

Republic of Iraq
Federal Supreme Court
Ref. 3/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 11/2/2024 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: - Muhammed Ismail Khalil.

Who Requested to Issue the State Order Against: Governor of Baghdad/
Being in this capacity.

Abstract of the Request:

The applicant for the issuance of the state order submitted to the Federal Supreme Court its regulation dated 7/2/2024, for which the legal fee was collected on the same date and registered in the number(3/federal/state order/2024), due to his filing of the lawsuit before this court in the number (52/federal/2024), according to which the judgment is requested (to cancel all decisions and procedures taken by the person against whom the state order is requested / being in this capacity during the caretaker period, according to the detail referred to in the lawsuit petition), and his request included the issuance of an urgent state order (suspending all decisions and procedures taken by the person against whom the state order is requested/being in this capacity), until the lawsuit is resolved mentioned above, for the reasons detailed in the regulation, the conclusion of which lies in the following: ((The Governorate of Baghdad has already announced a number of

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government contracts within a short period of time by tendering and direct invitation to private companies and taking many decisions and procedures, all of which were after the end of the electoral cycle, as stipulated Article (30) of the Law of Governorates Not Organized in Region No. (21) of 2008, as amended: (The governor, his deputies and the heads of administrative units shall continue to conduct daily affairs after the end of the electoral cycle of the councils and until Election of their successors by the new councils), Whereas the Prime Minister, according to letter No. (M/S/592) dated 28/12/2023, directed the provincial councils to conduct daily affairs until the formation of the new provincial councils, the election of administrations and the assumption of their duties duly, and referred to the interpretative decision of the court No. (121/Federal/2022) which explains the caretaker government, but the Governorate of Baghdad did not apply the law, it did not take into account the directives of the Council of Ministers, and it proceeded to commit many legal violations...) after reviewing the requests and reasons contained in the draft requesting the issuance of the state order, the court completed its scrutinies, and issued the following decision:

The Decision:

Upon scrutiny and deliberation by the Federal Supreme Court, it was found that the applicant for the issuance of the state order, due to his filing of the lawsuit No. (52/Federal/2024) before this court, requested, according to his regulation dated 7/2/2024, to issue an urgent state order, including: (suspending all decisions and procedures taken by the person against whom the state order is required / being in this capacity, until the aforementioned lawsuit is resolved)), for the reasons referred to in detail

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In the Regulation, 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 as 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 No. (4679) on 13/6/2022, 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, and to the extent commensurate with the nature and specificity of the constitutional lawsuit, 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 replacing it) in terms of article (36) thereof, which stipulates that "the decisions of the court are final and binding on all authorities and persons and shall not be subject to 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, due to the finality of the decisions issued by this court and not subject to the methods of appeal which consists in submitting a request in two copies, including facts, grounds and documents, and the availability of urgency, and not entering into the original right and deciding on it, whereas the examination of the request for the issuance of the state order by this court has proven that there is no urgency in it or the state 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 lawsuit filed before

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this court No. (52/Federal/2024) according to which the judgment is requested (to annul all decisions and actions taken by the person against whom the state order is requested / being in this capacity during the caretaker period), for the reasons detailed in the lawsuit petition, This contradicts the established judicial norms in the constitutional districts of Arab and foreign countries, and with what the Iraqi judiciary has settled on, both constitutional and ordinary, and what is included in the well-established judicial applications in this field in accordance with the provisions of the Constitution and the existing laws in force. On the basis of the realization of the truth and the achievement of justice and fairness away from inclinations, passions, arbitrariness and flattery, there is no blame for what was really issued from word or deed, thus, the decision on the request of the applicant to issue a state order must be rejected for two reasons: First: the lack of urgency in it, the second: is that deciding on it means entering the origin of the right and giving a prior opinion on the lawsuit filed before this court in the number (52/Federal/2024), according to the aforementioned detail, and for the foregoing, the Federal Supreme Court decided to reject the request to issue the state order submitted by Muhammad Ismail Khalil. 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 the year 2005, article(5/2nd) of the Federal Supreme Court Law No. (30) of 2005 as amended by Law No. (25) of 2021. The decision has been made clear in the session dated 30/Rajab/1445 A.H. corresponding to 11/2/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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