

Republic of Iraq  
Federal Supreme Court  
Ref. 2 / federal/state order /2023



Kurdish text

The Federal Supreme Court (F S C) has been convened on 29/1/2023 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, Ayooob Abbas Salih, Dyar Mohammed Ali, and Munthir Ibrahim Hussein who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Issuing the State Order: Zuhair Ali Shaalan – Governor of Diwaniya/ being in this capacity – his agent the barrister Shawkat Sami Fadhil.

Who Requested to Issue the State Order Against: 1- The Prime Minister/ being in this capacity.

2- The Secretary-General of the Cabinet/ being in this capacity.

### **First: Abstract of the Request**

The applicant for issuing the state order submitted to this court, through his representative, his regulation dated 18/1/2023, for which the legal fee was collected on the same date and registered with the number (2/federal/state order/2023), according to which he requested the issuance of an urgent state order ((suspending the application of the Diwani order No. (Qaf/2/5/44/42/184 on 10/1/2023), according to which it was decided to withdraw the hand of the applicant for issuing the state order, Zuhair Ali Al-Shaalan, Governor of Diwaniyah / in addition to his job)), until the lawsuit filed by a student is resolved Issuance of the

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 2 / federal/state order /2023



Kurdish text

state order No. (10/Federal/2023) demanding ((ruling on the unconstitutionality and cancellation of the aforementioned Diwani order)), for the reasons detailed in the regulation, including (1) The unconstitutionality and legitimacy of the decisions that will be issued by the alternative governor, regardless of their form, descriptions, and effects, as he is (not employed in the first place), and was not attributed in the proper constitutional and legal way to occupy the position of the governor of Diwaniyah, in addition to the illegality of continuing to exercise the powers stipulated in the Law of Governorates Not Organized in Region No. (21) of 2008, as amended, and the illegality of the decisions to be issued later, and for the foregoing, and based on the provisions of Articles (151 and 152) of the Civil Procedure Law No. (83) of 1969, as amended, and Article (39) of the Rules of Procedure 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.

### **Second: the decision:**

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for issuing the state order, due to his filing of lawsuit No. (10/Federal/2023) before this court, requested according to its regulations dated 18/1/2023 to issue an urgent state order, which includes: ((Suspension of the application of the Diwani order subject to the constitutional challenge No. (Qaf/2/5/44/42/184 on 10/1/2023, according to which it was decided to withdraw the hand of the applicant for issuing the state order in addition to his job)), until the aforementioned lawsuit is resolved, for the reasons detailed in the draft, the Federal Supreme Court finds that the issuance of an urgent state order based on an independent request or implicit in the constitutional

*saady*

Republic of Iraq  
Federal Supreme Court  
Ref. 2 / federal/state order /2023



Kurdish text

cases filed before it has not been addressed, nor has it been addressed in the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, nor the Rules of Procedure 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 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 stipulated 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 (court decisions are final and binding on all authorities and persons and do not accept 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, because the decisions issued by this court are finality and are not subject to the methods of appeal, which consist in submitting an application in two copies containing the facts, grounds and documents, and the availability of urgency, and not to enter into the origin of the right and decide on it, and since the scrutiny of the request for issuing a state order by this court has proven the lack of urgency in it or the case of extreme 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 No. (10/Federal/2023) under which ((ruling on the unconstitutionality and cancellation of the Diwani Order No.

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Republic of Iraq  
Federal Supreme Court  
Ref. 2 / federal/state order /2023



Kurdish text

(S/2/5/44/42/184 on 10/1/2023, according to which it was decided to withdraw the hand of the applicant for issuing the state order / being in this capacity)), on the basis of violating the provisions of the Constitution of the Republic of Iraq of 2005 and the laws in force, for the reasons detailed in the petition, and that this contradicts the established judicial customs in the constitutional districts of Arab and foreign countries and with what the Iraqi judiciary has settled on in both its constitutional and ordinary parts and what is included in the well-established judicial applications in this area based on 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 tendencies, whims, arbitrariness and flattery, there is no blame for what was really issued from Saying or doing, and thus deciding on the applicant's request to issue the state order, must be rejected for two reasons: the first: it is the absence of urgency in it, and the second: it lies in the fact that deciding on it means entering into the origin of the right and giving a prior opinion on the lawsuit filed before this court in number (10/federal/2023), according to the detail referred to above. Accordingly, the FSC decided to reject the case. 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 (5/2<sup>nd</sup>) of the FSC's law No. (30) for 2005 which was amended by law No. (25) for 2021. It has been edited on the session dated 6/Rajab/1444 Hijri coinciding 29/January/2023 AD.

**Judge**  
**Jasem Mohammad Abboud**  
**President of the Federal Supreme Court**

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