Not Incorporated into a Region No. (21) for the amended year 2008, which included that the oldest member is the one who manages the session specified for the election of the chairman of the council and his deputy, and then the election of the governor, and this happens by informing the winning members of the provincial council to attend the place and time specified for the session to elect the chairman and deputy chairman of the council and the subsequent election of the governor on a date to be determined in advance by the Speaker of the Senior Council, and that this represents a violation of the principle of power-sharing with fair representation of all components in Kirkuk, and a violation of the principle of peaceful rotation of power stipulated in Article (6) of the Constitution, this also constitutes a violation of the provisions of Article (13/4th) of Law No. (4) of 2023, the third amendment to the Law on Elections of the Council of Representatives, Governorate Councils and Districts No. (12) of 2018, which stipulates that (power is shared with fair representation to ensure the participation of the components of the province regardless of the results of the elections), especially since the province of Kirkuk it has a special status

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confirmed by the court in its decision No. (213/Federal/State Order/2023). After reviewing the application and conducting its 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, due to his filing of the lawsuit No. (215/Federal/2024) before this court, requested according to his draft dated 13/8/2023, to issue an urgent state order that includes: ((Suspension of the implementation of the procedures of the session held by some members of the Kirkuk Provincial Council on 10/8/2024, and the consequences of appointing the head of the provincial council and the governor of Kirkuk, until the lawsuit filed before this court No. 215/Federal/2024 – requesting the ruling to annul the session and its results) for the reasons detailed in the regulation, the Federal Supreme Court finds that the issuance of a state order is constructive on an independent or implicit request in constitutional cases filed before it that has not been addressed, nor has it been processed 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, 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 commensurate with the nature and specificity of the constitutional case, based on the provisions of Article 39 of the aforementioned Rules of Procedure of the Federal Supreme Court, which stipulated that ((The court may consider in 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

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replacing it)), and in accordance with Article (36) thereof, which stipulates that (The decisions of the court are final and binding on all authorities and persons and are not subject to appeal...) on the basis of the 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 not subject to the methods of appeal, which consist in submitting an application in two copies containing facts, supports and documents, and the availability of urgency, and not to enter into the origin of the right and decide on it, and whereas the scrutiny of the request for the issuance of the state order from this court has proven the lack of urgency or the state of necessity that requires its issuance, and responding to its content means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court No. (215/Federal/2024), this contradicts the established judicial norms in the constitutional districts of Arabic and foreign countries, and with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this regard, in accordance with the provisions of the Constitution and the laws in force, which are based on the realization of the right and the achievement of justice and fairness, away from inclinations, whims, arbitrariness and flattery, there is no blame for what has been really said or done thus, the decision on the applicant's request for the issuance of the state order must be rejected for two reasons: The first: is the lack of urgency in it, and the second: 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 the number (215/Federal/2024), according to the aforementioned detail, and for the foregoing, the Federal Supreme Court

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decided to reject the request, and the decision has been issued unanimously, final and binding based on the provisions of Article (94) of the Constitution of the Republic of Iraq of 2005 and Article (5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021 and it has been edited in the session dated 13/Safar/1446 A.H. corresponding to 18/8/2024 AD.

Judge
Jassim Mohammad Abood
President of the Federal Supreme Court

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