

Republic of Iraq
Federal Supreme Court
Ref. 63/ federal/state order /2024



Kurdish text

The Federal Supreme Court (F S C) has been convened on 12/3/2024 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, Dyar Mohammed Ali and Munther Ibrahim Husain who are authorized in the name of the people to judge and they made the following decision:

The Requestor of Issuing the State Order: - Uday Awad Kazem Al-Hussain- His agent the barrister Abdulkazim Karim Al-Kinani

Who Requested to Issue the State Order Against:

1. President Of The Republic/ being in this capacity.
2. Head of Basra Governorate Council/ being in this capacity.

Abstract of the Request:

The applicant for the issuance of the state order, through his agent, submitted to the Federal Supreme Court, his regulation dated 20/2/2024, for which the legal fee was collected on the same date and registered in the number (63/Federal/2024) under which the claim is (ruling on the invalidity and cancellation of Presidential Decree No. (4) for the year 2024 regarding the appointment of Asaad Abdul Amir Abdul Ghaffar Al-Aidani as Governor of Basra and removing its effects and considering it as if it were not), in accordance with the detail referred to in the petition, It also included a demand for the issuance of an urgent state order that includes: suspending the enforcement of the presidential decree - the subject of the appeal - until the aforementioned lawsuit is resolved, for the reasons detailed in the regulation, the conclusion of which lies: The first state order is required to be issued

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against him the presidential decree was issued based on what was presented by the Basra Provincial Council, contrary to the rules of the Constitution and the relevant legal texts, and without paying attention to the legal violations that preceded the first meeting of the provincial council and the accompanying election of the governor, which necessitated the rejection of the issuance of the contested presidential decree, for the reasons detailed in the petition, and after reviewing the contents of the application and making its scrutinies, the court 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. (63/Federal/2024) before this court, requested, according to his regulation dated 20/2/2024, to issue an urgent state order, including: Demanding the suspension of the enforcement of Presidential Decree No. (4) of 2024, regarding the appointment of Asaad Abdul Amir Abdul Ghaffar Al-Eidani, 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 privacy of the constitutional lawsuit, based on the provisions of Article (39) of the Internal Regulations of

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the Federal Supreme Court referred to above, which stipulates 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) and in accordance with 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 from 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, For the finality of the decisions issued by this court and not being subject to the methods of appeal, which lies in submitting a request in two copies that include facts, grounds and documents, and the availability of urgency, and not entering into the origin of the right and deciding on it, and since the audit of the request for issuing the state order from this court has proven that it is not urgent, nor the state of necessity that requires its issuance, in addition to the above, responding to its content means entering the origin of the right and giving a prior opinion of the lawsuit filed before this court in the number (63/Federal/2024) The claimant (ruling on the invalidity and cancellation of Presidential Decree No. (4) of 2024 regarding the appointment of Asaad Abdul Amir Abdul Ghaffar Al-Aidani as Governor of Basra and removing its effects and considering it as if it were not), For the reasons referred to in detail 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, both constitutional and ordinary, and what is included in the well-established judicial applications in this field based on the provisions of the Constitution and the laws in force, based on the

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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 said or done, and thus deciding on the request of the applicant to issue the state order, is a duty Rejection for two reasons:

The first :is the absence of urgency and the absence of the necessity that requires its issuance.

The second: is that deciding on it means entering into the origin of the right and giving a prior opinion of the lawsuit filed before this court. No. (63/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 Uday Awad Kazem Al-Hussein. 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 on 1/Ramadan/1445 A.H. corresponding to 12/3/2024 AD.

Judge
Jasem Mohammad Abbood
President of the Federal Supreme Court

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