

Republic of Iraq
Federal Supreme Court
Ref. 172 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/8/2023 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: Daoud Abed Zayer - as a shareholder and Chairman of the Board of Directors of the Iraqi Land Transport Company / being in this capacity.

Who Requested to Issue the State Order Against:

Secretary General of the Council of Ministers /
being in this capacity.

The Request

The applicant for the issuance of the state order submitted to the Federal Supreme Court the statement of claim dated 18/7/2023, for which the legal fee was collected on the same date and registered in the number (172/Federal/2023) under which the claimant is claimed, ((Judgment canceling the circular of the General Secretariat of the Council of Ministers No. (Qaf/2/1/27/5670 on 5/2/2023 and State Council Resolution No. (9) of 2023)) based on their violation of the provisions of the Constitution of the Republic of Iraq of 2005, and also demanded the issuance of an urgent state order to stop the circular of the General Secretariat of the Council of Ministers and a decision The aforementioned Council of State until the case is resolved, for the reasons detailed in its petition, the conclusion of which lies in the

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following: ((Your honorable court has previously issued its decision No. (134/Federal/Cassation/2012), which stipulated that public sector representatives shall not participate after their appointment by electing private sector representatives in mixed sector companies and that this ruling was following the provisions of Article (103/1st) of the Companies Law No. (21) of 1997, as amended, and since the defendant issued his circular No. Qaf/2/1/27/5670 dated 5/2/2023 attached to the letter of the State Council No. 268 dated 25/1/2023 and its annex Resolution No. (9) for the year 2023 issued by the State Council, which refers to the contribution of public sector representatives in the election of boards of directors in mixed sector companies, contrary to the decision of the Federal Supreme Court above, whereas the decisions of the Federal Court and following the provisions of Article (94) of the Iraqi Constitution of 2005 (decisions of the Federal Supreme Court are final and binding on all authorities), and that the judicial authority is independent and is exercised by courts of all types and degrees and issues their rulings following the law under the provisions of Article (87) of the Constitution, whereas the decisions of the courts of final degree are evidence against all people in accordance with the provisions of Articles 105 and 106 of the Evidence Law, and that the Council of State under the amended State Shura Council Law No. 65 of 1979, Article 8th thereof, which stipulates that "the Council shall refrain from expressing legal opinion and advice in cases submitted to the judiciary and in decisions that have a legal reference for appeal)), accordingly, and pursuant to the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (39) of the Internal Regulations of the Federal Supreme Court No. (1) of 2022, the request was submitted to issue an urgent state order in accordance with the aforementioned detail.

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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. (172/Federal/2023) before this court, requested, according to his regulation dated 18/7/2023, to issue an urgent state order, which includes the demand: ((Stopping the circular of the General Secretariat of the Council of Ministers No. (Qaf/2/1/27/5670 on 5/2/2023 and State Council Resolution No. (9) of 2023)), until the case is resolved, for the reasons detailed in its 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, it was not addressed, nor was it addressed in the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021, nor the Bylaw 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, and to the extent commensurate with the nature and privacy 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 replacing it) and in accordance with Article 36 thereof, which stipulates that: (the court's decisions are final and binding on all authorities and persons and are not subject to appeal by any means of appeal...) On the basis of the foregoing, the issuance of an urgent state order by the Federal Supreme

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Court is governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Law, which lies in submitting a request in two copies that include the facts, evidence and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, and since the audit of the request for the issuance of the state order by this court has proven the lack of 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 of the constitutional lawsuit filed before this court in the number (172/Federal/2023) under which (the ruling to cancel the circular of the General Secretariat To the Council of Ministers No. (Qaf/2/1/27/5670 on 5/2/2023 and State Council Resolution No. (9) of 2023), for the reasons detailed in its petition, and that this contradicts the judicial customs established in the constitutional districts of Arab 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 field 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, there is no blame for what was really said or done, and therefore the decision on the request of the applicant to issue the state order must be rejected for two reasons: the first: it is the absence of urgency and the state of necessity that requires its issuance, and the second: that deciding on it means entering into the origin of the right and giving a prior opinion of the constitutional lawsuit filed before this court No. (172/Federal/2023), according to the aforementioned detail, and for the foregoing, the Federal Supreme Court decided to reject the request. The decision has been issued unanimously, final, and binding according to the provisions

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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 13/Muharram Al-Haram/1445 Hijri coinciding with 1/August/2023 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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