

Republic of Iraq
Federal Supreme Court
Ref. 34 / state order/federal /2022



Kurdish text

The Federal Supreme Court (F S C) has been convened on 7/12/2022 headed by Judge Jassim Mohammed Abood and membership of Judges Sameer Abbas Mohammed, Ghaleb Amir Shunain, Hayder Ali Noori, Hayder Jaber Abid, Khalaf Ahmed Rajab, 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: Mohammed Abdul Sada Al-Asdi – his agent the barrister Saif Mahir Al-Asdi.

Whom requested to issue the State Order against: 1- the Prime Minister/ being in this capacity.

2- The Executive Head of the Media and Tellecommnication Commission/ being in this capacity.

First- the abstract of the request:

The applicant for issuing the state order, through his representative, with his regulation dated 22/11/2022, for which the legal fee was collected on the same date and registered in the number (34/federal/state/2022), requested the Federal Supreme Court to issue an urgent state order that includes: ((Suspension of Diwani Order No. (22143) on 14/11/2022 containing the reassignment of (Ali Hussein Abdul Qader Al-Moayyed) to head the executive body of the Media and Communications Commission, and the cancellation of the resulting violations, until the resolution of the lawsuit filed by him before this court numbered (259/Federal/2022) In confirmation of the request contained therein containing the same request above)) The summary of the reasons for his request is as follows: 1 - The decision to reassign Ali

saady

Republic of Iraq
Federal Supreme Court
Ref. 34 / state order/federal /2022



Kurdish text

Hussein Al-Moayyad to head the executive body of the Authority is contrary to the law, as the person required to issue the state order against him II had previously filed the lawsuit numbered (2788/Q/2022) before the Administrative Court, and the decision was cassation before the Supreme Administrative Court, and the final decision has not been issued until today to respond or ratify. 2- Based on Order No. (65) of 2004, Section IV/2 thereof, (Director General), the one who has the authority to appoint the Director General, the head of the executive body of the Media and Communications Commission, is the Board of Commissioners, and this is confirmed by the legal representative of the General Secretariat of the Council of Ministers before your esteemed court under its regulation No. (33464) on 26/9/2022 (the role of his department ends with the appointment of the Governor to the membership of the Board of Commissioners, and that the Director General has a level of experience in legal, commercial and administrative affairs in the fields of engineering and telecommunications) and this is not available in the taxpayer, as he does not have any actual service Legal, administrative, and commercial in any of the mentioned fields. In fact, he did not have actual service in state departments and did not receive any position in the Media and Communications Commission. 3- There are legal and regulatory measures taken in the previous period concerning the settlement of files and problems pending for more than fifteen years related to Korek and in coordination with the Parliamentary Transport and Communications Committee, and that this settlement of files is estimated at millions of dollars, and that any decision in this regard issued by the defendant under the aforementioned Diwani Order is issued by a body that is not legally authorized. 4- The management of the Media and Communications Commission, as one of the important and independent

saady



bodies, requires those who manage this sector to take important decisions and procedures on the basis of which rights and obligations are entailed, as the head of the executive body has the authority under Order No. (65) of 2004 to impose financial fines, confiscate equipment, grant licenses, licenses and frequencies, and all decisions taken by him will be issued by an incompetent person and on the basis of which they will be subject to appeal and cassation and that this will cause a waste of state funds. 5- The person who is required to issue the second state order against him, issued several unstudied and unprofessional decisions, including the exemption of the technical assistant of the Authority, who is responsible for following up the file of the Authority's cases in international arbitration courts and is charged with following them up by a Diwani order, and therefore his removal affects the position of the Authority before the international judicial authorities and causes the loss of those cases, in addition to dismissing the directors of the Legal Department, his assistant, the Lawsuits Department, media organization, maintenance, services, quality of service and spectrum monitoring, which caused confusion in the work of the institution, especially That there are important lawsuits followed up by the legal department. 6- There are procedures for the referral of contracts by the Study and Analysis Committee in the Authority and the committees formed under the law concerning projects to develop the work of the Authority, and that by taking any decision related to those projects, it will cause great harm to the Authority considering the decisions issued by him being the Chairman of the Central Committee for Referrals, especially since these projects are ready for referral towards the end of the fiscal year. 7- The media, elites and social networking sites dealt largely with the issue of the illegality of the appointment, and that this confused the media and communications sector in general and clearly, and all sectors concerned

saady

Republic of Iraq
Federal Supreme Court
Ref. 34 / state order/federal /2022



Kurdish text

with licensed and unlicensed work became aware of the illegality of the Diwani order, and that this will lead to the reluctance of the authorities to deal with the Authority for fear of their interests and dealings until the legal position of the deceased is resolved. 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, a request was submitted to issue an urgent state order in accordance with the aforementioned details.

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 the lawsuit No. (259/Federal/2022) before this court, requested in its regulation dated 21/11/2022, the issuance of an urgent state order, which includes: ((Suspension of Diwani Order No. (22143) on 14/11/2022 containing the reassignment of (Ali Hussein Abdul Qader Al-Moayyed) to head the executive body of the Media and Communications Commission, and the cancellation of the resulting violations, until the aforementioned case is resolved)), for the reasons detailed in the request, and 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 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 the year 1969 as amended, and to the extent commensurate with the nature and specificity of the

saady

Republic of Iraq
Federal Supreme Court
Ref. 34 / state order/federal /2022



Kurdish text

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 a 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 Code of Civil Procedure, because the decisions issued by this court are finality and are not subject to the methods of appeal, which lie 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, Whereas the scrutiny of the request for issuing the state order by this court has proven that it is not urgent nor the state 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. (259/Federal/2022) according to which it is required ((the judgment obliging the required issuance of the state order against them / in addition to their functions to apply the provisions of the Constitution and the law correctly and to cancel the Diwani Order No. (22143) on 14/11/2022 containing Re-assigning (Ali Hussein Abdul Qader Al-Moayyed) to head the executive body of the Media and Communications Commission, and canceling the resulting violations, on the basis of its violation of the provisions of the Constitution of the Republic of Iraq of 2005 and the laws in force)) for the reasons detailed

saady

Republic of Iraq
Federal Supreme Court
Ref. 34 / state order/federal /2022



Kurdish text

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, 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 to be in accordance with what was actually said or done, and thus the decision on the applicant's request to issue the state order is obligatory to reject it for two reasons: The first: is the absence of urgency, 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 (259/federal/2022), according to the detail referred to above. Accordingly, the Federal Supreme Court decided to reject the request. The decision has been made unanimously, final and binding for all powers according to provisions of the articles (94) of the Republic of Iraq Constitution for 2005, and articles (5/2nd) of the FSC's law No. (30) for 2005 which was amended by the law No. (25) for 2021. The decision has been edited in the session dated 12/Jamada Al-Oula/1444 Hijri which coinciding 7/December/2022 A.D.

Signature of
The president
Jasem Mohammad Abbood

saady

Republic of Iraq
Federal Supreme Court
Ref. 34 / state order/federal /2022



Kurdish text
