

Republic of Iraq
Federal Supreme Court
Ref. 259 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 1/11/2023 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: the Minister of Communications/ being in this capacity.

The Abstract of the Request:

The person requesting the issuance of the state order, through her representative, submitted to this court the statement of claim dated 10/24/2023, for which the legal fee was collected on the same date and registered under the number (259/Federal/2023), according to which the claim is made ((ruling that Article (1) is unconstitutional) From Section Three and Section Two/Paragraph (3), Section Three/Paragraph (1), Section Five/Paragraph (2), Section Five/Paragraph (2 and Beh), Section 5/Paragraph (2 and Kaf), Section 1/Paragraph (3) and Section 3/Paragraph (1) and Section 5/Paragraph (1) and (Section 5/Paragraph (2 and Alif) and Section 5/Paragraph (2 and Dal) and Section 5/Paragraph (2 and Dal and 13) and Section 5/Paragraph (2 and Ta) and Section 5/Paragraph (2 and Yeh) and Section 5/Paragraph (2/Jim) of Coalition Provisional Authority Order No. (65) of 2004, based on its violation of the provisions of the Constitution of the Republic of Iraq of 2005 in Articles (80, 83, 103, and 110/six) of which, It also requested the

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issuance of an urgent state order including (suspension of implementation of the articles contained in Coalition Provisional Authority Order No. (65) of 2004 whose unconstitutionality is being challenged), until the aforementioned lawsuit is resolved for the reasons indicated in detail in the statement of claim.

The Decision:

Upon examination and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, due to her filing of case No. (259/Federal/2023) before this court, requested, in accordance with its regulations dated 10/24/2023, the issuance of an urgent state order, which includes the ruling: (to stop work Temporarily in Article (1) of Section Three), (Section Two/Paragraph 3), (Section Three/Paragraph 1), (Section Five/Paragraph 2), (Section Five/Paragraph 2 and Beh), and (Section 5/Paragraph 2 and K).) and (Section 1/Paragraph 3) and (Section 3/Paragraph 1) and (Section 5/Paragraph 1) and (Section 5/Paragraph 2 and A) and (Section 5 and Paragraph 2 and Dal) and (Section 5 and Paragraph 2 Zin and 13) and (Section 5/Paragraph 2 and I) and (Section 5/Paragraph 2 and J) and Section 5/Paragraph 2/Jim) of Coalition Provisional Authority Order No. (65) of 2004, until the aforementioned case is resolved, for the reasons referred to above in detail, the Federal Supreme Court finds, that issuing an urgent state order based on an independent request or implicitly in the constitutional lawsuits brought before it has not been addressed, nor has it been addressed in Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, nor the Bylaw of the Federal Court Supreme Court No. (1) of 2022 published in the Iraqi

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Gazette, Issue (4679) on 6/13/2022, 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 that is 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 light of 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...), and based on the above, issuing an order An urgent state ruling by the Federal Supreme Court, governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Code, due to the finality of the decisions issued by this court, and not being subject to methods of appeal, which consists of submitting a request in two copies, including the facts, evidence and documents, the availability of the status of urgency, and not entering into the origin of the right and deciding on it, and since the examination of the request to issue the guardianship order by this court has proven that it does not have the status of urgency nor the state of necessity that requires its issuance, in addition to what Previously, responding to its content means entering into the root of the right and giving a prior opinion on the constitutional lawsuit filed before this court, No. (259/Federal/2023), according to which it is requested to rule on the unconstitutionality of the aforementioned articles of the Coalition Provisional Authority Order No. (65) of 2004. Based on its violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 in Articles (80, 83, 103 and 110/sixth) thereof, and that

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this conflicts with established judicial customs in the constitutional issues of Arab and foreign countries, and with what the Iraqi judiciary, both its constitutional and ordinary parts, has settled on, and what is included in the established judicial applications in this field based on the provisions of the Constitution and the laws in force, which are based on the realization of rights and the achievement of justice and fairness, far from inclinations, whims, arbitrariness and flattery, the blamer is not to be blamed for what was truly said or done. Thus, deciding on the request requesting the issuance of a guardianship order must be rejected for two reasons: the first: the lack of urgency in it and the state of necessity that requires its issuance, and the second: the fact that deciding on it means entering into the origin of the right and giving a prior opinion on the case brought before this court, No. (259/Federal/) 2023), following the details referred to above, and based on the above, the Federal Supreme Court decided to reject the request to issue the state order submitted by the Minister of Communications/being in this capacity. The decision has been issued unanimously, final, and binding according to the provisions 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 16/Rabea Al-Akhir/1445 Hijri coinciding 1/November/2023 AD.

Judge
Jasem Mohammad Abboud
President of the Federal Supreme Court

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