

Republic of Iraq
Federal Supreme Court
Ref. 207/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 6/8/2024 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Jaber Abid Hayder Ali Noori, Khalef Ahmed Rajab, Ayoob Abbas Salih, Dyar Mohammed Ali, and Khalid Taha Ahmed who are authorized in the name of the people to judge and they made the following decision:

The Requestor of issuing the State Order: Prime Minister / being in this capacity – His agent the legal adviser Haider Ali Jaber.
Whom requested to issue the State Order against: The Speaker of the Council of Representatives/ 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 agent the statement of claim on 4/8/2024, for which the legal fee was collected on the same date, and was registered in the number (207/Federal/2024) under which the ruling on the unconstitutionality of Articles (2 and 20) of the ninth amendment Law No. (17) of 2024 of the Ministry of Higher Education and scientific research No. (40) of 1988 (as amended) and its abolition, by claiming to add it from The Council of Representatives when it enacted the aforementioned law contrary to the general policy of the state competent to be drawn by the Council of Ministers in accordance with article (80/I) of the Constitution, and without the consent of the government or taking its opinion, this is considered an interference with the powers and functions of the executive authority and a violation of the principle of separation of powers stipulated in Article (47) of the Constitution)), this is for the reasons detailed in the regulation, and it was also requested to

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issue a state order stipulating ((suspension of execution the text of Articles (2 and 20) of the law subject to the appeal until the case is resolved, due to the availability of urgency in case of extreme necessity and in accordance with the provisions of articles (150 and 151) of the civil procedure law No. (83) of 1969 as amended, as the suspension of execution lies in correcting the effects of the entry into force of these two texts and preventing the order of any result that is difficult to remove until their constitutionality is decided or not, in accordance with the details contained in the regulation.)) After reviewing the contents of the request and conducting the 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, according to the statement of claim dated 4/8/2024, an urgent state order was issued that includes ((suspending the implementation of the text of Article (2) - which made the authority to appoint assistant presidents of universities and deans of colleges and institutes and the directors of research centers in the Scientific Research Authority by the President of the University and the President of the Scientific Research Authority, Article (20) - which specified the period of assignment in person for each of the President of the Scientific Research Authority, his deputies, university presidents and their assistants, deans and directors of the centers of the Scientific Research Authority (4) four years, extendable for one year and as of the date of confirmation, and the period of assignment by proxy is specified for a maximum period of one year) of the law - the subject of the appeal - This is due to the availability of urgency and the state of extreme necessity and in accordance with the provisions of

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Articles (150 and 151) of the Civil Procedure Law No. 83 of 1969, as amended, as the suspension of execution lies in correcting the effects which results from the entry into force of these two texts and preventing the order of any result that is difficult to remove until their constitutionality is decided or not, according to the details contained in the regulation.) until the resolution of the case numbered (207/Federal/2024) filed before it to challenge the two articles whose implementation is requested to be suspended, for the reasons detailed in the regulation, 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 amending Law No. 25 of 2021. nor the Rules of Procedure of the Federal Supreme Court No. (1) for the year 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 Rules of Procedure of the Federal Supreme Court referred to above, which stipulates that (the Court may consider requests for Summary Judiciary 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 decisions of the court 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 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

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this court and not subject to the methods of appeal, which consist in submitting an application in two copies containing facts, grounds 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 of this court, has proved that it is not of urgency, 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 in the number (207/Federal/2024) according to ((which the ruling on the unconstitutionality of Articles (2 and 20) is claimed from the ninth amendment Law No. (17) of 2024 to the Law of the Ministry of Higher Education and Scientific Research No. (40) of 1988 (as amended) and its repeal, by claiming that it was added by the Council of Representatives when it enacted the said law Violating the general policy of the state competent to be drawn by the Council of Ministers in accordance with Article (80/1st) of the Constitution, without the consent of the government or taking its opinion, this is considered an interference with the powers and functions of the executive authority and a violation of the principle of separation of powers stipulated in Article (47) of the Constitution, this is contrary to with the established judicial customs in the constitutional districts of Arabic and foreign states, with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the 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 in view of the above, the Federal Supreme Court decided to reject the application for the issuance of the urgent

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state order submitted from the Prime Minister / being in this capacity, 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 made clear in the session dated 1/Safar/1446 A.H. Corresponding to 6/8/2024 AD.

Judge
Jassim Mohammad Abood
President of the Federal Supreme Court

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