

Republic of Iraq
Federal Supreme Court
Ref. 266 / 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 barrister Massoud Mohieddin Mahmood – his agent the barrister Hasan Sabah Kamal.

Who Requested to Issue the State Order Against: Bâtonnier of Kurdistan Bar Association/ being in this capacity.

The Abstract of the Request

The person requesting the issuance of the state order, through his representative, submitted to this court the statement of claim dated 10/31/2023, for which the legal fee was collected on the same date and was registered under the number (266/federal/2023), according to which the demands are made (the ruling to abolish the Kurdistan Region Bar Association and prevent it from practicing Its work, canceling all its decisions and actions since 2019, and returning all salaries and allocations received to the union's fund) on the basis of its violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 in Articles (1 and 2/First - Beh, Jim, 5, 6, 13, 14 and 16) thereof, and the provisions of the law, regulations and instructions. It also

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requested the issuance of an urgent state order containing the ruling (to suspend the work and activities of the Bar Association in the Kurdistan Region), until the aforementioned lawsuit is resolved for the reasons indicated in detail in the statement of claim, the summary of which lies in the following: (The Bar Association in the Kurdistan Region is an organizational and democratic professional association with an independent legal personality that operates in accordance with Law No. (17) of 1999 amended issued by the Kurdistan National Council and its objectives are to support, consolidate and develop the federal democratic system, as stated in the provisions of Article (46) of it, with all its paragraphs, and the union must convene the general body every three years to elect a new president and members of the union, as stated in the text of Article (48) of it, and that the union in its current session, which is the fifth session, should have held elections in the year (2017), however, it did not do so and continued its work and activities despite the end of its term. On 10/31/30/2019, the General Authority of the Bar Association in the Kurdistan Region met in its general conference to elect delegates to determine the date of the elections and supervise the elections. The Association was dissolved and all its tasks were handed over to the committee. The conference supervisor was informed that November 28, 2019 would be the date for holding the elections for the president and members of the union. The day before the elections were held, the committee decided to postpone the elections until further notice without any justifiable legal reason, and the elections were not held to this day, in this case, the union is considered dissolved and has expired, and yet it carries out its activities normally and naturally, issues decisions, disposes of the union's funds, and concludes contracts with companies. This contradicts democratic systems and violates the Constitution of the Republic of Iraq for the year 2005 in Articles (1 and

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2/First - Beh, Jim, 5, 6, 13, 14 and 16) thereof, note that the Presidency of the Public Prosecution in the Kurdistan Region sent an official letter, No. (889), on 7/23/2023 to the Presidency of the Council of Ministers in the Kurdistan Region for the purpose of obligating the region's unions to hold their elections for a period of time, and that their practices and actions are illegal and illegitimate, and their decisions are not binding. Note that the text of Article (59/Fourth) of the aforementioned Kurdistan Region Bar Association Law stipulates that in the event of the absence of the president and members of the union, the Judicial Council in the Kurdistan Region must appoint a first-class judge and the membership of four consultant lawyers who will manage the affairs of the union, this also has not been implemented, and despite the illegality and constitutionality of the Kurdistan Region Bar Association, they prevent the applicant for issuing the state order, who has the identity of the Iraqi Bar Association, from practicing the legal profession in the region, to address the Judicial Council in the Kurdistan Region, based on the decision of the Kurdistan Region Syndicate, which It was circulated to the regional courts pursuant to their letter No. (3970) on 8/9/2023 (Iraqi lawyers are prohibited from practicing the legal profession in the region from 9/17/2023, except after submitting a pledge and other documents, and this is illegal), In view of the foregoing, and based on the provisions of Articles (151 and 152) of the 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 details referred to above.

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The decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the person requesting the issuance of the state order, due to his filing of the case No. (266/Federal/2023) before this court, requested, according to his regulations dated 10/31/2023, the issuance of an urgent state order, which includes the ruling: (to stop work and activities The Bar Association in the Kurdistan Region), until the aforementioned case is resolved, for the reasons mentioned in detail therein. The Federal Supreme Court finds that issuing an urgent state order based on an independent request or implicitly in the constitutional cases 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 internal regulations of the Federal Supreme Court No. (1) of 2022 published in the Iraqi Gazette, Issue (4679) on 6/13/2022, 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 proportionate to the nature and specificity of the constitutional lawsuit, based on the provisions of Article (39) of the aforementioned rules of procedure of the Federal Supreme Court, which It 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 (the court's decisions are final and binding). To all authorities and persons, and it does not accept appeal in any way...), and on the basis of the above, 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 Code,

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due to the finality of the decisions issued by this court and not being subject to appeal methods, which consist of submitting a request in two copies containing the facts, evidence and documents, and 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 from this court has proven that it does not have the status of urgency. Nor is there a case of necessity that requires its issuance. In addition to the above, responding to its content means entering into the origin of the right and giving a prior opinion on the constitutional lawsuit filed before this court in the number (266 / Federal / 2023) according to which the ruling is requested (cancelling the Kurdistan Region Bar Association and preventing it from practicing its work and canceling all... Its decisions and actions since 2019 and the return of all salaries and allocations to the union fund) on the basis of its violation of the provisions of the Constitution of the Republic of Iraq for the year 2005 in Articles (1 and 2/First - Beh, Jim, 5, 6, 13, 14 and 16) thereof and the provisions of the law, regulations and relevant instructions, according to the details referred to therein, this contradicts the judicial customs established in the constitutional judiciaries of Arab and foreign countries and with what the Iraqi judiciary has settled on, both its constitutional and ordinary parts, and what is included in the 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 achieving... Justice and fairness, away from inclinations, whims, arbitrariness and flattery. The blamer is not to be blamed for what is truly issued, whether he says or does. Thus, deciding on the request to issue a guardianship order must be rejected for two reasons: The first: It is the lack of urgency in it and the state of necessity that requires its issuance. The second: It lies in the fact that the decision It

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means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court, No. (266/Federal/2023), in accordance with the details referred to above. Accordingly, the Federal Supreme Court decided to reject the request to issue a state order submitted by lawyer Masoud Mohieddin Mahmoud. The decision has been issued unanimously 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 with 1/November/2023 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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