

Republic of Iraq
Federal Supreme Court
Ref. 152/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 9/6/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali , Khaled Taha Ahmed, Munther Ibrahim Husain, who are authorized in the name of the people to judge and they made the following decision:

The Applicant for the issuance of the state order: Briar Rashid Sharif / Member of the Council of Representatives - His agents the barristers Motamed Nima Abdul Mohsen and Diaa Saleh Alwan.

Who is required is to issue the state order against him: the Speaker of the Kurdistan Regional Parliament Iraq / being in this capacity.

Abstract of the request:

The applicant for the issuance of the state order submitted to this court through the mediation of his agents, his list dated 26/5/2024, for which the legal fee was collected on the same date, and registered in the number ((152/Federal/2024 - according to which he requested a ruling on the unconstitutionality of articles (thirteenth / fourth) and (sixteenth / first and second) of Law No. (14) of 2008 Law of the Shura Council of the Kurdistan Region – Iraq, and the ruling on the unconstitutionality of Law No. (17) of 2022 Law of the First Amendment to the Law of the Shura Council of the Kurdistan Region Iraq No. (14) of 2008)) and asked this court to issue an urgent state order to suspend the work of the first amendment law of the Regional Shura Council Law No. (17) of 2022, until the case is resolved pursuant to the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, based on the provisions of Article (39) of the Court's Rules of Procedure), in order to include the law and its amendment clear

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constitutional violations, as article (13th) of Law No. (14) of 2008 stipulates that (the Administrative Court shall have the following competencies: Fourth: Nationality Cases), and this jurisdiction falls within the exclusive competences and powers of the federal authorities (legislative, implementation and judiciary), based on the Constitution of the Republic of Iraq of 2005 in Article (110/5th) thereof, which stipulates: (The federal authorities shall have the following exclusive competencies: Fifth: Regulating matters of nationality, naturalization, residence and the right to political asylum), and therefore the first defendant has violated the lofty constitutional rules and violated the principles contained therein, as stipulated in Article (16th) of Law No. (14) of 2008: ((The Court of Administrative Justice shall not have jurisdiction to hear appeals relating to the following: First: Acts of Sovereignty the powers of the President of the Region stipulated in Article 10th of the Regional Presidency Law No. 1 of 2005 shall be considered acts of sovereignty)), this immunity for the powers of the President of the Region is a clear violation of the text of article (100) of the Constitution, which stipulates (It is forbidden to stipulate in the laws that any action or administrative decision is immune from appeal), as the Federal Council of Representatives enacted Law No. (17) of 2005, as amended by Law No. (3) of 2015, the First Amendment Law to the Law on the Repeal of Legal Texts that Prevent Courts from Hearing Cases, and Article (1) of it stipulates: ((Legal texts shall be repealed wherever they appear in laws and decisions issued by the Revolutionary Command Council (dissolved) from 17/7/1968 to 9/4/2003, which prohibits the courts from hearing cases arising from the application of laws and decisions of the dissolved Revolutionary Command Council)), whereas the principle is the general jurisdiction of the judiciary to consider disputes, and the deprivation of this jurisdiction is not

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permissible except as an exception, and in a manner that does not affect the basic rights of the citizen, and the right to litigation is guaranteed to all, article (16th) of the law stipulates: (The Court of Administrative Justice shall not have jurisdiction to consider appeals related to the following: Second: Administrative decisions that the law has drawn a way to grievance, object to or appeal them), and it is customary the grievance against administrative decisions is before the administration itself that issued it or before an administrative authority higher than it, and the objection is also before a higher administrative authority or an administrative committee regarding a specific administrative decision, which means violating Article (100) of the Constitution, so the administrative grievance and administrative objection against a specific administrative decision cannot prevent the ability of the Administrative Court in the territory of considering the dispute raised against him, the Federal Supreme Court has issued its decision issue (233 and its unified / federal / 2022) on 30/5/2022 Containing the ruling on the unconstitutionality of the law on the continuation of the fifth session of the Kurdistan Parliament Iraq No. (12) of 2022 issued by the Kurdistan Parliament Iraq in the regular session No. (11) on 9/10/2022, and considering the term of the fifth session of the Kurdistan Regional Parliament - Iraq expired with the expiry of the legal period specified for it under Article (51) of Law No. (1) of 1992 amended by Article (3) of Law No. (5) of 1998 First Amendment Law to Law No. (1) of 1992 and considering all that was issued by the Kurdistan Regional Parliament Iraq after that legal period constitutionally invalid based on the provisions of Article (13/2nd) of the Constitution of the Republic of Iraq)), but the Speaker of the Kurdistan Regional Parliament Iraq / being in this capacity, despite his commitment to the end of the fifth electoral cycle, but he did not commit to repeal the laws that were issued after the

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extension law (canceled), including the law of the first amendment to the Shura Council Law of the Region No. (17) of 2022, which was enacted by the Kurdistan Regional Parliament for Iraq for its outgoing fifth session, and this is a clear violation of the Constitution in article (13/2nd) thereof, which stipulates: (It is not permissible to enact a law that contradicts this constitution, and every text contained in the constitutions of the regions, or any other legal text that contradicts it), is considered null and void), and after the court reviewed what was stated in the request and conducted the scrutinies, it 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. (152/Federal/2024) before this court, requested, according to its regulation dated 26/5/2024, to issue an urgent state order that includes ((suspending the application of the First Amendment Law of the Regional Shura Council Law No. (17) of 2022, pursuant to the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and based on the provisions of Article (39). of the Court's Rules of Procedure)), and until the lawsuit filed before this court is resolved No. (152/Federal/2024), for the reasons detailed therein, 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 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

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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 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 accordance with Article (36) thereof, which stipulates that "court decisions are final and binding on all authorities and persons and cannot be challenged by any means of 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, for 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 containing facts, supports and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, whereas the scrutiny of the request for the issuance of the state order from this court has proven that there is no urgency in it, nor the state of necessity that requires its issuance, in addition to the above, responding to its content means entering the origin of the right and giving a prior opinion on the lawsuit filed before this court No. (152/Federal/2024), and that this contradicts the established judicial customs 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 established judicial applications in this area is in accordance with 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,

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whims, arbitrariness and flattery, there is no blame for the blame for what was really issued in words or deeds, and for the foregoing, the Federal Supreme Court decided to reject the request to issue the urgent state order submitted by (Briar Rashid Sharif / Member of the Council of Representatives), 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 2005 2021, and it has been made clear at the session dated 2/Dhu al-Hijjah/1445 A.H. corresponding to 9/6/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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