

Republic of Iraq  
Federal Supreme Court  
Ref. 24 / federal / 2020



Kurdish text

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The Federal Supreme Court (F.S.C.) was convened on 6.6.2021 headed by Judge Jasem Mohammad Abbood and the membership of the judges Ghaleb Amer Shnain, Haidar Jaber Abed, Haider Ali Noory, Khalaf Ahmad Rajab, Ayoub Abbas Salih, Abdul Rahman Suleiman Ali, Diyar Muhammad Ali and Monther Ebraheem Husain who are authorized to judge in the name of the people, they made the following decision:

**The applicant for the issuance of the state order:**

The attorney Shawkat Fadhel Al-Samaraay.

**The person who's the state order is against:**

The Speaker of the Iraqi Council of Representatives (I.C.R.)/ in addition to his post / his agents the legal advisor Haithem Majid Salim and the legal official Saman Muhsen Ebraheem.

**First- The brief of the request:**

The attorney Shawket Fadhel Al-Samaraay requested in his draft presented to the Federal Supreme Court No.(24/federal/2020) dated on 5.2.2020, which its legal fee was collected on 6.2.2020 requested to issue a state order, which includes (given the importance of the subject of the lawsuit No.(23/Federal/2020) filed before this court, for which the legal fee has been met on 6.2.2020, the importance of the constitutional breach committed in the legislation of the legislative order issued by the Coalition Provisional Authority

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No.(19) of 2003, and the seriousness of the effects resulting from the application of the law in question, with the continuation of this breach by the executive authority and the intervention of armed, disorderly and lawless elements to suppress the demonstrations, which began before the eyes of all authorities and bodies without a constitutional or legal basis using force, sticks, knives and various weapons to disperse the peaceful demonstrations sweeping the cities of central and southern Iraq, and this matter violates the constitution and the laws in force and threaten the security and safety of peaceful demonstrators and their internationally guaranteed, constitutional and legal right to demonstrate, assemble and express opinion. It also threatens societal security and peace with an imminent danger that may reach armed civil war. In confirmation of the defenses, we mentioned in our constitutional petition based on challenging the unconstitutionality of the legislative decision issued by the Coalition Provisional Authority by number (19) of 2003, and based on the provisions of the articles (151, 152) of the amended Civil Procedure Law No. (83) of 1969, we ask your esteemed court to issue an urgent state order suspending the work of the law in question until the case is resolved.

**Second: The decision:**

During scrutiny and deliberation by the F.S.C. it found that the requester of the state order the attorney Shawkat Fadhel Al-Samaraay, requested in the draft addressed to this court No. (24/

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Federal /2020) dated on 5.2.2020 which its legal fee collected on 6.2.2020, to issue state order includes (suspend the implementation of the legislative decision issued by the Coalition Provisional Authority No. (19) for 2003 for the reasons mentioned in detail in the aforementioned draft. The Federal Supreme Court finds that its jurisdictions and authorities in issuing state orders under requests submitted to it or lawsuit filed before it, wasn't stipulated or treated in the F.S.C. amended law No.(30) of 2005, nether in its bylaw No.(1) of 2005, by that the authority of the Federal Supreme Court in issuing state orders is under the provision stipulated in articles (152, and 152) of the amended civil procedures law No.(83) of 1969 by the amount that fit the nature of the constitutional lawsuit and its specification according to the provision of article (19) of the F.S.C. bylaw which stated 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 this bylaw), and by the indication of article (17) of it which stated that (the judgments and decisions issued by the Court are final and doesn't subject to any method of appeal...), on that base of that, issuing the state order by the Federal Supreme Court is govern only by controls and conditions that are required to issue it listed in the Law of Procedures due to the finality of the decisions issued from this Court and that it doesn't submit to the appeal methods represented by submitting request of two copies that includes the facts, substantiations, and documents and the

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availability of the urgent character and not interfering the origin of the right or deciding it. Since examining the request by this court has proven the absence of the urgency that must be present for the issuance of the state order due to the absence of the character of extreme necessity that requires the issuance of such order, and in addition to the foregoing, the issuance of a state order means entering into the origin of the right and deciding on it and is consider as giving an opinion before its time of unconstitutionality of (the legislative decision issued by the Coalition Provisional Authority No.(19) for 2003) requested to be suspend, specially that the requester to issue the state order challenge it constitutionality in the lawsuit No.(23/Federal/2020) which it fee was collected on 6.2.2020, the date 6.6.2021 was appointed for argument in it, that contradicts what the Iraqi judicial has decided in its two types constitutional and regular and the judicial customs in the constitutional judiciary of the Arabic and foreign countries, and what it included of judicial implementation in this regard according to the provision of the Constitution and in force laws, based on setting the right, achieving justice and fairness, far from tendencies, desire, arbitrariness and flattery. By that the request is binding to be dismissed for two reasons first: lacking the urgency character, second: deciding it means entering the origin of the right and giving an opinion before its time of unconstitutionality of (the legislative decision issued by the Coalition Provisional Authority No. (19) for 2003) requested to be suspended, especially that he challenged its constitutionality before

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this Court according to the aforementioned details. For the aforementioned, the Federal Supreme Court decided to dismiss the request of who requesting the issuance of the state order the attorney Shawkat Fadhel Al-Samaraay which includes (suspend the implementation of the legislative decision issued by the Coalition Provisional Authority No. (19) for 2003) until deciding the lawsuit filed by him before this Court No. (23/Federal/2020) challenging the constitutionality of the mentioned legislative order which its fee was collected on 6.2.2020, the date 6.6.2021 appointed for argument in it. This decision has been issued according to articles (94) of the Constitution of 2005, and article (5/2<sup>nd</sup>) of the Federal Supreme Court amended law No. (30) for 2005, unanimously and final, issued publicly on (24. Shawal .1442) AH., (6.6.2021) A.D.

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Signature of  
The president

**Jasem Mohammad  
Abbood**

Signature of  
The member

**Ghaleb Amer Shnain**

Signature of  
The member

**Haidar Jaber Abed**

Signature of  
The member

**Haider Ali Noory**

Signature of  
The member

**Khalaf Ahmad Rajab**

Signature of  
The member

**Ayoub Abbas Salih**

Signature of  
The member

**Abdul Rahman  
Suleiman Ali**

Signature of  
The member

**Diyar Muhammad  
Ali**

Signature of  
The member

**Monther Ebraheem  
Husain**

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